

TERMS OF SERVICE

Jukata, Inc. (“**Jukata**”) provides (1) a website located at <http://www.jukata.com/> (“**Website**”) and (2) certain services to individuals who have an active account with Jukata (“**Members**”) to synchronize their music collection with Jukata’s servers and access the collection from certain computers (“**Computer Services**”) and certain mobile phones (“**Mobile Services**”). Computer Services are provided directly by Jukata. Mobile Services are provided by Jukata through your cell phone service provider (“**Service Provider**”). To use the Mobile Services, you must order the Mobile Services from your Service Provider, pay all applicable fees to your Service Provider, and otherwise comply with your agreement with your Services Provider (“**Service Provider Agreement**”), including any applicable bandwidth limitation set forth therein. The Computer Services and Mobile Services are collectively, the “**Member Services**” and the Website, Member Services, Jukata Software (defined below) and any other features, content, or applications offered from time to time by Jukata in connection with the Website or Member Services are collectively, the “**Services**”.

THIS TERMS OF SERVICE (“**AGREEMENT**”) SETS FORTH THE LEGALLY BINDING TERMS FOR YOUR USE OF THE SERVICES. IF YOU DO NOT COMPLY WITH THIS AGREEMENT, YOU ARE NOT AUTHORIZED TO USE THE SERVICE. THIS AGREEMENT IS ACCEPTED BY YOU UPON THE EARLIER OF YOUR (A) DOWNLOADING OR USE OF THE SERVICES (INCLUDING THE JUKATA SOFTWARE), OR (B) REGISTERING TO BE A MEMBER. BY TAKING ANY OF THESE STEPS, YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, AUTHORITY, AND CAPACITY TO ENTER INTO THE AGREEMENT AND TO ABIDE BY ALL OF THE TERMS AND CONDITIONS SET FORTH HEREIN. IF YOU USE THE SERVICES ON BEHALF OF A COMPANY, ENTITY, OR ORGANIZATION, YOU REPRESENT AND WARRANT THAT YOU ARE AN AUTHORIZED REPRESENTATIVE OF SUCH COMPANY, ENTITY, OR ORGANIZATION WITH THE AUTHORITY TO BIND IT TO THE AGREEMENT. IF YOU DO NOT AGREE WITH ALL PROVISIONS OF THIS AGREEMENT, PLEASE DO NOT DOWNLOAD OR USE THE SERVICES (INCLUDING THE JUKATA SOFTWARE).

PLEASE REVIEW JUKATA’S PRIVACY POLICY (WHICH WILL BE MADE AVAILABLE SHORTLY) AT WWW.JUKATA.COM/PRIVACYPOLICY. THE TERMS OF THE PRIVACY POLICY (ONCE MADE AVAILABLE) ARE INCORPORATED INTO, AND CONSIDERED A PART OF, THIS AGREEMENT.

1. MEMBER SERVICES

This section 1 only applies to you if you are a Member. All other sections of this Agreement apply to you regardless of if you are or are not a Member.

1.1 Accounts

(a) **Setting Up Accounts.** In order to use the Member Services, you must first register for a Jukata account (“**Account**”) on the Website. You represent and warrant that: (a) all required registration information you submit is truthful and accurate; (b) you will maintain the accuracy of such information; and (c) your use of the Services does not violate any applicable law or regulation or the terms of this Agreement. When you sign up to become a Member, you will be asked to choose a username and password for your Account. You are entirely responsible for maintaining the confidentiality of your password. You agree not to use the Account, username, or password of another Member at any time. You agree to notify us immediately if you suspect any unauthorized use of your Account or access to your password. You are solely responsible for any and all use of your Account.

(b) **Setting Up Member Services.** You may add up to five (5) of your computers which meet Jukata’s minimum technical specifications (as set forth on the Website) to your Account (“**Account Computers**”). Account Computers may include supported personal computers, laptops,

digital video recorders, and certain game consoles. Once added, you may access the Computer Services from any of the Account Computers, provided that you may only access the Computer Services from one Account Computer at a time. You may sign up one (1) of your cell phones which meet Jukata's minimum technical specifications (as set forth on the Website) ("**Mobile**") for Mobile Services with your Service Provider. Your use of the Mobile Service is subject to your compliance with the terms of this Agreement and your Service Provider Agreement and may be limited by restrictions set forth in your Service Provider Agreement, such as bandwidth limitations.

