

## NATIVE DSD MUSIC.com TERMS AND CONDITIONS – USER

THIS IS A LEGAL AND BINDING AGREEMENT BETWEEN YOU AND NATIVE DSD.COM, ("HD")] STATING THE TERMS THAT GOVERN YOUR USE OF THE NATIVE DSD MUSIC DIGITAL STORE AND WEBSITE. TOGETHER WITH ANY UPDATES, ADDITIONAL TERMS, SOFTWARE LICENSES AND HD'S RELATED RULES AND POLICIES SHALL COLLECTIVELY CONSTITUTE THE AGREEMENT ("AGREEMENT") BETWEEN YOU AND NATIVE DSD MUSIC TO AGREE TO THESE TERMS, CLICK "AGREE". IF YOU DO NOT AGREE TO THESE TERMS, DO NOT CLICK "AGREE," AND DO NOT USE THE NATIVE DSD MUSIC DIGITAL STORE. IF YOU USE ANY PART OF THE NATIVE DSD MUSIC DIGITAL STORE, BY THAT USE, YOU ARE AGREEING TO THE TERMS OF THIS AGREEMENT. YOU MUST ACCEPT AND ABIDE BY THESE TERMS AS PRESENTED TO YOU: CHANGES, ADDITIONS, OR DELETIONS ARE NOT ACCEPTABLE, AND, IN ADDITION TO OTHER REMEDIES, HD MAY REFUSE YOU ACCESS TO THE HD DIGITAL STORE FOR NONCOMPLIANCE WITH ANY PART OF THIS AGREEMENT.

### 1. Definition of the "NATIVE DSD MUSIC Digital Store" and "Products".

NATIVE DSD MUSIC is a Netherlands limited liability company, and is the provider of the NATIVE DSD MUSIC Digital Store that manages the NATIVE DSD MUSIC.com site and permits you to purchase downloads of digital content ("Products") encoded using a high-definition or "lossless" codec, under certain terms and conditions as set forth in this Agreement. Our Products are files of recordings that are downloaded to and stored on the hard drive of your computer, PDA, or other digital device, or copied onto a CD, and transferred to other digital devices. NATIVE DSD MUSIC Products may be purchased individually as tracks, collectively as albums, or, in some cases, only in the form of a full-length album. However, as addressed below, each purchase of a Product shall be deemed a final, nonrefundable sale. Further, there is no assurance that Products will be compatible with any particular digital device or compact disc burner, or that any compact discs that are burned will function properly.

2. System Requirements. Use of the Digital Store requires Internet access (fees may apply), a compatible device, and certain software (fees may apply), and may require obtaining updates or upgrades from time to time. Because use of the Digital Store involves hardware, software, and Internet access, your ability to use the Digital Store may be affected by the performance of these factors. Do not use the Digital Store unless you have high speed Internet access. You acknowledge and agree that such system requirements, shall be not be construed to represent or guarantee you access to the Digital Store.

3. Policies and Rules. Your use of the Digital Store and purchases made through it are subject to NATIVE DSD MUSIC Terms of Use agreement, and any end-user agreements or other terms and conditions required for use of the Digital Store, all of which are hereby made a part of this Agreement.

4. NATIVE DSD MUSIC Privacy Policy. Except as otherwise expressly

provided for in this Agreement, the Digital Store is subject to 'NATIVE DSD MUSIC' Privacy Policy, which is expressly made a part of this Agreement. If you have not already read NATIVE DSD MUSIC's Privacy Policy, please do so now by going to [www.nativedsd.com](http://www.nativedsd.com)

5. Your Information. You agree to provide accurate, current, and complete information required to register with the Digital Store and at other points as may be required in the course of using the Digital Store ("Registration Data"). You further agree to maintain and update your Registration Data and Account Information as required to keep it accurate, current, and complete. NATIVE DSD MUSIC may terminate your rights to any or all of the Digital Store if any information you provide is false, inaccurate or incomplete. You agree that NATIVE DSD MUSIC may store and use the Registration Data and Account Information you provide (including credit card information, even if we state we are not storing your credit card information) for use in maintaining your accounts and billing fees to your credit card.

6. Age requirements for use of the Digital Store. This Digital Store is available for individuals aged 18 years or older.

