

## Terms And Conditions

### Acceptance of Terms of Use

These Terms of Use constitute a legally binding agreement made between You, whether personally or on behalf of an entity (“You”, “Your”), and the Screen Music and Sound Guild of New Zealand Incorporated, doing business as SMSG (“SMSG”, “We”, “Us”, or “Our”), concerning your access to and use of the <https://www.smsg.org.nz> website as well as any other media form, media channel, mobile website or mobile application related, linked, or otherwise connected thereto (collectively, the “Site”). You agree that by accessing the Site, you have read, understood, and agreed to be bound by all of these Terms of Service. IF YOU DO NOT AGREE WITH ALL OF THESE TERMS OF SERVICE, DO NOT USE THIS WEBSITE.

### Description of service

You may not access the Site by any means other than through the interface We provide to You.

### Content and data

You are responsible for all information, data, text, media, goods, services or other materials You upload, post, transmit or otherwise make available via our Site (your “Data”). We do not control, verify, or endorse Data that You make available on the Site. You may not upload any unlawful Data, including any content that infringes any intellectual or other proprietary rights of any party (for example, images that you do not have the rights to). By uploading your Data, You affirm that You have the right to do so and that You have the authority to allow Us to use it under these Terms. You may not upload any Data that contains software viruses, worms, Trojan horses or any other computer code, file or program that interrupt, destroy or limit the functionality of the Site, network or equipment related to the Site, or impact the ability of any user to access the Site.

We will not sell your Data. Your Data will be shared or modified under the following conditions:

#### Data shared with third-party service providers

We may need to transmit certain Data to third-party service providers as necessary to accomplish tasks as part of our Site. This includes, but is not restricted to, sending emails, sending text messages, processing payments, exporting accounting data and synchronizing mailing lists. Information from third-party service providers may also be used to modify your Data. For example, activity reported by your payment processor may be used to insert transactions and update renewal dates.

#### Data shared publicly and with your users

When You expose information on our Site to the public online, including, but not restricted to membership forms, events and members directory, We may need to expose the appropriate Data required. For example, if You have a public member directory, We will expose the member data required to publish the directory profile, according to the directory profile template You or We have configured in your account.

#### Data required by law or compliance

We may disclose your Data in order to comply with legal requests, legal process, to respond to claims that your Data violates the rights of third-parties, or to protect Our rights, property or personal safety of our users and the public. It is Our policy to promptly process and investigate notices of alleged copyright infringement, and take appropriate actions. To report a claim of

Intellectual Property Infringement, send contact information and details of the alleged infringement to [admin@smsg.org.nz](mailto:admin@smsg.org.nz)

### **Data transmissions**

The operation of the Site will involve transmissions of your Data over various networks and devices. Your Data may be modified to conform and adapt to technical requirements of connecting network, devices and software such as mobile format.

Under no circumstances will We be liable for your Data, including, but not limited to, any errors or omissions in your Data, or for any loss or damage of any kind incurred as a result of the use of any Data posted, transmitted or otherwise made available via the Site. You understand that We may need, and You hereby grant Us the right, to use, modify, adapt, reproduce, distribute, and display content posted on the Site solely to the extent necessary to provide the Site. You acknowledge that We shall have the right (but not the obligation) to refuse, move or delete any Data that is available via the Site. We shall also have the right to remove any Data that violates these Terms, could damage Our reputation or goodwill, or is otherwise objectionable in Our sole discretion. You must evaluate, and bear all risks associated with, the use of any Data.

### **Emails and messages**

As part of our Site, We act as a conduit for the transmission of emails and messages, including, but not restricted to, messages sent to You from a publicly visible members directory, and messages sent from You to others.

We are not responsible for, and provide no guarantees for actions or inactions, any services or goods requested, offered or provided by other users of the Site, as a result of these emails or messages. We shall have the right at our sole discretion to refuse to transmit any email or message through the Site.

### **Fees and cancellation policies**

Membership fees are due and payable yearly. All fees are in NZD and taxes imposed by taxing authorities is stipulated. You authorize Us, and our third party payments service provider, to charge You any fees for Services/Events You may purchase. You agree to reimburse Us for any legal fees, collection costs, interest or other fees that result from the collection of overdue amounts or any payment disputes you initiate.

To cancel Your membership, you must phone or email Us. Cancelled membership fees are non-refundable.

You may upgrade or downgrade Your membership on the Site.

If You cancel Your membership, cancellation will take effect immediately. If your account is overdue for more than 30 days, We reserve the right to cancel your membership. When your membership is cancelled, You will no longer have access to your Data or the Site, and We may delete your Data from Our system. We accept no liability for your deleted Data, and We cannot recover any deleted Data. We reserve the right to store your Data that may have been archived as part of our routine backup and for accounting purposes, however We have no obligation to maintain or provide You a copy of any of your Data that We may store.

