

Last modified December 23, 2010

Please read these Rock Band Network Program Terms (“Program Terms”) carefully as they are part of the [Terms of Use Agreement](#) (and constitute “Additional Terms” as defined therein) and represent a legally binding agreement between Harmonix Music Systems, Inc., (“Harmonix” or “We” or “Us”) and You (“You” or “Participant”) regarding Your participation in the RBN Program (as defined in Section 1.1 below) and Harmonix’s use of Your Submission Materials (as defined in Section 4.1 below).

Overview.

1.1. RBN Program. The Rock Band Network is a program (the “RBN Program” or “Program”) operated in part by Harmonix, and is offered in part through the “Rock Band Creators Club” website owned and controlled by Harmonix (the “Website”), currently located at creators.rockband.com. The RBN Program, among other things, (a) enables You to upload Rock Band video game levels to the Website for evaluation and possible distribution to users of the Rock Band video game (such feature and process, the “Submission Feature”), (b) enables You to download, play, review and comment on other Rock Band video game levels submitted to the Website (such feature, the “Review Feature”), and (c) enables Harmonix to sell and distribute Your submitted Rock Band video game levels, all pursuant to and in accordance with these Program Terms.

1.2. Agreement. By registering on the Website, You are signifying Your acceptance of these Program Terms as governing Your participation in the RBN Program. In addition, each and every time You participate in the RBN Program, You are signifying Your acceptance of and compliance with these Program Terms, including as they may be revised from time to time pursuant to Section 1.3 (Revisions) and Section 9.1(d) (Royalty Changes). For the avoidance of doubt, participation in the RBN Program includes any and all use of, access to or other interaction with the Website, including the Submission Feature and the Review Feature, and any acceptance or receipt of Royalties (as defined in Section 9.2 below).

1.3. Revisions. We have the right to change these Program Terms at any time for any or no reason, including as described in the [Terms of Use Agreement](#). We will notify You of any such changes by email or upon log-in, and You will have the option of either (a) accepting such revised Program Terms and continuing to be able to participate in the RBN Program, or (b) not accepting such revised Program Terms, thereby ending Your participation in the RBN Program and resulting in termination of these Program Terms pursuant to Section 12.3 (Termination by You). In addition, We may change Royalty rates applicable to Your Game Files (as defined in Section 4.1 below) pursuant to Section 9.1(d) (Royalty Changes).

Participation Requirements. You must meet the following requirements to participate in the RBN Program. Each and every time You participate in the RBN Program, You are certifying that You satisfy the requirements below. In the event You no longer meet these requirements, You agree to stop participating in the RBN Program and cancel Your user account, thereby terminating these Program Terms pursuant to Section 12.3 (Termination by You).

2.1. U.S. Residents Only. You must be a legal resident of the United States, its territories or its possessions.

2.2. Age. You must be at least 18 years of age or older.

2.3. Console Requirements. Certain additional console- or Digital Application-specific participation requirements may apply to You as set forth in Article 3 (Console-Specific Terms and Conditions).

2.4. Rejection and Removal. Harmonix reserves the right, in its sole and exclusive discretion for any or no reason and at any time, to reject or remove You from participation in the RBN Program, including for failure to comply with the participation requirements set forth above, and to terminate these Program Terms, with no obligation or liability to You for doing so or failing to do so in any particular manner.

Console-Specific Terms and Conditions.

3.1. Console Participation Requirements. Certain additional console- or Digital Application-specific participation requirements may apply to You.

(a) XNA Creators Club Online Premium Membership. If You participate in the RBN Program, including using the Submission Feature or Review Feature, in connection with Rock Band video game levels for the Xbox 360 video game console and/or any successor video game console ("Xbox Console") developed and/or distributed by Microsoft Corporation ("Microsoft"), You must be (and continue to be) a member of the "XNA Creators Club Online Premium Membership" and "Xbox Live" programs operated by Microsoft (together, the "Microsoft Program"). Harmonix shall have the right to remove Your Xbox Game Files (as defined in Section 9.1(a) below) and any related Submission Materials from distribution if You are no longer a member of the Microsoft Program or otherwise fail to comply with Microsoft Program Terms (as defined in Section 3.2(a) below).

3.2. Other Console Terms and Conditions. Certain additional console- or Digital Application-specific terms and conditions may apply to You (such additional terms and conditions, including the Microsoft Program Terms (as defined in subsection (a) below), collectively, "Console-Specific Terms").

(a) Microsoft Program Terms. If You participate in the RBN Program, including using the Submission Feature or Review Feature, in connection with Rock Band video game levels for the Xbox Console, You shall comply with all terms and conditions applicable to the Microsoft Program that Microsoft has presented to You or of which Microsoft has provided You notice, including the XNA Creators Club Online Premium Membership agreement, the Xbox Live terms of use, and the Xbox Live code of conduct (all such terms and conditions, collectively "Microsoft Program Terms"). The Xbox Live terms of use are currently set forth [here](http://www.xbox.com/en-US/legal/LiveTOU.htm) at <http://www.xbox.com/en-US/legal/LiveTOU.htm>.

Submission Materials.

4.1. Uploading. You may submit video game levels playable with the Rock Band Game (as defined in Section 6.3 below) (such submitted game levels, "Game Files"), album artwork (such submitted material, "Album Artwork") and other materials (such submitted material, "Other Materials") by uploading files to

the Website. In addition, We may extract certain materials from Your submissions, including the Sound Recordings (as defined in Section 6.3 below) embodied therein and the Musical Compositions (as defined in Section 6.3 below) embodied in each such Sound Recording (such extracted Sound Recordings together with the Musical Compositions, “Music Files”), and the lyrics to each Musical Composition embodied in each such Music File (such extracted lyrics, “Lyrics”). For the avoidance of doubt, Music Files include applicable Lyrics, and references herein to Music Files also refer to the applicable Lyrics therein. The Game Files, together with the Album Artwork, Other Materials and Music Files are collectively referred to as the “Submission Materials”. Instructions for uploading Submission Materials can be found on the Website. Always keep a copy of anything You submit because We are not responsible for lost, damaged, misdirected, unusable or unreadable Submission Materials.

