

# Rhapsody End User License Agreement

READ CAREFULLY. THIS RHAPSODY END USER LICENSE AGREEMENT IS A LEGAL AND BINDING AGREEMENT BETWEEN YOU ("YOU" AND "YOUR") AND LISTEN.COM, INC. ("LISTEN," "WE," "US," OR "OUR"). BY CLICKING THE "AGREE" BUTTON OR BY OTHERWISE INSTALLING, COPYING OR USING THE RHAPSODY APPLICATION, OR ANY WEB SITE OWNED OR CONTROLLED BY LISTEN, YOU ARE INDICATING THAT YOU HAVE READ THIS AGREEMENT, THAT YOU UNDERSTAND IT, AND THAT YOU CONSENT TO BE BOUND BY ALL OF ITS TERMS AND CONDITIONS. THIS AGREEMENT SETS FORTH YOUR RIGHTS AND OBLIGATIONS WITH RESPECT TO YOUR USE OF THE DOWNLOADABLE RHAPSODY SOFTWARE (THE "SOFTWARE") AND ANY INFORMATION OR DATA OF ANY KIND, INCLUDING WITHOUT LIMITATION ANY ARTWORK, TEXT, VIDEO, AUDIO, OR PICTURES SERVED THROUGH THE SOFTWARE OR RECEIVED FROM OR ON ANY WEB SITE OWNED OR CONTROLLED BY LISTEN (COLLECTIVELY THE "CONTENT") (THE SOFTWARE AND THE CONTENT ARE TOGETHER REFERRED TO AS THE "APPLICATION"; THE "SOFTWARE" INCLUDES BETA AND PRE-RELEASE VERSIONS). IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, YOU ARE NOT AUTHORIZED TO USE THE APPLICATION AND YOU MUST STOP THE REGISTRATION PROCESS AND PROMPTLY CEASE USING AND DESTROY ANY COPIES OF THE SOFTWARE IN YOUR POSSESSION.

## 1. DESCRIPTION OF APPLICATION

By downloading the Software and registering to use the Application, you may be eligible to subscribe to any of our premium subscription services which include: (i) a music subscription service which gives you instant, unlimited access to high quality streams and conditional downloads of our extensive library of music files (subject to license restrictions and digital rights management restrictions applicable to such downloads) and lets you purchase and/or burn tracks for an additional charge, (ii) a portable music subscription service that allows you to transfer a subset of our music library to portable devices for personal use; and (iii) a premium Internet radio service that includes a wider array of stations and many enhanced features as compared to our free radio services. The Software also: (i) enables you to access our online music store, which lets you download and/or burn tracks for an additional charge without subscribing to a premium subscription service, (ii) functions as a software player, enabling you to organize your music files, make personal use copies of tracks from your CDs (where the original medium is technologically compatible and not copy-protected), organize your digital music library, and perform a wide variety of related functions. In addition, through the Application, you will have access to our artist, album and track information, music recommendations, artist biographies and discographies, and access to our menu of free radio stations and music videos.

Please note that when you subscribe to our streaming music-on-demand service, you agree also to the terms of the [Rhapsody Service Terms and Conditions](#). Any information that you supply to us will be governed by the terms and conditions of Listen's [Privacy Policy](#), as it may be updated from time to time by us.

## 2. GRANT OF LICENSE

Listen hereby grants to you a limited, non-exclusive license to use the Application on any computer solely for personal, noncommercial use and subject to the following terms:

You may not: (i) frame or link to the Application except as expressly permitted in writing by Listen; (ii) permit other individuals to use the Application; (iii) modify, translate, reverse engineer, decompile, disassemble (except to the extent that this restriction is expressly prohibited by law) or create derivative works based upon the Application or any portion thereof; (iv) copy the Application or any portion thereof; (v) sell, rent, lease, transfer, distribute, broadcast, display or otherwise assign any rights to the Application to any third party; (vi) remove any proprietary notices or labels on the Application; (vii) use the Application in conjunction with any device or service designed to circumvent technological measures employed to control access to, or the rights in, a content file or other work protected by the copyright laws of any jurisdiction; (viii) use the Application for any commercial or illegal purpose; (ix) use the Application to invade the privacy of, or obtain personal information about, any Application account holder or user, or to obtain a list of Application account holders or users; (x) copy, modify, erase or damage any information contained on computer servers used or controlled by Listen or any third party used in connection with the Application or the services provided through the Application; (xi) use the Application to violate any legal right of any third party, including any publicity or privacy right, copyright or other intellectual property right, or to take any action that is harassing, libelous, defamatory, abusive, tortious, threatening, harmful or

otherwise objectionable; or use any data mining, robots, or similar data gathering and or extraction tools in connection with the Application; (xii) use the Application to post or transmit any unsolicited advertising or promotional materials; (xiii) access or use any password protected, secure or non-public areas of the Application except as specifically authorized in writing by Listen (unauthorized individuals attempting to access these areas of the Application may be subject to prosecution); or (iv) impersonate or misrepresent your affiliation with any person or entity.

Other than as specifically permitted during a free trial period, you may not use any subscription-based features of the Application unless you have paid the applicable subscription fee and agreed to the terms of the Rhapsody Service Terms and Conditions. Listen is not obligated to provide any such free trial period.

### **3. UPGRADES**

You acknowledge that Listen may issue upgraded versions of the Application from time to time, and may automatically electronically upgrade the version of the Application that you are using on your computer. You consent to such automatic upgrading, and agree that this Agreement (as amended from time to time) will govern all such upgraded versions.

The Application will operate only on those hardware and software platforms specified in the Application documentation. It is your responsibility to ensure that you have the appropriate software, hardware and Internet connection to operate the then-current version of the Application. Listen reserves the right to cease supporting any hardware or software platform at any time, with or without notice.

Listen may modify the Application at any time without notice and may discontinue any Listen web site at any time without notice.

### **4. TITLE TO DOWNLOADABLE SOFTWARE**

Listen retains all title, ownership rights, and intellectual property rights in and to the Software you must download to your hard drive in order to use the Application. Except as expressly stated in this Agreement, Listen does not grant any express or implied right or license to you under any patent, copyright, trademark, or trade secret rights of Listen.

### **5. TITLE TO CONTENT SERVED THROUGH THE APPLICATION**

The Content served by Listen or third parties directly through the Application is the property of Listen, its licensors and its advertisers. Title, ownership rights and intellectual property rights in and to such Content is the property of either Listen or third-party content owners and copyright holders and is protected by applicable copyright and other law. Other than as expressly provided herein, this Agreement gives you no express or implied license to the Content, including without limitation, any right to use, sell, rent, copy, distribute, broadcast, modify, perform or publicly display any Content.

Listen complies with copyright law and expects its users to do the same. You may not use the Application to help you infringe the copyrights of any third party. Unauthorized use, copying, distribution, modification, public display, or public performance of copyrighted works is an infringement of the copyright holders' rights and a violation of the law. You agree that you shall only use the Application in a manner that does not violate any third-party rights and that complies with all applicable laws in the jurisdiction in which you use the Application, including, but not limited to, applicable restrictions concerning copyrights and other intellectual property rights.

### **6. LINKED ENTITIES**

The Application contains links through advertising and otherwise, to various third party web sites and other resources ("Linked Entities"). These Linked Entities (other than [www.listen.com](http://www.listen.com)) are not under the control of Listen and Listen is not responsible or liable for the content, communications or materials of any Linked Entities. Listen is providing these links to you as a convenience only. The inclusion of any link does not imply endorsement by Listen of the Linked Entity or any association with its operators. You are responsible for adhering to the applicable terms of service for any Linked Entity. You are solely responsible and liable for any interactions you may have with such entities, their sponsors and other third parties.

