

## **Terms and Conditions for uploading music to the Tracktesting platform**

### **Transfer of rights**

These terms and conditions (the Agreement) are entered into when authors and artists (hereinafter referred to as "you", "rightsholder", "author" or "artist") upload music to the English company Track Testing Ltd. (Company No. 07216719) (hereinafter referred to as "TT"). TT may operate under a number of different public brands and web-sites owned by TT (e.g. [www.digistreams.com](http://www.digistreams.com)).

Further the Agreement and the information provided to TT when authors and artists upload musical works/tracks to TT must be validated from time to time at the request of TT. Such ongoing validation forms and integral part of the Agreement.

By entering into the Agreement and/or uploading musical works/tracks to TT, you transfer any and all copyrights exclusively to TT to the uploaded musical works/tracks for the duration of the agreement. The Agreement can be cancelled on your own discretion at any time (ref. "Termination" below). You are entitled to royalty payment as specified in the Agreement.

As long as this agreement is in force TT is entitled to use your musical works/tracks including, but not limited to, to publish, copy, license, distribute and make publicly available your uploaded musical works/tracks

### **Sole copyright holder (Warranty of copyrights)**

By entering the Agreement and uploading music to the TT platform you are requested to provide TT with information regarding copyright. This information is crucial to TT to avoid that TT violates author's and performing artist's rights as administered by national collection societies around the world (e.g. ASCAP (US), PRS (UK) and others (<http://www.tracktesting.com/upload/termsandconditions/copyright-agencies-worldwide.txt>)).

TT is an alternative way of selecting, testing, performing A&R-type validation, promoting and distributing music. TT is providing this service to (1) unpublished music tracks by (2) un-signed artists & bands and for (3) composers, songwriters and performing artists that are not members of one of the national collection agencies. (1)-(3) must be complied with in order to use the FREE services from TT..

By entering into the Agreement and/or uploading musical works/tracks to TT you confirm and guarantee that (i) you are the sole rightsholder (i.e. composer, writer, performing artist and producer), or (ii) you are representing all rights of all relevant rightsholders (i.e. composer, writer, performing artist and producer) and are authorized to enter into the Agreement and upload musical works/tracks on behalf of any and all of the rightsholders herein, and (iii) that none of the uploaded musical works/tracks have been published.

You guaranty that none of the rightsholders have entered into an agreement with or transferred any rights to a collecting society or publisher, and that this agreement does not violate other agreements.

If your information or your guarantees is incorrect TT is entitled to immediately delete any and all of your uploaded musical works/tracks and suspend any royalty payment. Should the incorrectness

of your information lead to claims from third parties you shall and warrant to indemnify TT any such claims (including reasonably attorney's fees).

#### *Change in information*

You are obliged to immediately inform TT about any relevant changes regarding to information you have provided to TT upon signing the Agreement or uploading musical works/tracks to TT (e.g. you or one of the rightsholders become a member of a collecting society).

#### **Termination**

You can - at any time - terminate the Agreement or the availability of specific musical works/tracks on the TT platform by a simple instruction on your profile page or by sending an email to [artistsandbands@tracktesting.com](mailto:artistsandbands@tracktesting.com).

Your termination will come into automatic effect 150 days following the end of the termination. At the same time, the physical presence of your music track on our public access servers is deleted and any and all copyrights to the musical works/tracks are automatically transferred back to you.

#### **Obligations by TT**

For any commercial use (i.e. use generating remuneration) of your music, TT is obliged to:

- i) provide transparent account information on your profile page;
- ii) send you email notification each month of any commercial use that generate income to you;
- iii) to pay you royalties according to our actual rates as published on our web-page;
- iv) not to change any such rates with a notice that is shorter than the period of time it will take you to terminate this agreement.

#### **Royalty**

As a general principle TT is only obliged to pay royalties of commercial use of your musical works/tracks. Commercial use of music shall be defined as use which has generated revenues to TT. Your right to royalty shall only be calculated on the basis of revenues actually received by TT.

### *Royalty fees*

Royalty fees as of 1. January 2010 and until further notice:

### *Downloads*

Digital downloads pr. track 20% of gross revenue

Compilations 20% of gross revenues on a relative share of total tracks included (pro rata).