4.2. Rights to Submission Materials. You must have, and continue to have, during Your participation in the RBN Program, all rights and powers necessary and sufficient to grant or provide all of the authorizations, permissions, approvals, consents, rights and licenses in the Submission Materials as required by these Program Terms, and You agree not to submit any Submission Materials for which You do not have such rights and powers.

4.3. Compliance with Content Standards. You agree not to submit any Submission Materials that violate (a) any Harmonix content standards that have been presented to You or of which You have been provided notice, including as set forth [here](http://creators.rockband.com/submission_standards) on the webpage http://creators.rockband.com/submission_standards (as may be updated from time to time by Harmonix in its sole and exclusive discretion), as set forth in these Program Terms and as otherwise set forth in the Terms of Use Agreement (collectively, “Harmonix Content Standards”), or (b) any content standards in applicable Console-Specific Terms and Conditions.

4.4. Certain Content Standards. Submission Materials shall not include:

Obscenity

Crude, vulgar or offensive pictures, depictions, images, language and/or symbols

Gang signs or symbols

Nudity

Commercial products (e.g., clothing, toys, food) and/or their trademarks, brands, logos or endorsements

License plates, phone numbers, personal addresses – physical or email or otherwise

Website or web page links

Derogatory characterizations of any ethnic, racial, sexual or religious groups, humiliation of other people (publicly or otherwise), or any assault or threatening of others

Conduct or activities in violation of these Program Terms

Content which endorses or condones illegal drug use or alcohol abuse, or content that promotes, glamorizes or shows as socially acceptable the use of illegal drugs or the abuse of legal drugs (i.e., narcotic addiction and alcohol abuse should only be depicted as self-destructive, anti-social behavior)

Explicit, graphic or excessive sexual activity (i.e., when sexual themes are key to the meaning or intent of a Submission Material they must be depicted with consistent regard for commonly accepted standards of taste and propriety)

Gratuitous violence (i.e., violence, if depicted, must be essential to the development of a theme, plot or concept of a Submission Material, and violence may not be used to stimulate the audience or to invite imitation, nor may it be shown or offered as an acceptable solution to problem or conflict; further, exceptional care must be taken in instances where women and children are victims of, or are threatened by, acts of violence)

4.5. No Illegal Content. Submission Materials shall not include:

Libelous, tortious, obscene or otherwise unlawful material

Material that infringes or violates any copyright or other third party right

Any covers or any sampling (but see Section 4.10(b) below)

Any matter the publication or sale of which would violate any federal or state statute or regulation

Trespass or the violation of other people's rights or property (including intellectual property)

Illegal (e.g., discriminatory, harassing) or inappropriate activity, behavior or conduct (e.g., inflicting emotional distress)

4.6. Compliance with Technical Requirements. You agree to only submit Submission Materials that meet (a) Harmonix's technical requirements that have been presented to You or of which You have been provided notice, including as set forth [here](http://creators.rockband.com/docs/Technical_Requirements) on the webpage http://creators.rockband.com/docs/Technical_Requirements (as may be updated from time to time by Harmonix in its sole and exclusive discretion) and as set forth in these Program Terms, and (b) any technical requirements in applicable Console-Specific Terms.

4.7. Harmonix Review. You are fully responsible for compliance with standards, requirements and restrictions applicable to Submissions Materials, although Harmonix may use or provide automated and/or manual means of reviewing Submission Materials, in its sole and exclusive discretion, in order to monitor and enforce compliance with such standards, requirements and restrictions.

4.8. Withdrawal. Subject to Section 6.11 (Archival Copies and Customer Support) and Section 9.4 (Unpublishing and Selloff Period), You may withdraw any Submission Material from the RBN Program and the Website at any time; provided, however, that Harmonix shall have the right for up to 30 days after such withdrawal to completely remove such Submission Materials from the RBN Program and the Website.

4.9. Rejection and Removal. Notwithstanding anything to the contrary herein, Harmonix reserves the right, in its sole and exclusive discretion for any or no reason and at any time, to reject and remove any Submission Materials from the RBN Program and the Website, including for failure to comply with Harmonix Content Standards and the requirements set forth above, with no obligation or liability to You for doing so or failing to do so in any particular manner.

4.10. Exceptions Processes.

(a) Additional Information. When You submit Submission Materials, and from time to time upon request by Harmonix, You may be asked to provide some additional information about Yourself and Your submission, including whether Your Submission Materials includes a cover or samples, whether You or Your band are represented by a music label, whether You are an authoring company or other service provider submitting materials on behalf of an artist, and documents evidencing proof that You own or possess all necessary rights (“Submission Materials Information”). You agree to submit and provide only Submission Materials Information that is comprehensive, accurate and up-to-date. You acknowledge and agree that such identification and listing shall not limit, lessen or alter any of Your obligations, representations and warranties hereunder, and shall not be deemed to excuse or mitigate any breach of the foregoing by You.

(b) Covers and Samples Exception Process. Pursuant to Section 4.5 (No Illegal Content), You shall not submit Submission Materials that include covers or samples. However, notwithstanding the foregoing, if You own or possess all necessary rights to submit Submission Materials including covers and samples in compliance with these Program Terms, and You declare during the submission process that such Submission Materials include covers or samples and that You own or possess all necessary rights thereto, then Harmonix may in its sole and exclusive discretion evaluate and approve or reject your Submission Materials. You should expect to provide additional Submission Materials Information to assist Harmonix’s evaluation.