7. Objectionable Material. You understand that by using the Digital Store, you may encounter content that may be deemed offensive, indecent, or objectionable, which content may or may not be identified as having explicit language. Nevertheless, you agree to use the Digital Store at your sole risk and that NATIVE DSD MUSIC shall have no liability to you for content that may be found offensive, indecent, or objectionable.

8. User Account and Security.

a. Account and Password. As a registered user of the Digital Store, you may receive or establish an account and sub accounts (individually) and collectively referred to as "Account". You are solely responsible for maintaining the confidentiality and security of your Account. You should not reveal your Account information to anyone else or use anyone else's Account. You are entirely responsible for all activities that occur on or through your Account, and you agree to immediately notify NATIVE DSD MUSIC of any unauthorized use of your Account or any other breach of security. NATIVE DSD MUSIC shall not be responsible for any losses arising out of the unauthorized use of your Account.

b. Security. You understand that the Digital Store, and Products purchased through the Digital Store, do not utilize any digital rights management or DRM. As such, you, the consumer, hereby agree to adhere to the laws of the Netherlands protecting copyrighted intellectual property and shall refrain from illegally copying, selling or otherwise exploiting the Products in any manner. Violations of Netherlands Copyright Law may result in civil and/or criminal liability.

9. Purchase of Content from NATIVE DSD MUSIC.

a. Products Requirements. You acknowledge that use of Products may require the use of other hardware and software products (e.g., the

ability to make copies of Products on physical media and render performance of Products on authorized digital player devices), and that such hardware and software is your responsibility. Once a Product is purchased and you receive the Product, it is your responsibility not to lose, destroy, or damage the Product, and NATIVE DSD MUSIC shall be without liability to you in the event to any loss, destruction, or damage.

b. Use of Products. You acknowledge that your use of the Products is limited to your own personal use and the Products shall not be commercially exploited by you in any way and is subject to NATIVE DSD MUSIC's Usage Rules which you hereby agreed to.

c. Your use of the Products is conditioned upon your prior acceptance of the terms of this Agreement.

d. You shall be authorized to use the Products only for personal, noncommercial use. Any burning or exporting capabilities are solely an accommodation to you and shall not constitute a grant or waiver ( or other limitation or implication) of any rights of the copyrights owners in any content, sound recording, underlying musical composition, or artwork embodied in any Product. The delivery of Products does not transfer to you any commercial or promotional use rights in the Products.

e. You agree that your purchase of Products constitutes your acceptance of and agreement to use such Products solely in accordance with the Terms of Use, and that any other use of the Products may constitute a copyrights infringement.

f. You acknowledge that some aspects of the Digital store and the purchase of Products, may entail the ongoing involvement of NATIVE DSD MUSIC. Accordingly, in the event that NATIVE DSD MUSIC changes any part of the Digital Store or discontinues the Digital Store, which NATIVE DSD MUSIC may do at its election, at any time, with or without notice to you, you acknowledge that you may no longer be able to use Products to the same extent as prior to such change or discontinuation, and that NATIVE DSD MUSIC shall have no liability to you in such case.

g. ALL SALES ARE FINAL. We will NOT issue refunds.

10. Interactive Features. The Digital Store may offer interactive features that allow you to, among things, submit or post information and materials on areas of the Digital Store accessible and viewable by other users of the Digital Store and the public. You agree that any use by you and such features shall be your sole responsibility, shall not infringe or violate the right of any other, contribute to or encourage unlawful conduct, or otherwise be obscene, objectionable or in poor taste. Moreover, you hereby grant NATIVE DSD MUSIC a worldwide, royalty-free, nonexclusive license to use such materials as part of the Digital Store, and in relation to Products, without any compensation or obligation to you.

a. NATIVE DSD MUSIC reserves the right to not post or publish materials, and to delete remove or edit any material, at any time in its sole discretion without liability.