### **7. COPYRIGHT AGENT**

The music industry depends upon copyright law to enable songwriters, recording artists, music publishers and record labels to get fairly compensated for their works. Unauthorized copying or distribution of copyrighted music is an infringement of the copyright holder's rights. At our discretion and in appropriate circumstances, Listen may revoke the license of users who infringe upon the copyright, or other intellectual property rights, of others. If you are an artist or other copyright holder who believes that

Listen's service is hosting or linking directly to infringing copies of your work, please let us know. Pursuant to 17 United States Code 512(c)(2), our designated agent for notice of alleged copyright infringement on the Application is:

Zahavah Levine

Legal Director of Music Licensing

RealNetworks, Inc.

2012 16th Street

San Francisco, California 94103

phone: 415.934.2000

Copyright Agent Contact

Pursuant to Title 17, United States Code, Section 512(c)(3), a notification of claimed infringement related to the Application must be a written communication addressed to the designated agent as set forth above, and must include substantially all of the following:

- 1 A physical or electronic signature of the owner (or person authorized to act on behalf of the owner) of an exclusive right that is allegedly infringed;
- 2 Specific identification of the copyrighted work claimed to have been infringed, or if multiple copyrighted works are covered by a single notification, a list of each copyrighted work claimed to have been infringed;
- 3 Information related to the work(s) reasonably sufficient for Listen to promptly locate the work (e.g. title of work, location within the Application, etc.);
- 4 Information reasonably sufficient to permit Listen to directly contact the complaining party, such as a complete name and address, telephone number, and an email address;
- 5 A statement that the complaining party has a good faith belief that use of the work(s) in the manner complained of is not authorized by the copyright owner, its agent, or the law;
- 6 A statement requesting that Listen take a specific act with respect to the alleged infringement (e.g., removal, access restricted or disabled); and
- 7 A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

## **8. REGISTRATION**

You agree to provide true, accurate, current and complete information about yourself as prompted by the registration process (such information being the "Account Information"). You agree to update your Account Information in order to keep such information current.

During the registration process to use the Application, you will create a password and a user name. Once you have completed the registration process, we will set up an account for you. You are solely and entirely responsible for maintaining the confidentiality of your password and user name. Furthermore, you are solely and entirely responsible for any and all activities that occur under your account.

## **9. BETA RELEASE OR PRE-RELEASE VERSIONS**

In the event that the Software is a beta release or pre-release version, the terms of this Section shall apply. Your license to use the Software expires 120 days after installation (or such other period as indicated by the Software) and the Software may cease to function. The Software you are receiving may contain more or less features than the commercial release of the Software we intend to distribute. While we intend to distribute a commercial release of the Software, we reserves the right at any time not to release a commercial release of the Software or, if released, to alter features, specifications, capabilities, functions, licensing terms, release dates, general availability or other characteristics of the commercial release. You agree that the beta release or pre-release versions are not suitable for production use and may contain errors affecting their proper operation. You agree that you will not do anything to circumvent or defeat the features designed to stop the Software from operating after the license expires.

## **10. DISCLAIMER OF WARRANTY**

THE APPLICATION IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE APPLICATION OR ITS OPERATION. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LISTEN AND ITS DISTRIBUTION AND SYNDICATION PARTNERS DISCLAIM ALL WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.

USE OF THE APPLICATION IS AT YOUR OWN RISK. LISTEN MAKES NO WARRANTY THAT THE APPLICATION WILL MEET YOUR REQUIREMENTS, OR THAT THE APPLICATION WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE; NOR DOES LISTEN MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE APPLICATION OR AS TO THE ACCURACY OR RELIABILITY OF ANY CONTENT OBTAINED THROUGH THE APPLICATION. LISTEN MAKES NO WARRANTY REGARDING ANY GOODS OR SERVICES PURCHASED OR OBTAINED THROUGH THE APPLICATION OR ANY TRANSACTIONS ENTERED INTO THROUGH THE APPLICATION.