(c) Music Label Exception Process. If You are represented by a music label, then You shall not submit any Submission Materials, and You acknowledge and agree that any proposed Submission Materials shall instead be submitted by Your music label on Your behalf. However, notwithstanding the foregoing, if You own or possess all necessary rights to submit Submission Materials in compliance with these Program Terms, and You declare during the submission process that You are represented by a music label and that You own or possess all necessary rights to Your Submission Materials, then Harmonix may in its sole and exclusive discretion evaluate and approve or reject your Submission Materials. You should expect to provide additional Submission Materials Information to assist Harmonix’s evaluation.

(d) Service Provider Exception Process. If You are an authoring company or other service provider submitting Submission Materials on behalf of an artist, and You own or possess all necessary rights to submit Submission Materials in compliance with these Program Terms, and You declare during the submission process that You are an authoring company or other service provider and that You own or possess all necessary rights to Your Submission Materials, then Harmonix may in its sole and exclusive

discretion evaluate and approve or reject your Submission Materials. You should expect to provide additional Submission Materials Information to assist Harmonix's evaluation.

Band Membership.

5.1. Band Members and Other Content Contributors. For the purpose of assisting Harmonix to create accurate metadata, packaging, etc., You will identify and list in the associated Submission Materials Information each individual or entity who has any right, title or interest in or to any Submission Material, including all band members and other contributors (particularly if any Submission Material was created by the result of collaborative effort or by multiple individuals, or includes covers or samples), music labels and publishers (collectively, the "Content Contributors").

5.2. Disputes Among Content Contributors. Harmonix assumes no responsibility for any internal disputes among You and Content Contributors with regard to the Submission Materials and/or the RBN Program, collective or relative interests in any intellectual property, allocation of payments or royalties, or any other internal disputes among the Content Contributors. You agree to fully comply with any and all agreements that You may have with Your other band members and/or any other Content Contributors, and You agree to ensure proper payment of any royalties to Your other band members and all other Content Contributors. You acknowledge that such disputes will not be resolved by Harmonix. In the event that any such dispute interferes with the operation of the RBN Program, Harmonix may in its sole and exclusive discretion remove You from participation in the RBN Program, remove any one or more Submission Materials from the RBN Program and Website, and/or terminate these Program Terms, with no obligation or liability to You for doing so or failing to do so in any particular manner.

Submission Materials Licenses.

6.1. Licensed Formats. "Download Formats" means any and all file or data formats that may be downloaded from a server and saved on or by a Digital Application, including proprietary formats for video game consoles. "Streaming Formats" means any and all file or data formats that may be streamed or otherwise transferred from a server and dynamically rendered on or by a Digital Application, including data formats for Internet-based radio and TV, and data formats for the delivery and display of web pages and web page elements such as but not limited to text, graphics, photos, audio, video and advertisements. "Digital Applications" means any and all digital devices (including computers, mobile devices, game consoles and TVs), software applications (including web browsers) and digital platforms, whether now known or hereafter developed.

6.2. Licensed Channels. "Licensed Channels" means any and all digital network distribution channels, services, platforms, means, media and technology, including the Internet, the World Wide Web and other public or proprietary networks (such as but not limited to game console networks), now known or hereafter developed or discovered throughout the universe, in whole or in part, to host, cache, store, maintain, use, reproduce, distribute, display, exhibit, perform, publish, broadcast, transmit, modify, prepare derivative works of, adapt, reformat, translate and otherwise exploit all or any portion of the Submission Materials. For the avoidance of doubt, Licensed Channels do not include any physical media, including optical discs, electromagnetic storage devices, or solid state storage devices. "Harmonix

Websites” means the Website (whether located at the current domain(s) and any successor or alternative domain(s) thereto) and any additional websites (including rockbandnetwork.com) owned or operated by or behalf of Harmonix in whole or in part that relate primarily to the Rock Band Game as may be determined by Harmonix in its sole and exclusive discretion.

6.3. Other Definitions. The “Rock Band Game” means a "Rock Band"-branded video game, regardless of platform, and any and all titles, versions, localizations, sequels, ports, upgrades, enhancements and spin-offs thereof, whether thematically different or related, and whether now existing or hereafter developed. A “Game Component” means a feature, function, game level, mode (including Trial Modes), upgrade, expansion or modification to or of the Rock Band Game. “Trial Mode” means a game mode where only a portion of the Rock Band Game or a game level is playable by or presented to a user. "Musical Composition" means any musical composition or medley consisting of words and/or music, or any dramatic material, whether in the form of instrumental and/or vocal music, prose or otherwise, irrespective of length. "Sound Recording" means any recording of sound, whether or not coupled with a visual image, by any method and on any substance or material, whether now or hereafter known, including Audio-Visual Recordings. “Audio-Visual Recording” means all forms of recording embodying performances of Artist wherein a visual image is embodied, reproduced, transmitted or otherwise communicated, whether of You or otherwise, together with sound, whether or not the interaction of a consumer is possible, or necessary, for the visual images to be utilized or viewed.

6.4. Music Files. You hereby grant and agree to grant to Harmonix, under all applicable intellectual property rights, a limited, non-exclusive, and worldwide license, with right of sublicense, to reproduce, encrypt, decrypt, assemble, disassemble, compress, transcode, convert, synchronize with visual images generated by any means, display, perform (publicly and privately), distribute, transmit and broadcast Music Files, in whole or in part:

(a) in Streaming Formats on or through (i) the Harmonix Websites (including in connection with the Submission Feature and Review Feature of the RBN Program on or through the Website), and/or (ii) Licensed Channels in connection with the advertising, promotion, marketing and/or sale of Game Files and/or the Rock Band Game;

(b) within Game Files and/or as (or part of) Game Components provided in conjunction with Game Files, in each case in Download Formats on or through Licensed Channels; and

(c) solely with respect to Lyrics, as part of documentation to or the packaging of, or in advertising, promotion or marketing materials relating to, or displayed in connection with the use of, Game Files and/or the Rock Band Game.