11. Territory. NATIVE DSD MUSIC is available worldwide.

12. Agreement to Pay.

- a. Payment for Products. You agree to pay for all Products you purchase through the Digital Store, and that NATIVE DSD MUSIC may charge your credit card for any Products purchased, and for any additional amounts (including any taxes, as applicable) as may be accrued (collectively "Fees") by or in connection with your Account.
- b. Right to Change Prices and Availability of Products. Prices and availability of any Products are subject to change at any time.
- c. Electronic Signatures and Contracts. Your use of the Digital Store includes the ability to enter into agreements and/or to make purchases electronically. YOU ACKNOWLEDGE THAT YOUR ELECTRONIC SUBMISSIONS CONSTITUTE YOUR AGREEMENT AND INTENT TO BE BOUND BY AND TO PAY FOR SUCH AGREEMENTS AND PURCHASES. YOUR AGREEMENT AND INTENT TO BE BOUND BY ELECTRONIC SUBMISSIONS APPLIES TO ALL RECORDS RELATING TO ALL TRANSACTIONS YOU ENTER INTO WHEN USING OUR DIGITAL STORE, INCLUDING NOTICES OF CANCELLATION, POLICIES, CONTRACTS, AND APPLICATIONS.
- d. Required Hardware and Software. In order to access and retain your electronic records, you may be required to have certain hardware and software, which are your sole responsibility.

13. Delivery of Products. On occasion, technical problems may delay or prevent delivery of your Product. Your exclusive and sole remedy with respect to a Product that is not delivered within a reasonable period will be either replacement of such Product, or refund of the purchase price paid for such Product, as determined by NATIVE DSD MUSIC.

14. Intellectual Property.

- a. Acknowledgement of Ownership. You agree that the Digital Store, including but not limited to graphics, audio clips, and editorial content, contains proprietary information and material that is owned by NATIVE DSD MUSIC and/or its licensors, and is protected by applicable intellectual property and other laws, including but not limited to copyright, and that you will not use such proprietary information or materials in any way whatsoever except for use of the Digital Store in compliance with the terms of this Agreement. No portion of the Digital Store may be reproduced in any form or by any means. You agree not to modify, rent, lease, loan, sell, distribute, or create derivative works based on Digital Store, or in any manner. You shall not exploit Digital Store in any unauthorized way whatsoever, including but not limited to, by trespass or burdening network capacity.
- b. Removal of NATIVE DSD MUSIC Content or Other Materials. Notwithstanding any other provisions of this Agreement, NATIVE DSD MUSIC and its licensors reserve the right to change, suspend, remove, or disable access to any such Products, content or materials under this Agreement. NATIVE DSD MUSIC may also impose limits on the use of or access to certain features or portions of the Digital Store, in any case without notice or liability.
- c. Copyrights. All copyrights in and to the Digital Store, including but not limited to the NATIVE DSD MUSIC Network (including the compilation of content, postings, links to other Internet resources, and descriptions of those resources),s and software, are owned by

NATIVE DSD MUSIC and/or its licensors. THE USE OF THE SOFTWARE OR ANY PART OF THE DIGITAL STORE, EXCEPT FOR USE OF THE DIGITAL STORE AS PERMITTED IN THESE TERMS, IS STRICTLY PROHIBITED AND INFRINGES ON THE INTELLECTUAL PROPERTY RIGHTS OF OTHERS AND MAY SUBJECT YOU TO CIVIL AND CRIMINAL PENALTIES, INCLUDING POSSIBLE MONETARY DAMAGES, FOR COPYRIGHT INFRINGEMENT.

d. Trademarks. NATIVE DSD MUSIC, the NATIVE DSD MUSIC logo, The Internet's Hi Def Download Store and other NATIVE DSD MUSIC trademarks, Digital Store marks, graphics, and logos used in connection with the Digital Store are trademarks or registered trademarks of NATIVE DSD MUSIC BV. in the Netherlands and/or other countries. Other trademarks, Digital Store marks, graphics, and logos used in connection with the Digital Store may be the trademarks of their respective owners. You are granted no right or license with respect to any of the aforesaid trademarks and any use of such trademarks.

#### 15. Termination.

a. Termination by NATIVE DSD MUSIC. If you fail, or if NATIVE DSD MUSIC suspects in its sole determination that you have failed, to comply with any of the provisions of this Agreement, including but not limited to failure to make payment of Fees due, failure to provide NATIVE DSD MUSIC with a valid credit card or with accurate and complete Registration Data, Billing Information, User Profile information, and information in Add Funds, failure to safeguard your Account information, or violation of the Usage Rules or any license to the software, NATIVE DSD MUSIC, in its sole discretion, without notice to you may: (i) terminate this Agreement and/or your Account, and you will remain liable for all amounts due under your Account up to and including the date of termination; and/or (ii) terminate the license to the software; and/or (iii) preclude access to the Digital Store (or any part thereof).

b. Termination of the Digital Store. NATIVE DSD MUSIC reserves the right to modify, suspend, or discontinue the Digital Store (or any part or content thereof) at any time with or without notice to you, and NATIVE DSD MUSIC will not be liable to you or to any third party should it exercise such rights.