#### **11. LIMITATION OF LIABILITY**

THE ENTIRE RISK ARISING OUT OF THE USE AND/OR PERFORMANCE OF THE APPLICATION REMAINS WITH YOU. IN NO EVENT SHALL LISTEN, ITS DISTRIBUTION AND SYNDICATION PARTNERS OR LICENSORS OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR AFFILIATES BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, DIRECT, INDIRECT, SPECIAL, PUNITIVE, OR OTHER DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE APPLICATION OR ANY PART THEREOF, EVEN IF LISTEN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU, BUT THEY SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY LAW.

#### **12. USER SUPPLIED MATERIALS**

All information, advice, files, links, communications or other materials posted by you to or through the Application ("User-Supplied Materials") shall be your responsibility. You agree not to post or transmit any User-Supplied Materials that infringe a third party's rights, including without limitation any privacy, publicity or intellectual property rights, or that are unlawful, untrue harassing, libelous, defamatory, abusive, tortious, threatening, harmful (including but not limited to viruses, worms or similar software) or that is otherwise objectionable. You grant, or warrant that the owner of such User-Supplied Materials has expressly granted Listen, the royalty-free, perpetual, irrevocable, fully sub-licensable, non-exclusive right and license to use, reproduce, display, modify, transmit, distribute, perform, display and delete such User-Supplied Materials (in whole or in part) worldwide and or/ to incorporate such User-Supplied Materials in other works in any form, media or technology now known or later developed. User-Supplied materials are public and not private communications.

#### **13. USER-SUPPLIED MATERIALS AND MONITORING**

Listen shall have the right, but not the responsibility, to monitor and/or remove User-Supplied Materials deemed harmful or offensive in Listen's sole discretion, or that otherwise violate this Agreement or any rules that Listen may institute from time to time. Listen shall have no liability for the failure to receive or for the removal of any User-Supplied Materials. Any opinions, advice, statements, services, offers or other information or content expressed or made available by third parties, are those of the respective author(s) or distributor(s) and not of Listen. Listen neither endorses nor is responsible for the accuracy or reliability of any opinion, advice, information, or statement made on or in connection with the Application by anyone other than authorized Listen employees acting in their official capacities.

#### **14. INDEMNITY**

You agree to indemnify and hold Listen and its parents, members, subsidiaries, affiliates, service providers, syndicators, distributors, licensors, officers, directors and employees, harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to, or arising out of or related to your violation of this Agreement, or your violation of any law, regulation or third-party right.

#### **15. TERMINATION**

- a This Agreement (and your license) shall terminate automatically and immediately if you fail to comply with any of the limitations described in this Agreement. No notice shall be required from Listen to effectuate such termination.
- b In addition, Listen reserves the right to terminate this Agreement and discontinue your access to the Application at any time for any reason, and with or without notice.
- c Upon termination of this Agreement for any reason you must immediately destroy all copies of the

Application.

## **16. CUSTOMER SERVICE**

If you have any questions or concerns about your account, you may contact [Customer Service](#). You understand and agree that Listen is solely responsible for all customer service, help, and account issues related to the Application. Neither your ISP nor any third-party website through which you may have accessed the Application is responsible for customer service, help, or account-related issues. You agree not to direct any questions, requests for assistance, or inquiries about the Application to your ISP or to any third party website through which you may have accessed the Application.

## **17. MODIFICATION**

Listen may modify this Agreement at any time in our sole discretion. A change of terms notice will be posted at the top of this Agreement. In the event of a material change to this Agreement we will use reasonable efforts to notify you by sending notice to the email address that you have provided to us. If any modification is unacceptable to you, you agree that your only recourse is to immediately terminate your use of the Application and destroy any copies of the Software in your possession. Your continued use of the Application following our posting of a change of terms notice or a new End User License Agreement on the Application will constitute your binding acceptance of the change. YOUR ACCEPTANCE OF THIS AGREEMENT INDICATES THAT YOU GIVE CONSENT TO LISTEN TO E-MAIL YOU WITH NOTICES CONCERNING MATERIAL CHANGES IN THE TERMS OF THIS AGREEMENT, THE APPLICATION OR THE SERVICES TO WHICH YOU HAVE SUBSCRIBED.