6.5. Game Files. You hereby grant and agree to grant to Harmonix, under all applicable intellectual property rights, a limited, exclusive, and worldwide license, with right of sublicense, to distribute, reproduce, perform (publicly and privately), prepare derivative works of (including porting to other video game consoles or other Digital Applications), transmit and broadcast Game Files in Download Formats on or through Licensed Channels. The exclusivity of the foregoing license grant shall (a) include exclusivity with respect to third parties (in other words, You may not grant the same rights to the Game

Files to any other person or entity), (b) include exclusivity with respect to You (in other words, You may not exercise the same rights Yourself with respect to the Game Files), and (c) not include exclusivity with respect to the Music File(s) embodied in any Game File(s).

6.6. Album Artwork. You hereby grant and agree to grant to Harmonix, under all applicable intellectual property rights, a limited, non-exclusive, and worldwide license, with right of sublicense, to distribute, reproduce, reformat, resize, crop, adjust, transmit and broadcast Album Artwork:

(a) in Streaming Formats on or through (i) the Harmonix Websites (including in connection with the Submission Feature and Review Feature of the RBN Program on or through the Website), and/or (ii) Licensed Channels in connection with the advertising, promotion, marketing and/or sale of Game Files and/or the Rock Band Game;

(b) in Game Files and/or as (or part of) Game Components provided in conjunction with Game Files, in each case in Download Formats on or through Licensed Channels; and

(c) as part of documentation to or the packaging of, or in advertising relating to, Game Files and/or the Rock Band Game.

6.7. Names and Likeness. You hereby grant and agree to grant to Harmonix, under all applicable intellectual property rights, a limited, non-exclusive, and worldwide license, with right of sublicense, to use, distribute, reproduce, transmit and broadcast the names, voice, biographical facts, likenesses and other distinctive identification of You and all other band members solely as represented in the Submission Materials and Submission Materials Information:

(a) in Streaming Formats on or through (i) the Harmonix Websites (including in connection with the Submission Feature and Review Feature of the RBN Program on or through the Website), and/or (ii) Licensed Channels in connection with the advertising, promotion, marketing and/or sale of Game Files and/or the Rock Band Game;

(b) in Game Files and/or as (or part of) Game Components provided in conjunction with Game Files, in each case in Download Formats on or through Licensed Channels; and

(c) as part of documentation to or the packaging of, or in advertising relating to, Game Files and/or the Rock Band Game.

6.8. Other Materials. You hereby grant and agree to grant to Harmonix, under all applicable intellectual property rights, a limited, non-exclusive, and worldwide license, with right of sublicense, to distribute, reproduce, prepare derivative works of, transmit and broadcast Other Materials:

(a) in Streaming Formats on or through (i) the Harmonix Websites (including in connection with the Submission Feature and Review Feature of the RBN Program on or through the Website), and/or (ii) Licensed Channels in connection with the advertising, promotion, marketing and/or sale of Game Files and/or the Rock Band Game;

(b) in Game Files and/or as (or part of) Game Components provided in conjunction with Game Files, in each case in Download Formats on or through Licensed Channels; and

(c) as part of documentation to or the packaging of, or in advertising relating to, Game Files and/or the Rock Band Game.

6.9. Moral Rights. You hereby forever waive and relinquish all moral rights or *droits moral* now or hereafter recognized with respect to the Submission Materials solely to the extent any such rights are implicated by any Harmonix actions related to its authorized or permitted exploitation of Submission Materials pursuant to the licenses and rights granted herein.

6.10. Reservation of Rights. Except for the licenses, rights, authorizations, and consents granted hereunder, You retain all right, title and interest in and to the Submission Materials and Submission Materials Information, including all associated intellectual property rights existing anywhere in the world, and Harmonix acquires no title or ownership rights in the Submission Materials and Submission Materials Information. Harmonix retains all right, title and interest in and to the RBN Program, the Harmonix Websites, and all features and services provided by Harmonix to You (all of the foregoing, collectively, the "Harmonix RBN Services"), including all associated intellectual property rights existing anywhere in the world, and You acquire no title or ownership rights in the Harmonix RBN Services.

6.11. Archival Copies and Customer Support. You hereby grant and agree to grant to Harmonix, under all applicable intellectual property rights, a limited, non-exclusive, worldwide and perpetual license, with right of sublicense, to (a) archive copies of any and all Submission Materials and/or Game Files to the extent Harmonix reasonably believes necessary to (i) comply with applicable law and its legal obligations and to support the legal obligations of third party service providers or partners in connection with the RBN Program, and (ii) enable Harmonix to provide backup copies of Game Files to users who had previously purchased such Game Files, and (b) provide backup copies of Game Files to users who had previously purchased such Game Files. For the avoidance of doubt, notwithstanding any provisions to the contrary in these Program Terms, including any provisions regarding Your ability to withdraw or unpublish Submission Materials, including Game Files, You agree that any exercise of the foregoing license by Harmonix during or after the term of these Program Terms shall not be a breach hereof.

Review of Submission Materials.

7.1. Community Review. You acknowledge and agree that other participants in the RBN Program and certain other third parties approved by Harmonix (including music industry representatives) may access, download, play, review, comment on, and judge Your Submission Materials.

7.2.No Obligations. Harmonix reserves the right, in its sole and exclusive discretion for any or no reason and at any time, to reject and remove any Submission Materials from the RBN Program and the Website, with no obligation or liability to You for doing so or failing to do so in any particular manner.

Selection of Submission Materials for Commercial Distribution.

8.1. Criteria and Selection. While participants in the RBN Program and certain other third parties approved by Harmonix may review and judge Your Submission Materials, Harmonix may choose to rely or not rely on such reviews and judgments in selecting Submission Materials for distribution in its sole and exclusive discretion. Further, You acknowledge and agree that selection or rejection of Submission Materials for distribution pursuant to these Program Terms shall at all times be wholly in Harmonix's sole and exclusive discretion, and may be in accordance with any or no criteria in Harmonix's sole determination. You acknowledge and agree Harmonix at all times is under no obligation to consider, select or distribute any Submission Materials. Harmonix may provide You with non-binding suggestions for Your Submission Materials, including as set forth [here](http://creators.rockband.com/submission_standards) on the webpage http://creators.rockband.com/submission_standards (as may be updated from time to time by Harmonix in its sole and exclusive discretion), but any compliance by You with any such suggestions does not obligate Harmonix in any way to select or distribute Your Submission Materials, or to rely on any such suggestions in its judgment or selection of any materials submitted by any participants in the RBN Program, including You. All decisions by Harmonix with respect to selection of Submission Materials for distribution are final.