(c) Canceling Accounts. You may delete your Account and end your status as a Member at any time, for any reason, by following the instructions on the Website. Your Account may be deleted without warning if we believe that you are younger than thirteen (13). Jukata may suspend (without notice) or terminate (with 5 days notice to your Account email address) your Account at any time, for any reason or no reason, at our sole discretion, including for your breach of this Agreement. You understand that any termination of your Account involves deletion of your Account information from our live databases and all your Content (defined below) stored in your Account. Jukata will not have any liability whatsoever to you for any termination of your Account or related deletion of your Content. Upon termination of your Account, the Jukata Software (defined below) license granted hereunder shall terminate and you shall immediately destroy any copies of the Jukata Software in your possession.

(d) United States Use. The Member Services are currently only offered for use in the United States (i.e., for internet addresses originating in the United States only). If you are not using the Member Services in the United States, you are not authorized to use the Member Service, sign up for an Account, or download the Jukata Software.

1.2 Jukata Software

(a) Setup. In order to use the Computer Services, you must download, install and execute the applicable Jukata plug-in software for the media player on your Computer ("**Computer Software**") (if available). The Computer Service currently supports the media players listed at, and the Computer Software for such media players is available at, www.jukata.com/downloads. In order to use the Mobile Services, you must download, install, and execute the applicable Jukata client software ("**Mobile Software**") onto your Mobile (if available). The Mobile Software is provided by Jukata through your Service Provider and is subject to your compliance with the terms of this Agreement and your Service Provider Agreement. The Mobile Software, Computer Software, and any other software provided or utilized by Jukata to provide the Member Services are collectively "**Jukata Software**" and are deemed part of the Services.

(b) Jukata Software License. Subject to the terms of this Agreement, Jukata grants to you a nontransferable, nonexclusive, royalty-free, fully paid, worldwide license, for your own personal noncommercial use, from internet addresses originating in the United States only, while you are a Member, to (1) access and use the Mobile Service and install and execute the Mobile Software, in executable object code format only, solely on your Mobile and solely for your use of the Mobile Service in accordance with this Agreement and your Service Provider Agreement, and (2) access and use the Computer Service and install and execute the Computer Software, in executable object code format only, solely on your Computers and solely for your use of the Computer Service.

(c) Open Source Software. Certain items of independent, third-party code that are included with the Jukata Software may be subject to open source licenses ("**Open Source Software**"). This Open Source Software is licensed under the terms of the applicable license for such Open Source Software. Nothing in this Agreement limits your rights under, or grants you rights that supersede, the

terms and conditions of any applicable license for such Open Source Software. In particular, if the Open Source Software is subject to the GNU General Public License (“**GPL**”), nothing in this Agreement restricts your right to copy, modify, and distribute such Open Source Software. Currently Jukata uses Open Source Software under the following licensees: LAME (www.mp3dev.org) and LGPL (<http://www.gnu.org/licenses/lgpl-3.0.txt>). This list may be updated from time to time. Applicable licenses, source code, attributions, and/or other information regarding any such Open Source Software will be provided upon written request to Jukata.

1.3 Your Content.

(a) **Synchronizing and Uploading.** The Member Services currently only supports audio files (“**Music Files**”). The Computer Software, in part, enables you to synchronize and/or upload your Music Files on your Computer through your Account to the Member Services, up to the maximum number of tracks and/or media files set forth on the Website. You are solely responsible for all Music Files, text, data, images, audio files, video files, and other content accessed or uploaded through your Account to the Member Services (“**Content**”). You represent and warrant that (i) you own a copy of each of your Music Files, (ii) you have the right to synchronize and upload your Music Files to the Member Services and to stream your Music Files back to you, and (iii) your Content does not violate the Acceptable Use Policy (defined below). Because you alone (and not Jukata) are responsible for your Content, you may expose yourself to liability if, for example, your Content violates the Acceptable Use Policy. You assume all risks associated with use of your Content.

(b) **Content License.** You hereby grant to Jukata an irrevocable, nonexclusive, royalty-free and fully paid, worldwide license (i) to synchronize and upload your Music Files to the Member Services and to stream your Music Files back to you, each on your behalf, (ii) to reproduce, distribute, publicly display and publicly perform your Music Files as necessary to perform such synchronization, uploading, and streaming on your behalf, and (iii) to reproduce, distribute, publicly display and perform, prepare derivative works of, and otherwise use your Content (other than the Music Files) to provide you the Member Services.