16. General Compliance with Laws. The Digital Store is controlled and operated by NATIVE DSD MUSIC BV of the Netherlands. You agree to comply with all local, and national laws, statutes, ordinances, and regulations that apply to your use of the Digital Store.

17. Enforcement of These Terms. NATIVE DSD MUSIC reserves the right to take steps NATIVE DSD MUSIC believes are reasonably necessary and appropriate to enforce and/ or verify compliance with any part of this Agreement (including but not limited to NATIVE DSD MUSIC's right to cooperate with any legal process relating to your use of the Digital Store and/or Products, and/or third party claim that your use of the Digital Store and/or Products is unlawful and/or infringes such third party's rights.) You agree that NATIVE DSD MUSIC has the right, without liability to you, to disclose any Registration Data and/ or Account information to law enforcement authorities, government officials, and/or any third party as NATIVE DSD MUSIC believes is reasonably necessary or

appropriate to enforce and/or verify compliance with any part of this Agreement (including but not limited to NATIVE DSD MUSIC's right to cooperate with any legal process relating to your use of the Digital Store and/or Products, and/or a third party claim that your use of the Digital Store and/or Products is unlawful and/or infringes such third party's rights).

18. No Responsibility for the third-Party Material or Web sites. Certain content, Products, and Digital Stores available via Digital Store may include materials from third parties. In addition, NATIVE DSD MUSIC may provide links to certain third party websites. You acknowledge and agree that NATIVE DSD MUSIC is not responsible for examining or evaluating the content or accuracy of any such third-party material or Websites. NATIVE DSD MUSIC does not warrant or endorse and does not assume and will not have any liability or responsibility for any third-party materials or websites, or for any other materials, products, or Digital Stores of third parties. Links to other websites are provided solely as a convenience to you.

19. Disclaimer of Warranties; Liability Limitations.

a. NATIVE DSD MUSIC DOES NOT GUARANTEE, REPRESENT, OR WARRANT THAT YOUR USE OF THE DIGITAL STORE WILL BE UNINTERRUPTED OR ERROR-FREE, AND YOU AGREE THAT FROM TIME TO TIME HD MAY REMOVE THE DIGITAL STORE FOR INDEFINITE PERIODS OF TIME, OR CANCEL THE DIGITAL STORE AT ANY TIME, WITHOUT NOTICE TO YOU AND WITHOUT LIABILITY TO YOU.

b. YOU EXPRESSLY AGREE THAT YOUR USE OF, OR INABILITY TO USE, THE DIGITAL STORE IS AT YOUR SOLE RISK. THE DIGITAL STORE AND ALL PRODUCTS AND DIGITAL STORES DELIVERED TO YOU THROUGH THE DIGITAL STORE ARE (EXCEPT AS EXPRESSLY STATED BY HD) PROVIDED "AS IS" AND "AS AVAILABLE" FOR YOUR USE WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON INFRINGEMENT. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, THE ABOVE EXCLUSION OF IMPLIED WARRANTIES MAY NOT APPLY TO YOU.

c. IN NO CASE SHALL NATIVE DSD MUSIC, ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, CONTRACTORS, OR LICENSORS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING FROM YOUR USE OF ANY OF THE DIGITAL STORES OR FOR ANY OTHER CLAIM RELATED IN ANY WAY TO YOUR USE OF THE DIGITAL STORES, INCLUDING BUT NOT LIMITED TO, ANY ERRORS OR OMISSIONS IN ANY CONTENT, OR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS RESULT OF THE USE OF ANY CONTENT (OR PRODUCT) POSTED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE DIGITAL STORE, EVEN IF ADVISED OF THEIR POSSIBILITY. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR THE LIMITATION OF LIABILITY THIS CLAUSE SHALL BE LIMITED TO THE EXTENT PERMITTED BY LAW.

d. NATIVE DSD MUSIC SHALL USE REASONABLE EFFORTS TO PROTECT INFORMATION SUBMITTED BY YOU IN CONNECTION WITH THE DIGITAL STORES, BUT YOU ACKNOWLEDGE AND AGREE THAT YOUR SUBMISSION OF SUCH INFORMATION IS AT YOUR SOLE RISK, AND HD HEREBY DISCLAIMS ANY AND ALL LIABILITY TO YOU FOR ANY LOSS OR LIABILITY RELATING TO SUCH INFORMATION IN ANY WAY.