8.2. Additional Submissions; Further Assurances. If Harmonix considers or selects Your Submission Materials for distribution, it may be on condition that You prepare additional materials or sign additional documents necessary for such distribution, including possibly: releases or further documentation to prove ownership in the Submission Materials and compliance with these Program Terms, confidentiality agreements, different or improved versions of Game Files or Music Files, additional Album Artwork, etc. You acknowledge that Your compliance with any condition or request made by Harmonix does not obligate Harmonix in any way to select or distribute Your Submission Materials, or to rely on any such additional materials or documents in its judgment or selection of any materials submitted by any participants in the RBN Program, including You.

Distribution and Royalties.

9.1. Sales and Royalties. You are entitled to a royalty for each of Your Game Files sold by or on behalf of Harmonix, determined as follows:

(a) Xbox Game Files. For each of Your Game Files for the Xbox Console (each "Xbox Game File") sold by or on behalf of Harmonix, You shall be entitled to a royalty equal to a percentage amount of the Net Sales Price for such Xbox Game File (such royalties, "Xbox Royalties") as set forth in the then-current [royalty schedule](http://creators.rockband.com/royalty_schedule) currently located at the webpage http://creators.rockband.com/royalty_schedule (the "Xbox Royalty Schedule").

(b) Other Game Files. For each of Your Game Files sold by or on behalf of Harmonix, but excluding all Xbox Game Files, You shall be entitled to a royalty equal to a percentage amount of the Net Sales Price for such Game File (such royalties, "Harmonix Royalties") as set forth in the then-current [royalty schedule](http://creators.rockband.com/royalty_schedule) currently located at the webpage http://creators.rockband.com/royalty_schedule (the "Harmonix Royalty Schedule").

(c) Net Sales Price. "Net Sales Price" for a Game File means the sale amount for such Game File actually collected by or on behalf of Harmonix, excluding any and all applicable taxes, and excluding any amounts refunded by Harmonix to a purchaser (e.g., for customer service purposes).

(d) Royalty Changes. For the avoidance of doubt, Harmonix may change the percentage amounts for Xbox Royalties or Harmonix Royalties at any time for any or no reason upon notice to You; provided, however, that (i) Harmonix shall provide You with advance notice of any such change, including by email or upon log-in, (ii) Harmonix shall publish an updated Xbox Royalty Schedule or updated Harmonix Royalty Schedule as applicable, and (iii) all of Your affected Game Files shall be automatically unpublished as of the effective date of such change unless You otherwise agree to such change. You shall have the ability to agree to the revised percentage amounts at any time with respect to any of Your affected Game Files, including Game Files that were automatically unpublished pursuant to the foregoing.

9.2. Payments. You shall be paid the Xbox Royalties and Harmonix Royalties ("Royalties") as follows:

(a) Xbox Royalties. You acknowledge that You shall be paid any Xbox Royalties directly by Microsoft (or its third party payment processor) on behalf of Harmonix. You must register with Microsoft (or its third party payment processor) and provide Microsoft (or its third party payment processor) with all financial, tax and banking information requested by Microsoft (or its third party payment processor), even if You have previously provided such information to Harmonix, in order to be paid any Xbox Royalties. Your failure to provide such information within 60 days after any request by Microsoft (or its third party payment processor), or Your failure to keep such information current, may result in removal of Your Game File from distribution and/or forfeiture of Xbox Royalties owed to You at Harmonix's sole discretion.

(b) Harmonix Royalties. Harmonix shall pay You the Harmonix Royalties at least once annually to the address provided to Harmonix by You in the Submission Materials Information. You acknowledge that You may be paid by a third party payment processor on behalf of Harmonix, and that payments may be contingent on registration by You with such third party payment processor as well as further information provided by You, such as financial, tax and banking information, as requested by Harmonix or such third party payment processor, Your failure to register or provide such information, or Your failure to keep information current, may result in removal of Your Game File from distribution and/or forfeiture of Harmonix Royalties owed to You at Harmonix's sole discretion.

(c) Taxes. You are responsible for any taxes applicable to You for any payments You may receive hereunder. If any government authority requires taxes to be withheld on payments to You, Harmonix is authorized to deduct those taxes from amounts owed to You and remit them to the relevant authority.

9.3. Pricing.

(a) Discretionary Sales Pricing. You agree that the sales price(s) for Your Game File(s) shall be determined by Harmonix (or its designee(s)) at its sole and exclusive discretion, notwithstanding any pricing suggestions or requests that may be made by You.

(b) Promotional Game Files. For the avoidance of doubt, nothing in these Program Terms shall limit the right of Harmonix (and its designee(s)) to offer free promotional versions of Your Game Files, including limited-play or Trial Mode versions of Your Game Files, at its sole and exclusive discretion. You acknowledge that, for such free versions, no royalties or other payments, including Royalties, shall be due to You.

9.4. Unpublishing & Selloff Period. Subject to Section 6.11 (Archival Copies and Customer Support), You may unpublish and thereby stop the further distribution and sale of any particular Game File by withdrawing such Game File from the RBN Program and the Website at any time; provided, however, that Harmonix shall have (a) up to 30 days after such withdrawal to completely remove the Game File from the RBN Program and the Website, and (b) the right to continue to sell such Game File for up to 30 days as Harmonix winds down its sales channels. Further, if You withdraw Submission Materials from the RBN Program and the Website pursuant to Section 4.8 (Withdrawal), and Harmonix deems in its sole and exclusive discretion that such withdrawal affects Harmonix's ability to sell a related Game File, then such Game File shall be deemed to have been withdrawn pursuant to this Section 9.4.