### **Third parties**

We are not responsible for any risks, loss or damage incurred as a result of the use of any third-party service, product, software, content or website (collectively "Third Party Materials"), whether or not

You were linked to or directed to any Third Party Materials through Us. Any reference to any Third Party Materials is not an approval or endorsement by Us of such Third Party Materials or the third-party.

Use of third-party services, including but not limited to, payment processors (PayPal, Stripe), accounting software and mailing list services, may be subject to the applicable terms of service and privacy policies of those third-parties. You are solely responsible for reviewing, agreeing to, and complying with these terms and policies.

### **Disclaimer of warranties**

YOUR USE OF THE SITE IS AT YOUR SOLE RISK. THE SITE IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. WE MAKE NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND WE SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SECURITY, RELIABILITY, PERFORMANCE, OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

ANY DATA, INFORMATION, CONTENT OR MATERIALS CONTAINED IN OR MADE AVAILABLE IN CONNECTION WITH THE SITE IS NOT INTENDED AS A SUBSTITUTE FOR THE KNOWLEDGE, EXPERTISE, SKILL AND JUDGMENT OF ACCOUNTING, TAX, LEGAL OR OTHER PROFESSIONALS.

### **Limitation of liability**

OUR LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THESE TERMS (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) SHALL NOT EXCEED THE AMOUNT PAID BY YOU HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT SHALL OUR AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) EXCEED THE TOTAL AMOUNT PAID BY YOU HEREUNDER. THE FOREGOING SHALL NOT LIMIT YOUR PAYMENT OBLIGATIONS (FEES AND PAYMENT FOR PURCHASED SERVICES).

IN NO EVENT SHALL WE HAVE ANY LIABILITY TO YOU FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

UNDER NO CIRCUMSTANCES SHALL WE BE LIABLE IN ANY WAY FOR YOUR DATA AND YOUR USE OF THE SITE, INCLUDING, BUT NOT LIMITED TO, ANY ERRORS OR OMISSIONS, ANY INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OR OTHER RIGHTS OF THIRD PARTIES, OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF, OR RELATED TO, YOUR DATA AND THE USE OF THE SITE.

IN THE EVENT OF ANY PROBLEM WITH THE SITE, YOUR SOLE AND EXCLUSIVE REMEDY IS TO CEASE USING THE SITE.

### **Indemnification**

You agree, at Your own expense, to indemnify, defend and hold harmless SMSG and its employees, representatives, subsidiaries, affiliates, officers, directors, suppliers and agents (collectively, the “SMSG Indemnified Parties”), against any claim, suit, action or other proceeding against SMSG Indemnified Parties, by a third party, to the extent that such claim, suit, action or other proceeding is based on or arises in connection with your use of the Site or breaches of these Terms, specifically

including any claim that use of the Site by You infringes any third party intellectual property right, is libellous or defamatory, or otherwise results in injury or damage to anyone. You agree to pay any and all costs, damages and expenses, including, but not limited to, reasonable legal fees and costs awarded against or otherwise incurred by or in connection with or arising from any such claim, suit, action or proceeding attributable to any such claim.

### **General provisions**

These Terms constitute the entire agreement between You and Us, and govern your use of the Site, superseding any prior agreements (including, but not limited to, any prior versions of these Terms). We may provide notices of changes to these Terms or other matters by email or by displaying notices or links to notices to You generally on the Site. These Terms and the relationship between You and SMSG shall be governed by the laws of New Zealand without regard to its conflict of law provisions. You agree to submit to the exclusive jurisdiction of the courts located within New Zealand. If any provision of these Terms or incorporated documents are found by a court of competent jurisdiction to be invalid, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of these Terms shall remain in effect.

The failure to exercise or enforce any right or provision of these Terms by either party shall not constitute a waiver of such right or provision. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Site or these Terms must be filed within six (6) months after such claim or cause of action arose or be forever barred. The section titles in these Terms are for convenience only and have no legal or contractual effect. You acknowledge and agree that You are waiving the right to participate as a plaintiff or class member in any purported class action or representative proceeding. Further, more than one person's claims may not be consolidated under any circumstances, in any form of any class or representative proceeding or otherwise.

There are no express or implied third-party beneficiaries to these Terms. We reserve all rights, title and interest in and to the Site, including all related intellectual property rights. You shall not (i) create derivative works based on the Site, (ii) copy, frame or mirror any part or content of the Site, (iii) reverse engineer the Site, or (iv) access the Site in order to build a competitive product or service, or copy any features, functions or graphics of the Site.

You may not assign any of your rights or obligations without Our prior written consent (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign these Terms in its entirety, without consent of the other party, in connection with a merger, acquisition, or sale of all or substantially all of its assets. Subject to the foregoing, these Terms shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.