e. NATIVE DSD MUSIC DOES NOT REPRESENT OR GUARANTEE THAT THE DIGITAL STORE WILL BE FREE FROM LOSS, CORRUPTION, ATTACK, VIRUSES, INTERFERENCE, HACKING, OR OTHER SECURITY INTRUSION, AND NATIVE DSD MUSIC DISCLAIMS ANY LIABILITY RELATING THERETO. YOU SHALL BE RESPONSIBLE FOR BACKING UP YOUR OWN SYSTEM.

20. Waiver and Indemnity, BY USING THE DIGITAL STORE, YOU AGREE TO INDEMNIFY AND HOLD NATIVE DSD MUSIC, ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, CONTRACTORS, AND LICENSORS HARMLESS WITH RESPECT TO ANY CLAIMS ARISING OUT OF OUR BREACH OF THIS AGREEMENT, YOUR USE OF THE DIGITAL STORE, OR ANY ACTION TAKEN BY HD AS PART OF ITS INVESTIGATION OF A SUSPECTED VIOLATION OF THIS AGREEMENT OR AS A RESULT OF ITS FINDING OR DECISION THAT A VIOLATION OF THIS AGREEMENT HAS OCCURRED. THIS MEANS THAT YOU CANNOT SUE OR RECOVER ANY DAMAGES FROM NATIVE DSD MUSIC, ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, CONTRACTORS, AND LICENSORS AS A RESULT OF ITS DECISION TO REMOVE OR REFUSE TO PROCESS ANY INFORMATION OR CONTENT, TO WARN YOU, TO SUSPEND OR TERMINATE YOUR ACCESS TO THE DIGITAL STORE, OR TO TAKE ANY OTHER ACTION DURING THE INVESTIGATION OF A SUSPECTED VIOLATION OR AS A RESULT OF NATIVE DSD MUSIC'S CONCLUSION THAT A VIOLATION OF THIS AGREEMENT HAS OCCURRED. THIS WAIVER AND INDEMNITY PROVISION APPLIES TO ALL VIOLATIONS DESCRIBED IN OR CONTEMPLATED BY THIS AGREEMENT.

21. Changes. NATIVE DSD MUSIC reserves the right, at any time and from time to time, to update, revise, supplement, and otherwise modify this Agreement and to impose new or additional rules, policies, terms, or conditions on your use of the Digital Store. Such updates, revisions, supplements, modifications, and additional, rules, policies, terms, and conditions (collectively referred to in this Agreement as "Additional Terms") will be effective immediately and incorporated into this Agreement. Your continued use of the NATIVE DSD MUSIC Digital Store after Additional Terms are hereby incorporated into this Agreement by this reference.

22. Notices. NATIVE DSD MUSIC may send you a notice with respect to the Digital Store by sending an email message to the email address listed in your NATIVE DSD MUSIC Account contact information, by sending a message to you in your NATIVE DSD MUSIC's Message Center, by sending a letter via postal mail to the contact address listed in your NATIVE DSD MUSIC Account contact information, or by general posting in the NATIVE DSD MUSIC Network Digital Store. Notices shall become effective immediately.

23. Governing Law. The laws of the Netherlands, excluding its conflicts of law and rules, govern these Terms and your use of the Digital Store. Your use of the Digital Store may also be subject to other local, state, national, or international laws. You expressly agree that exclusive jurisdiction for any claim or dispute with NATIVE DSD MUSIC or relating in any way to your use of the Digital Store resides in the courts of the Netherlands.

24. Miscellaneous. These Terms of Digital Store use constitute the

entire agreement between you and NATIVE DSD MUSIC and govern your use of the Digital Store, superseding any prior agreements between you and NATIVE DSD MUSIC. You also may be subject to additional terms and conditions that may apply when you use affiliate Digital Stores, third-party content, or third-party software. If any part of these Terms of Digital Store is held invalid then the remaining portions of this Agreement shall remain in full force and effect. NATIVE DSD MUSIC's failure to enforce any right or provisions in these Terms of Use will not constitute a waiver of such provision, or any other provision of these Terms of Use. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, the other provisions will remain in full force and effect. NATIVE DSD MUSIC will not be responsible for failures to fulfill any obligations due to causes beyond its control.