9.5. Cessation of Distribution.

(a) By Harmonix. Harmonix shall have the right to remove Your Game Files and any other Submission Materials from distribution, and to terminate the rights of users to access, play or otherwise use Your Game Files that had previously been sold or otherwise provided to such users, all in its sole and exclusive discretion for any or no reason and at any time, with no obligation or liability to You for doing so or failing to do so in any particular manner.

(b) By Others. Other third parties may also have rights to stop distribution or sale of Your Game Files or Submission Materials, to stop play or use of previously sold Game Files by users, and to recover royalties, as set forth in applicable Console-Specific Terms, and such rights may be exercised for any or no reason and at any time, with no obligation or liability to You for doing so or failing to do so in any particular, as set forth in the applicable Console-Specific Terms.

9.6. Certain Limitations on Royalties and Payments.

(a) No Other Payments. Except for Royalties as expressly set forth in this Article 9, You shall not be entitled to any other payments, fees, royalties, revenue share, charges or other amounts, and no other such amounts of any kind shall be due, in connection with the sale of Game Files by or on behalf of Harmonix or any other use or exploitation by Harmonix of Harmonix's rights hereunder. For the avoidance of doubt, no Royalties or any other payments or amounts shall be due to You in connection with the use or other exploitation of Music Files and other Submission Materials in Streaming Formats as licensed or otherwise authorized hereunder.

(b) Royalty Withholding In Event of Breach. In the event You are in actual or alleged breach of any of these Program Terms, including any applicable Console-Specific Terms, Harmonix shall have the right to withhold any and all Royalties until such actual or alleged breach has been resolved and/or remedied, and Harmonix shall have the right to hold or use such Royalties to the extent necessary to mitigate or

remedy the harm or damages caused by such actual or alleged breach, all as determined by Harmonix in its sole and exclusive discretion, and You shall not be entitled to any such Royalties that are so withheld, held or otherwise used. For the avoidance of doubt, in accordance with the foregoing, if Harmonix believes in its sole and exclusive discretion that You are in breach of these Program Terms, or if it has received an allegation that you are in breach of these Program Terms, by failing to properly allocate and pay a share of Your Royalties to other Content Contributors or otherwise properly account to other Content Contributors as required by contractual agreement between You and any such other Content Contributors, then Harmonix shall have the right in its sole and exclusive discretion to withhold all or a portion of Royalties otherwise due to You and pay such Royalties or portion thereof to applicable Content Contributors to mitigate or cure such breach, and You shall not be entitled to such Royalties or portion thereof. The foregoing shall not limit any other rights and remedies of Harmonix under these Program Terms or at law or in equity or otherwise.

(c) Credits and Refunds in Event of Breach. In addition to subsection (b) above, if Harmonix removes one of your Game Files from distribution and terminates the rights of users to access, play or otherwise use such Game File in connection with an actual or alleged breach by You of any of these Program Terms, then Harmonix may issue or have issued credits or refunds to affected users, and You shall be responsible to pay back to Harmonix all Royalties previously paid to You in connection with such Game File, whether directly or in the form of credits against any future Royalties, all as determined by Harmonix in its sole and exclusive discretion, and all Royalties then-owing to You in connection with such Game File shall be cancelled as no longer owing. The foregoing shall not limit any other rights and remedies of Harmonix under these Program Terms or at law or in equity or otherwise.

Review Feature.

10.1. Postings. The RBN Program enables You to download, play, review and comment on Rock Band video game levels submitted by other participants (“Other Participant Game Levels”). You agree that Your Postings (as defined in the Terms of Use Agreement), shall comply with the Harmonix Content Standards and all other applicable requirements, and shall be truthful, complete, and made in good-faith.

10.2. Review License. Harmonix hereby grants to You a limited, non-exclusive and revocable license, without right of sublicense, to (a) download Other Participant Game Levels to Your computer, (b) transfer Other Participant Game Levels from Your computer to the Permitted Device only on or through the Permitted Network only, and (c) play Other Participant Game Levels on the Permitted Device only with a lawfully licensed copy of the Rock Band Game only. “Permitted Device” means a video game console or other Digital Application owned by You. “Permitted Network” means an electronic network connecting Your computer with the Permitted Device. You agree that Your download and use of Other Participant Game Levels shall not exceed the scope of the license provided herein and shall otherwise comply with the requirements of these Program Terms.

Representations and Warranties; Indemnification; Limitation of Liability.

11.1. General. Harmonix and You each represents, warrants and covenants to the other that: (a) it has the full right, power and authority to enter into these Program Terms and to perform the acts required of it under these Program Terms, (b) agreement to these Program Terms and performance of its obligations under these Program Terms do not and shall not violate any other agreement to which it is a party, (c) these Program Terms constitute legal, valid and binding obligations upon Your entry and participation in the Submission Feature, and (d) any and all activities it undertakes in connection with these Program Terms shall be performed in compliance with all applicable laws, rules and regulations. You further represent, warrant and covenant to Harmonix that You are over 18 years of age and that You have the legal right, power and authority to enter into these Program Terms and perform and comply with all of its terms and conditions.