### *Playlist distribution*

Playlist inclusion for streaming purposes 20% of gross revenue on a track count basis or as a relative share of total tracks included .

### *Set off*

Royalties regarding use of your music can be set off against any justified claim TT has on you.

### *Royalty bearing use*

Your musical works/tracks will be available for royalty under the following circumstances:

- i) when your music has received sufficient rating to make it to the TT Pro Panel selective validation; and
- ii) when the Pro Panel has rated the music sufficiently to become part of the TT promotion platform; and
- iii) when TT for a period of not less than 150 days has tested your music on various closed networks under TT management and control, and your music has been performing well; and
- iv) that TT informs you that your music track has been included on TT's distribution platform with iTunes and other third party global distribution channels; or
- v) TT informs you that your music track is included on one of the TT compilations.

Actions i) to iv) (or v) are cumulative and must all have been confirmed in order for your music track to be considered published. You will receive emails as your music track progresses.

Actions under iii) to v) entitle you to royalty income (ref. above) irrespectively of your music track not having been published, in case that any commercial or other revenue is generated in association with those actions.

Examples (non-exhaustive) of non-royalty bearing use:

- TT are entitled to distribute your track as a free down-load to tracktesters at the TT platform that have been directly involved in the testing of your own track or tracks by any other artist & band on the platform;
- TT are entitled to allow users of the TT web-site free streaming access to your individual track from our TrackTesting Streaming Library;
- TT is entitled to allow free distribution of single tracks by distribution channels, in order to promote the download sale of compilations, and you waive any royalties in this regard.
- If you are included on a compilation, you grant TT the right to distribute the compilation free of charge to testers at TT.
- If you are included on TT hit-lists or compilations, you permit TT to send the compilation as a playlist to select DJs, playlist administrators and A&R's in the TT Pro-Panel.

None of the events listed above entitles you to any royalty payments from TT.

*Reporting and payments of sales royalties.*

TT undertakes responsibility for the collection of sales information from third party channels and own downloads, as well as for reporting this by the end of each month.

Revenues from streaming of un-published music though available TT playlists will be reported on the basis of total gross revenue on a specific playlist including your music track, and your royalty will be calculated as your relative share of the revenue generated from the playlist that includes your track.

For inclusion on compilations, you will .

Each month you will receive an e-mail with statistical information on your royalty income from download sales and royalties from any streaming or other distribution taking place. Figures are included as they are reported from third party online shops or collected by our own registration. You will receive a transfer by Pay-Pal 60 days following the monthly statement, provided that you respond to our notification. If the amount owed to you is less than USD 50, the balance will be carried forward to the following month.

*Correspondence.*

Any obligation to correspond to you by TT is fulfilled by email message to the email address provided by your. The delivery is fulfilled by TT unless TT receives notification in the form of "not delivered message" from your mail server host. It is your own responsibility to make any appropriate adjustment to changes of provided email address.

This agreement will be accepted by you at the time of up-load of your music track for testing, and will simultaneously be send to you by email.

*Severability*

In the event any provision or part of a provision, of this Agreement is found by any court or authority of competent jurisdiction, to be illegal, invalid or unenforceable, that provision or part-provision shall be deemed not to form part of this Agreement, and the legality, validity or enforceability of the remainder of the provisions of this Agreement shall not be affected, unless otherwise required by operation of applicable law.

*Assignment*

You may not assign your rights, obligations or liabilities under this Agreement without the prior written consent of TT.

*Force Majeure*

Neither party shall be liable for a failure to perform any of its obligations under this Agreement, if and to the extent its performance or obligation is either directly or indirectly prevented, restricted, or interfered with by reason of fire, flood, wars, revolution, fiber cuts, acts of public enemy, or any other circumstances beyond the reasonable control and without the fault or negligence of the non-

performing party. The non-performing party shall provide the other party verbal notification of any "force majeure" event which may affect its ability to perform its obligations under this Agreement.

*Applicable law*

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with substantive Danish law.

TrackTesting

March 2010