(c) **Security.** We make reasonable efforts to protect your Content and Account information through the design of the Services as well as technical means, but no company, including Jukata, can fully eliminate security risks connected to handling data on the Internet and you acknowledge, understand and agree that Jukata therefore cannot and does not guarantee the security of your Content and Account information while it is transmitted over the Internet or stored on the Services.

1.4 Other Products.

(a) **Restore Service.** Jukata provides to Members a Music File restore service as described at www.jukata.com/restore_services (such page, the “**Restore Service Page**” and such services, the “**Restore Services**”). If you order Jukata’s Restore Service and meet the requirements set forth on the Restore Services Page (e.g., you have not exceeded the maximum number of restores and the file meets certain type and quality requirements, each as described on the Restore Services Page), Jukata will use commercially reasonable efforts to restore each Music File that has been synchronized with or uploaded to your Account for Jukata’s then current fee for the Restore Service as set forth on the Restore Services Page (such fee, the “**Restore Service Fee**”). For the avoidance of doubt, the Restore Service Fee applies each time you use the Restore Services. As your sole remedy and Jukata’s sole liability for failure to restore all such Music Files, Jukata will provide you a refund of the Restore Service Fee as described on the Restore Services Page. **FOR THE AVOIDANCE OF DOUBT, EXCEPT FOR A REFUND OF THE RESTORE SERVICE FEE, IN NO EVENT WILL JUKATA BE REQUIRED TO COMPENSATE YOU FOR ANY LOST FILES IN CONNECTION WITH THE SERVICE.**

(b) Music. If available and subject to additional terms and conditions, you may order music videos or music files (“**Music Products**”) from (1) Jukata’s Website, for Jukata’s then-current fee for the Music Product and subject to Jukata’s then-current terms and conditions of sale; (2) a third party provider’s website, for the provider’s then-current fee for the Music Product and subject to the provider’s then-current terms and conditions of sale; or (3) from a Jukata affiliate’s, for the affiliate’s then-current fee for the Music Product and subject to the affiliate’s then-current terms and conditions of sale.

1.5 Fees and Payment. If you have ordered the Restore Service, you agree to pay the Restore Service Fee. Unless you and Jukata have agreed to an alternate billing arrangement in writing, Jukata will automatically bill the credit card you provided with your order of the Restore Services, for the Restore Service Fee, and will provide you an invoice to the email address in your Account. All fees are non-refundable. Fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you are responsible for payment of all such taxes, levies or duties. If any fee cannot be charged to your credit card for any reason, Jukata may invoice you for such unpaid fees. All invoices, if any, shall be due and payable immediately upon receipt. Any amounts not paid when due shall bear interest at the rate of one and one half percent (1.5%) per month, or the maximum legal rate if less.

2. SERVICES

2.1 Website License. Subject to the terms of this Agreement, Jukata grants you a non-transferable, non-exclusive, royalty-free, fully paid, worldwide license to reproduce and publicly display and perform content on the Website (excluding Music Files) for your personal, noncommercial use in connection with your use of the Services.

2.2 Acceptable Use Policy.

(a) You agree not to use the Service with or upload any Content (1) that violates any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right; (2) that is unlawful, harassing, abusive, tortious, threatening, harmful, abusive, invasive of another’s privacy, vulgar, defamatory, false, intentionally misleading, trade libelous, pornographic, obscene, patently offensive (e.g., material that promotes racism, bigotry, hatred, or physical harm of any kind against any group or individual) or otherwise objectionable material of any kind or nature; (3) that is harmful to minors in any way; or (4) in violation of any law, regulation, or obligations or restrictions imposed by any third party.

(b) In addition, you agree not to use the Services (1) with, or upload, any computer viruses, worms, or any software intended to damage or alter a computer system or data; (2) to send unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, or any other form of duplicative or unsolicited messages, whether commercial or otherwise; (3) to harvest, collect, gather or assemble information or data regarding other users, including e-mail addresses, without their consent; (4) to interfere with or disrupt servers or networks connected to the Service or violate the regulations, policies or procedures of such networks; (5) to attempt to gain unauthorized access to the Service, other Accounts, computer systems or networks connected to or used together with the Service, through password mining or other means; or (6) to harass or interfere with another Member’s or Visitor’s use and enjoyment of the Service.

2.3 Third Party Providers. Jukata utilizes services from third party providers in providing the Service to you. Accordingly, the acceptable use policies of such third party providers may apply to your use of the Service. Links to each third party provider’s policies applicable to the Service are set forth at www.Jukata.com/thirdpartyproviders, and may be updated by Jukata from time to time (such

updates will be effective 30 days after they are posted). You are responsible for regularly reviewing each third party provider's policies as such terms may be revised from time to time by the third party provider.