11.2. Submission Materials. You represent, warrant and covenant to Harmonix that, at all times during Your participation in the RBN Program, (a) You have all rights to the Submission Materials and all components thereof (including all intellectual property rights such as but not limited to Sound Recording and Musical Composition rights) or have obtained all rights, consents and permissions (including from other band members and other persons participating in or contributing to the Submission Materials) necessary to grant the rights granted herein, (b) the Submission Materials (and any use or exploitation thereof by Harmonix in any manner authorized, permitted or licensed herein) do not and will not violate any law, statute, ordinance or regulation, or infringe any third party rights or interests (including intellectual property rights), or violate anyone's right to privacy or publicity, (c) the Submission Materials are free and clear of any liens, interest or claims with respect to the use or exploitation of the Submission Materials in the manner authorized herein, including from any union, guild, performance rights society, production company, publishing company, music label or studio, and such use or exploitation will not give rise to any claims for any payment whatsoever, including claims for re-use fees or guild or residual payments, (d) all of the information provided by You associated with Your Submissions Materials, including the Submissions Material Information, is correct, complete and current, (e) the Submission Materials comply with all Harmonix Content Standards, and are not and will not be defamatory, trade libelous, pornographic or obscene, (f) You have complied and are in compliance with all applicable Console-Specific Terms, (g) neither You nor anyone else has engaged or taken part in (or induced or encouraged anyone else to do so) in any activity or conduct in connection with the Submission Materials that (i) may or is likely to harm or create a risk of harm, physical or mental injury, emotional distress, death, disability, disfigurement, or physical or mental illness to any person, other living thing or any property, (ii) may or is likely to create a risk of any other loss or damage to person, living things or property; or (iii) is or may constitute a crime, unlawful or non-consensual activities (i.e., conduct that could lead to criminal prosecution), tortious conduct (i.e., conduct that could lead to civil prosecution) or the violation or infringement of the rights of any other party, and (h) You are in compliance with and will comply with any and all agreements and obligations that You may have with Your other band members and/or other Content Contributors, including any and all payments to such other band members and/or other Content Contributors, and including any and all payments in connection with the Harmonix Royalties or the Xbox Royalties. Upon the request of Harmonix, You shall furnish Harmonix with any documentation, substantiation and releases necessary and reasonably

required to verify and substantiate Your compliance with any or all of the terms and conditions of these Program Terms, including the foregoing representations, warranties and covenants.

11.3. Similar Submissions. You acknowledge that other persons may have submitted, may have made public or developed, or may originate, submit, make public or develop, material similar or identical to all or a portion of Your Submissions Materials or concepts contained therein, and You understand and agree You will not be entitled to any compensation from Harmonix because of its use or exploitation thereof, and the submission of Your Submissions Materials, or any use or display thereof by Harmonix, is not any admission of novelty, priority or originality by Harmonix.

11.4. Indemnity. You agree to defend and/or handle at Your own cost and expense any claim or action against Harmonix, its affiliates, officers, directors, employees, representatives, agents, distribution partners and/or other entities providing services in connection with the RBN Program (each an "Indemnified Party") based upon or in connection with any action or claim by a third party arising out of any actual or alleged breach of the representations, warranties and covenants contained in these Program Terms. You agree to indemnify and hold each of the Indemnified Parties harmless from and against any and all liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees) associated with any such claim or action. At the applicable Indemnified Party's option, You shall conduct the defense of any such claim or action and the negotiations for its settlement or compromise; provided, however, that (a) no settlement or compromise shall be entered into or agreed to without the applicable Indemnified Party's prior approval and (b) each Indemnified Party has the right to participate, at its own expense, in the defense and/or settlement of any such claim or action in order to protect its own interests.

11.5. Disclaimer of Warranties. THE HARMONIX RBN SERVICES ARE PROVIDED "AS IS," AND YOUR USE OF THE HARMONIX RBN SERVICES IS AT YOUR OWN RISK. YOU ARE SOLELY RESPONSIBLE FOR YOUR SUBMISSION MATERIALS AND POSTINGS, THE REPRESENTATIONS AND OBLIGATIONS UNDER THESE PROGRAM TERMS, AND FOR ANY DAMAGES TO YOUR COMPUTER SYSTEM OR LOSS OF DATA RESULTING FROM YOUR USE OF THE HARMONIX RBN SERVICES. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, HARMONIX MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE HARMONIX RBN SERVICES, AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARE HEREBY DISCLAIMED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES CONCERNING ACCESS TO AND/OR THE AVAILABILITY, ACCURACY, USEFULNESS AND/OR SECURITY OF THE HARMONIX RBN SERVICES.

11.6. Limitation of Liability. YOU UNDERSTAND AND AGREE THAT, TO THE FULLEST EXTENT PERMISSIBLE BY LAW, HARMONIX, ITS AFFILIATES AND THEIR RESPECTIVE SUCCESSORS, ASSIGNS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES, DISTRIBUTION PARTNERS AND/OR OTHER ENTITIES PROVIDING SERVICES IN CONNECTION WITH THE RBN PROGRAM SHALL NOT BE LIABLE FOR (A) ANY INDIRECT LOSS OR DAMAGE IN CONNECTION WITH OR ARISING FROM THIS AGREEMENT, INCLUDING CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, AND/OR (B) EXCLUDING DAMAGE ARISING FROM BREACH BY HARMONIX OF SECTION 9.1 (SALES AND ROYALTIES) OR SECTION 9.2(B) (HARMONIX ROYALTIES), ANY DIRECT LOSS OR DAMAGE IN CONNECTION WITH OR

ARISING FROM THIS AGREEMENT, INCLUDING COMPENSATORY DAMAGES, IN ALL CASES FOR (A) AND (B) REGARDLESS OF THE FORM OF ACTION OR THE BASIS OF THE CLAIM OR WHETHER A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11.7. Other. YOU ACKNOWLEDGE AND AGREE THAT (A) HARMONIX OPERATES IN THE UNITED STATES AND ITS OPERATION OF THE HARMONIX RBN SERVICES, INCLUDING THE RBN PROGRAM AND THE HARMONIX WEBSITES, ARE GOVERNED BY THE LAWS OF THE U.S., (B) YOU ARE IN COMPLIANCE WITH SECTION 2.1 (“U.S. RESIDENTS ONLY”), AND (C) ALL ASPECTS OF YOUR PARTICIPATION IN OR USE OF THE HARMONIX RBN SERVICES WILL BE SUBJECT TO U.S. LAW. CONSEQUENTLY, YOU HEREBY WAIVE ANY CLAIMS THAT MAY ARISE UNDER LAWS AND REGULATIONS THAT MAY APPLY TO YOU IN OR OF ANY OTHER COUNTRY OR JURSDICTION. HARMONIX DISCLAIMS ALL LIABILITY FOR ANY USE (X) NOT SPECIFICALLY AUTHORIZED BY THESE PROGRAM TERMS OR (Y) IN VIOLATION OF (i) THESE PROGRAM TERMS OR (ii) ANY LAWS OR REGULATIONS OTHER THAN THE LAWS AND REGULATIONS OF THE UNITED STATES.