## **18. U.S. GOVERNMENT RESTRICTED RIGHTS AND EXPORT RESTRICTIONS**

The Application is provided with restricted rights. Use, duplication or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of The Rights in Technical Data and Computer Software clause of DFARS 252.227-7013 or subparagraphs (c)(i) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19, as applicable. Manufacturer of Application is Listen.com, Inc., 2012 16th Street, San Francisco, CA 94103. You acknowledge that none of the Application may be downloaded or otherwise exported or re-exported (i) into (or to a national or resident of) Cuba, Iraq, Libya, North Korea, Iran, Serbia (except Kosovo), Sudan, Syria, or any other country to which the U.S. has embargoed goods; or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Denied Parties List or Entity List. By using the Application you are agreeing to the foregoing and are representing and warranting that you are not located in, under the control of, or a national or resident of, any such country or on any such list.

## **19. ARBITRATION, JURISDICTION & GOVERNING LAW**

You and Listen agree that the exclusive remedy for all disputes and claims relating in any way to, or arising out of, this End User License Agreement, the Application, or your use of the Application (including the arbitrability of any claim or dispute and the enforceability of this paragraph), or to any other alleged act or omission by you or Listen toward the other, shall be determined exclusively by final and binding arbitration. The arbitration shall be conducted under the Commercial Arbitration Rules of the American Arbitration Association ("AAA") before a panel of three arbitrators and conducted in the State of Washington. You and Listen also agree that the AAA Optional Rules for Emergency Measures of Protection shall apply to the proceedings. You and Listen may litigate in court only to compel arbitration under this End User License Agreement or to confirm, modify, vacate or enter judgment on the award rendered by the arbitrators. To the extent that you have breached or have indicated your intention to breach this End User License Agreement in any manner which violates or may violate Listen's or any of its licensor's intellectual property rights, or may cause continuing or irreparable harm to Listen (including, but not limited to, any breach that may impact Listen's or its licensor's intellectual property rights, or a breach by reverse engineering), Listen may seek injunctive relief, or any other appropriate relief, in any court of competent jurisdiction. You and Listen must commence

an arbitration by filing a demand for arbitration with the AAA within ONE (1) YEAR after the date the party asserting the claim first knows or reasonably should know of the act, omission or default giving rise to the claim; and there shall be no right to any remedy for any claim not asserted within that time period. (If applicable law prohibits a one year limitations period for asserting claims, the claim must be asserted within the shortest time period in excess of one year that is permitted by applicable law.) To the fullest extent permitted by applicable law: no arbitration under this End User License Agreement shall be joined to an arbitration involving any other current or former licensee of Listen, whether through class arbitration proceedings or otherwise; no finding or stipulation of fact in any other arbitration, judicial or similar proceeding may be given preclusive or collateral estoppel effect in any arbitration hereunder (unless determined in another proceeding between you and Listen); and no conclusion of law in any other arbitration may be given any weight in any arbitration hereunder (unless determined in another proceeding between you and Listen).

This End User License Agreement shall be governed by the laws of the State of Washington and the Federal Arbitration Act, without regard to conflicts of law provisions, and you hereby consent to the exclusive jurisdiction of the state and federal courts sitting in the State of Washington. This Agreement will not be governed by the United Nations Convention of Contracts for the International Sale of Goods, the application of which is hereby expressly excluded.

## **20. GENERAL**

No delay or failure to take action under this Agreement shall constitute any waiver by Listen of any provision of this Agreement. This Agreement (including all documents expressly incorporated by reference) constitutes the complete and exclusive agreement between Listen and you with respect to the subject matter hereof and supersedes all prior oral or written understandings, communications or agreements not specifically incorporated herein. If any provision of this Agreement is invalid or unenforceable under applicable law, it is, to that extent, deemed omitted and the remaining provisions will continue in full force and effect. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. This Agreement is personal to you and may not be transferred, assigned or delegated to anyone. Any attempt by you to assign, transfer or delegate this Agreement shall be null and void.

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Last modified: February 15, 2005