2.4 Certain Restrictions. The rights granted to you in this Agreement are subject to the following restrictions: (a) you shall not license, sell, rent, lease, transfer, assign, distribute, host, outsource, or otherwise commercially exploit the Services (including the Jukata Software); (b) you shall not display, disclose, or make the Services (including the Jukata Software) available to any third party; (c) you shall not modify, make derivative works of, disassemble, reverse compile or reverse engineer any part of the Services (including the Jukata Software); (d) you shall not access the Services (including the Jukata Software) in order to build a similar or competitive product or service; (e) except as expressly stated herein, no part of the Services (including the Jukata Software) may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means; and (f) any future release, update, or other addition to functionality of the Services (including the Jukata Software) shall be subject to the terms of this Agreement.

2.5 Enforcement by Us. We have the right (but not the obligation) to review any Content uploaded on the Services and delete (or modify) any Content that in our sole judgment violates this Agreement or the rights of any third party, harms or threatens the safety of any third party, or creates liability for Jukata or any third party. We reserve the right (but have no obligation under this Agreement) to investigate and/or take appropriate action, including legal action, in our sole discretion against you if you violate this Agreement, including removing your Content from the Services (or modifying it), terminating your Account, and/or reporting you to law enforcement authorities. In order to cooperate with legitimate governmental requests, subpoenas or court orders, to protect our systems and customers, or to ensure the integrity and operation of our business and systems, we may access and disclose any information consider necessary or appropriate, including Account information (i.e. name, e-mail address, etc.), IP addressing and traffic information, usage history, and any Content.

2.6 Ownership. You acknowledge that all the intellectual property rights, including copyrights, patents, trade marks, and trade secrets, in the Services (excluding your Content) are owned by Jukata or Jukata's licensors. The provision of the Services does not transfer to you or any third party any rights, title or interest in or to such intellectual property rights.

3. Third-Party Interactions

The Services might contain ads and/or links to third-party websites ("**Third Party Websites**") and for third party services ("**Third Party Services**"). For example, and without limitation, the Services may include ads and/or links to order Mobile Services from your Service Provider or view music videos or purchase Music Files from third parties. You use all Third Party Websites and/or Third Party Services at your own risk. We do not monitor or have any control over, and make no claim or representation regarding Third Party Websites and/or Third Party Services. To the extent ads and/or links to Third Party Websites and/or Third Party Services are provided by us, they are provided only as a convenience, and they do not imply our endorsement, adoption or sponsorship of, or affiliation with, such Third Party Websites and/or Third Party Services. We accept no responsibility for reviewing changes or updates to, or the quality, content, policies, nature or reliability of Third Party Websites and/or Third Party Services. When you leave the Website, our terms and policies no longer govern. You should review applicable terms and policies, including privacy and data gathering practices, of any Third Party Websites, and should make whatever investigation you feel necessary or appropriate before proceeding with any transaction with any third party through such Third Party Websites and/or Third Party Services. If you enter into any correspondence with, submit information or applications to, purchase goods and/or services from, or participate in promotions of any third parties, any such activity, and any terms, conditions, warranties or representations associated with such activity, is solely between you and the applicable third

party. Without limiting the foregoing, the Service Provider Agreement is solely between you and your Service Provider. Jukata and its licensors shall have no liability, obligation or responsibility for any such correspondence, information, application, purchase, or promotion between you and any such third party.

4. Disclaimers

THE SERVICES ARE PROVIDED “AS-IS” AND AS AVAILABLE. WE EXPRESSLY DISCLAIM ANY WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, ACCURACY, OR NON-INFRINGEMENT. WE MAKE NO WARRANTY THAT: (A) THE SERVICES WILL MEET YOUR REQUIREMENTS; (B) THE SERVICES WILL BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE BASIS; OR (C) THE SERVICES WILL BE ACCURATE, RELIABLE, COMPLETE, OR SAFE. WE MAKE NO WARRANTY REGARDING ANY PRODUCTS AND SERVICES ASSOCIATED WITH THE SERVICES, INCLUDING THE PRODUCTS AND SERVICES FROM THIRD PARTY WEBSITES AND THIRD PARTY SERVICES. ACCESS TO, AND USE OF, THE SERVICES ARE AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA RESULTING THEREFROM.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU.