Term and Termination.

12.1. Term. These Program Terms shall commence upon Your registration with the Website and shall continue in perpetuity until terminated pursuant to these Program Terms.

12.2. Termination by Harmonix. Harmonix may terminate these Program Terms, in its sole and exclusive discretion for any or no reason and at any time, with no obligation or liability to You for doing so or failing to do so in any particular manner.

12.3 Termination by You. If You fail to accept revised Program Terms pursuant to Section 1.3 (Revisions), or if You cancel Your account for any reason, including failure to meet the participation requirements set forth in Article 2 (Participation Requirements), then these Program Terms shall automatically terminate.

12.4 Effect of Termination. In the event of a termination of these Program Terms, (a) Harmonix shall remove Your Submission Materials from the Website within 30 days of such termination, (b) Harmonix may continue to sell Game Files that are for sale as of the date of such termination subject to the continuing royalty obligations of Article 9 (Distribution & Royalties), and (c) You shall immediately destroy all copies of Other Participant Game Levels that You have downloaded. Harmonix shall maintain Your user account after termination solely to enable You to unpublish Game Files pursuant to Section 9.4 (Unpublishing & Selloff Period), or alternatively Harmonix shall provide You with instructions on the Website or by direct communication or otherwise regarding unpublishing Your Game Files pursuant to Section 9.4 (Unpublishing & Selloff Period).

12.5 Survival. Any provision of these Program Terms which, either by its terms or to give effect to its meaning, must survive, or is specified in this Section 12.5, shall survive termination or expiration of these Program Terms, including Section 6.10 (Reservation of Rights), Section 6.11 (Archival Copies and Customer Support), Article 11 (Representations and Warranties; Indemnification; Limitation of Liability), Article 13 (General Terms) and this Article 12 (Term and Termination), shall survive the termination of these Program Terms. Further, the following provisions shall survive the termination of these Program

Terms with respect to any Game Files on sale by or on behalf of Harmonix as of the date of such termination that Harmonix continues to sell after such termination: Section 5.2 (Internal Disputes), Section 6.4 (Music Files), Section 6.5 (Game Files), Section 6.6 (Album Artwork), Section 6.7 (Names and Likenesses), Section 6.8 (Other Materials), Section 6.9 (Moral Rights) and Article 9 (Distribution and Royalties).

General Terms.

13.1. Notice. All notices and other communications required or permitted under these Program Terms shall be in writing and delivered personally, mailed via certified mail, postage prepaid, or via a nationally recognized overnight courier, to Harmonix at the addresses set forth below and to You at the address provided in the Submission Materials Information, unless, by notice, a party changes the addressee and addresses for giving notice. All notices shall be deemed given on the date personally delivered or when placed in the mail as specified. Harmonix may also deliver notices to You via email to any email address provided by You.

To Harmonix:

Senior Vice President, Business and Legal Affairs
Harmonix Music Systems, Inc.
625 Massachusetts Ave, 2nd Floor
Cambridge, MA 02139

and

Rock Band Network Administrator
Harmonix Music Systems
625 Massachusetts Ave 2nd Floor
Cambridge, MA 02139

13.2 Miscellaneous. You may not assign, transfer, convey or subcontract these Program Terms, or any rights or obligations hereunder, to any other party. Harmonix shall have the right to assign, transfer, sub-license, sub-contract, delegate, outsource or engage third parties to perform or benefit from all or any portion of its rights and obligations hereunder, without accounting, notification or other obligation to You. These Program Terms shall be binding upon, and enforceable by, and shall inure to the benefit of the parties and their respective successors and permitted assigns. Each party is an independent contractor and each party's personnel are not employees or agents of the other party for federal, state or other tax purposes or any other purposes whatsoever. Nothing in these Program Terms shall be construed or deemed to constitute, create, give effect to or otherwise recognize a joint venture, partnership, business entity of any kind, or constitute one party as an agent of the other party. These Program Terms and all disputes, claims, actions, suits or other proceedings arising hereunder shall be governed by, and construed in accordance with, the substantive law of the State of New York applicable to contracts wholly made and to be performed within the State of New York. You irrevocably submit to the sole and exclusive jurisdiction of the courts of New York State and the Federal courts of the

Southern District of New York, situated in the City, County and State of New York. You irrevocably consent to the exercise of personal jurisdiction over each of the parties by such courts and waives any right to plead, claim or allege that New York is an inconvenient forum. No failure or delay by Harmonix to exercise any right or enforce any obligation shall impair or be construed as a waiver or on-going waiver of that or any or other right or power, unless made in writing and signed by Harmonix. If any provision of these Program Terms is held to be illegal, invalid or unenforceable, the remaining provisions of these Program Terms shall be unimpaired and remain in full force and effect. The terms “include,” “includes,” and “including,” whether or not capitalized, mean “include, but are not limited to,” “includes, but is not limited to,” and “including, but not limited to,” respectively and are to be construed as inclusive, not exclusive. These Program Terms (and other terms and conditions expressly referenced herein) are part of and hereby incorporated into the [Terms of Use Agreement](#), which constitutes the entire agreement between You and Harmonix with respect to the subject matter hereof (including the Submission Materials), and supersedes any prior or inconsistent agreements, negotiations, representations and promises, written or oral, with respect to the subject matter hereof, including with respect to rights in and to so-called “user generated content”.

These Program Terms were last modified on the date first written above and are effective immediately.

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