5. LIMITATION ON LIABILITY

IN NO EVENT SHALL WE BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY LOST PROFIT OR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES ARISING FROM YOUR USE OF THE SERVICES, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, OUR LIABILITY TO YOU FOR ANY DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT (FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION), WILL AT ALL TIMES BE LIMITED TO THE GREATER OF (A) FIFTY US DOLLARS (\$50) OR (B) THE AMOUNT OF FEES PAID TO JUKATA BY YOU UNDER THIS AGREEMENT IN THE PREVIOUS 12 MONTHS. AS DESCRIBED ABOVE, EXCEPT FOR A REFUND OF THE RESTORE SERVICE FEE, IN NO EVENT WILL JUKATA BE REQUIRED TO COMPENSATE YOU FOR ANY LOST FILES IN CONNECTION WITH THE SERVICES.

SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION.

6. INDEMNITY.

You agree to indemnify and hold Jukata, its parents, subsidiaries, affiliates, any related companies, its suppliers, licensors and partners, and the officers, directors, employees, agents and representatives of each of them harmless, including costs and attorneys’ fees, from any claim or demand made by any third party due to or arising out of (i) your access to or use of the Services, (ii) your Account or you Content, (iii) your violation of this Agreement, including for any infringement by you, or any third party using your Account, of any intellectual property or other right of any person or entity or any other violation of the law. Jukata reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify us and you agree to cooperate with our defense of these claims. You agree not to settle any matter without the prior written consent of Jukata. Jukata will use reasonable efforts to notify you of any such claim, action or proceeding upon becoming aware of it.

7. TERM.

Subject to this Section, this Agreement will remain in full force and effect while you use the Services and/or are a Member. If you are a Member, each party may terminate your Account in accordance with Section 1 above. If you are a Visitor, we may terminate this Agreement or suspend your rights to use the Services at any time, for any reason, at our sole discretion, including for any use of the Services in violation of this Agreement. Upon termination of this Agreement, your right to access and use the Services will terminate immediately. Jukata will not have any liability whatsoever to you for any termination of this Agreement. Even after this Agreement is terminated, the following provisions of this Agreement will remain in effect: Sections 1.2(c), 1.3 - 1.5, 2.2 - 2.6, and 3 - 8.

8. GENERAL

8.1 Changes to Terms of Service. Agreement is subject to occasional revision, and if we make any substantial changes this Agreement, we will prominently post notice of the changes on our Website. Any material changes to this Agreement will be effective upon thirty (30) calendar days following our posting of notice of the changes on our Website. These changes will be effective immediately for new users of our Services. Continued use of our Services, following notice of such changes shall indicate your acknowledgement of such changes and agreement to be bound by the terms and conditions of such changes.

8.2 U.S. Export Controls. No software (including the Jukata Software) may be downloaded from the Services or otherwise exported or re-exported in violation of U.S. export laws. By downloading or using any software, you represent and warrant that such download or use is not in violation of any such law.

8.3 Governing Law and Arbitration. This Agreement shall be governed by the laws of the State of California without giving effect to any conflict of laws principles that may provide the application of the law of another jurisdiction. You agree to submit to the personal jurisdiction of the state courts and federal courts located within the State of California for the purpose of litigating all such claims or disputes. Notwithstanding the foregoing, we may seek injunctive or other equitable relief to protect its intellectual property rights in any court of competent jurisdiction.

8.4 Entire Agreement. This Agreement (which includes the Privacy Policy and any other rules posted on the Website) constitutes the entire agreement between you and us regarding the use of the Services. Our failure to exercise or enforce any right or provision of this Agreement shall not operate as a waiver of such right or provision. The section titles in this Agreement are for convenience only and have no legal or contractual effect. The word including means including without limitation. If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will be unimpaired and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. Your relationship to Jukata is that of an independent contractor, and neither party is an agent or partner of the other. This Agreement, and your rights and obligations herein, may not be assigned, subcontracted, delegated, or otherwise transferred by you without Jukata's prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void. The terms of this Agreement shall be binding upon assignees. Please contact us with any questions regarding this Agreement by e-mailing us at: termsofservice@jukata.com. Jukata is located at: 1400 Preston Road, Suite 400 Plano, Texas 75093. If you are a California resident, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting them in writing at 400 R Street, Sacramento, CA 95814, or by telephone at (800) 952-5210.

8.5 Copyright/Trademark Information. Copyright © 2009, Jukata. All rights reserved. The trademarks, logos and service marks ("**Marks**") displayed on the Services are our property or the property of other third parties. You are not permitted to use these Marks without our prior written consent or the consent of such third party which may own the Marks.