

Music Directory Agreement

This agreement (“Agreement”), effective as of June 1, 2021 (“Effective Date”), is entered into by and between USA Federation for Sport Cheering, a Texas nonprofit corporation, and the Party identified on the signature page hereof (“Vendor”). USA Cheer and Vendor are collectively referred to herein as the “Parties” or individually as a “Party”.

WHEREAS, USA Cheer is the governing body for sport cheering in the United States and Vendor is either (i) a music provider in the business of granting permission (selling licenses) to individuals or organizations, or (ii) an individual or organization using music to create derivative works for individuals or organizations, enabling them to use music for various purposes;

WHEREAS, Vendor desires to provide music to participants in cheer and/or dance-related events, including but not limited to music mixers, coaches, and teams (individually, a “Participant” or collectively “Participants”); and

WHEREAS, for good and valuable consideration, the receipt and sufficiency thereof is hereby mutually acknowledged, the Parties agree as follows:

1. Vendor understands and agrees that it shall be responsible for obtaining any and all rights, licenses, and clearances from third parties to the extent necessary to carry out its services or provide products to Participants. Vendor understands that in order for Vendor to grant a Participant the right to use music, Vendor must acquire various rights, including those from the owner(s) of each sound recording(s) and copyright owner(s) of each song(s). Uses by Participants may include (without limitation): (a) creating a derivative work by editing/adapting a track and incorporating into a mix/medley; (b) choreograph and perform a routine to a mix/medley; and (c) make copies of the mix for a team. The precise use and license necessary for that use will be determined by and between the Participant and Vendor.
2. USA Cheer will publish a directory of vendors (“Directory”) who have agreed to, and comply with, the terms of this Agreement. For as long as Vendor complies with the terms of this Agreement and this Agreement remains in place, Vendor shall be included in the Directory.
3. Vendor warrants and represents that (i) it has full power and authority to enter into this Agreement; (ii) Vendor’s performance hereunder will not violate or conflict with the terms of any other agreement to which Vendor may be bound; (iii) Vendor has complied with all applicable laws and regulations regarding the subject matter herein; and (iv) Vendor has or will acquire and maintain all rights, licenses, and clearances from third parties as required to provide its services and products to Participants.
4. Vendor’s must determine what type of license a Participant needs for such Participant’s particular use of all music provided by Vendor. Vendor acknowledges that USA Cheer is not responsible for determining whether Vendor is obtaining the proper rights from third parties, or whether Vendor is issuing the proper licenses. USA Cheer reserves the right to remove Vendor from the Directory if, in USA Cheer’s sole discretion, Vendor is, or may be violating copyright or other law. Nothing in the preceding sentence shall be interpreted to create any liability on USA Cheer for a violation of law or infringement by Vendor.
5. Vendor represents and agrees that a background check will be conducted on any Vendor employee, contractor, or volunteer prior to such time that such individual will have direct contact with any athlete.

6. Vendor has indicated the category(ies) below that apply to Vendor's organization and certifies same to USA Cheer. The category(ies) indicated will indicate the section(s) of the Directory in which the organization will be listed, without further verification by USA Cheer. USA Cheer will determine the format of the list and may change the format at any time, in its sole discretion. USA Cheer assumes no responsibility for properly categorizing a vendor in the Directory.

Music Licensing Company: This is the entity that licenses compositions and recordings owned by third parties.

Cover Music Producer: This is the entity that creates and licenses cover versions of recordings of compositions previously released to the general public. .

Original Music Producer: This is the entity that creates and licenses original content.

End Music Producer – Custom: This is the entity that provides a user with a custom mix based on User input.

End Music Producer – Pre-made: This is the entity that provides a Participant with a pre-made mix selected by the Participant.

End Music Producer – User-generated: This is the entity that provides a user with a platform to select and edit their own mix.

OTHER TERMS AND CONDITIONS:

1. Term: This Agreement will terminate on May 31, 2022. The Agreement can be terminated by either Party, with 14 days' written notice to the other Party. USA Cheer reserves the right to immediately terminate this Agreement or remove Vendor from the Directory, or both, if in USA Cheer's sole discretion, Vendor no longer best represents the interests of cheer or dance, including as a response to such actions as, but not limited to, criminal act, fraud, breach of any term in this Agreement, excessive complaints of failure to provide services, or actions or publicity that may put USA Cheer in a negative light.
2. Law: This Agreement shall be construed in accordance with and governed by the laws of the State of Texas without giving effect to any choice or conflict of law provision or rule, whether of the State of Texas or any other jurisdiction, that would cause the application of laws of any jurisdiction other than the State of Texas.
3. Arbitration: Any and all disputes, claims or cause of action, in law or equity, including but not limited to statutory claims, arising from or relating to the enforcement, breach, performance, or interpretation of this Agreement must be resolved pursuant to the Federal Arbitration Act, 9 USC §1-16, and to the fullest extent permitted by law, by final, binding and confidential arbitration conducted in Dallas, Texas by the American Arbitration Association ("AAA") or its successors under the then-applicable commercial arbitration rules and procedures for the AAA. These provisions supersede any contrary arbitral rules that might otherwise apply.
 - a. Arbitrator: Within ten calendar days after the arbitration demand is served on the respondent, the parties must jointly select an arbitrator with at least five years' experience in that capacity. If the parties do not agree on an arbitrator within ten calendar days, a party may petition the AAA to request a list of arbitrators and the parties shall select one under the AAA's rules.
 - b. Discovery: Discovery permitted herein shall be generally governed by the Federal Rules of Civil Procedure, subject to the limitations and provisions set forth in this Agreement.
 - i. Required Disclosures; Depositions: Except for impeachment-only information, each party must voluntarily disclose: the names and addresses of all persons who have discoverable information; a copy of all documents that the party may use to support its claims or defenses; and a computation showing each element of damages. Each party may have no more than 21 hours, total, for depositions.

ii. *Document Requests; Discovery Disputes:* Each party may serve no more than twenty requests for documents from an opposing party. The parties must confer in good faith to resolve all discovery disputes. If they cannot resolve these themselves, the parties must attempt to do so in conference with the arbitrator. If the dispute is not resolved in conference, the arbitrator must promptly rule on the issues.

iii. *Expert-Witness Reports:* Each testifying expert must provide: a written report stating all opinions that he or she will express at the hearing; the basis and reasons for the opinions; the facts and data considered in forming the opinions; all exhibits that will be used to summarize or support the opinions; and his or her résumé.

iv. *Other Discovery:* No other discovery is allowed except by the arbitrator and for good cause.

c. Final Hearing; Applicable Law: The final hearing will be held in Dallas, Texas, and must be concluded within six months of the date the arbitrator is appointed. The laws of the state of Texas shall be applied to any arbitration proceedings, with regard to principles of conflict of laws.

d. Award; Costs and Fees: The arbitrator must issue a written, reasoned award within 20 calendar days from the date the hearing is formally closed, or as soon after that as is feasible. Each Party shall be entitled to all rights and remedies that either would be entitled to pursue in a court of law. The prevailing Party shall be awarded its attorney's fees and costs.

e. Judicial Confirmation; Injunctive Relief: The arbitrator's award may be confirmed, modified, or vacated, and judgment entered, by any state or federal court having subject-matter jurisdiction sitting in the state of Texas or by any other court having appropriate jurisdiction. Nothing in this Agreement shall prevent USA Cheer from obtaining injunctive relief in court to prevent irreparable harm pending the conclusion of any such arbitration pursuant to applicable law; however, Vendor shall have no authority to obtain injunctive relief against USA Cheer pending the conclusion of any such arbitration.

4. Indemnification: Vendor shall indemnify, defend, and hold harmless USA Cheer and its successors, assigns, affiliates, and subsidiaries, and their respective officers, directors, employees, and agents from any claims, demands, suits, damages, losses, liabilities, out of pocket costs, and expenses (including without limitation reasonable attorneys' fees or legal, accounting, and other expenses) arising out of or relating in any way to any (a) breach of a representation or warranty by Vendor in this Agreement; (b) third-party claim of infringement, misappropriation or unauthorized use of any copyright or any other intellectual property right, in connection with services provided by Vendor; or (c) any other material breach of this Agreement. This Section 4 shall survive any expiration or termination of this Agreement.

Insurance: If Vendor is classified under one of the following categories in Section 6 above, Vendor agrees to comply with the terms of this Section 5: Music Licensing Company or Cover Music Producer. Vendor agrees to purchase and maintain during the term of this Agreement, at its sole cost and expense, commercially sufficient insurance with limits that are appropriate for the execution of this Agreement and Vendor's activities and obligations hereunder, including but not limited to commercial general liability insurance and media liability insurance. USA Cheer may require Vendor to provide a certificate of insurance. Vendor agrees to notify USA Cheer within seven (7) days if such policy(ies) are terminated or modified. USA Cheer's failure to request, review, or object to the terms of such certificates or insurance shall not be deemed a waiver of Vendor's obligations or the rights of USA Cheer.

5. **LIMITATION OF LIABILITY: IN NO EVENT SHALL USA CHEER BE LIABLE TO VENDOR FOR STATUTORY, CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR INDIRECT DAMAGES.**

6. **RELEASE AND WAIVER: VENDOR HEREBY WAIVES, RELEASES, AND AGREES NOT TO SUE USA CHEER OR ITS SUCCESSORS, ASSIGNS, AFFILIATES, OR SUBSIDIARIES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS, OR AGENTS WITH RESPECT TO ANY LIABILITY OR CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT OR THE PROVISION OF SERVICES BY VENDOR TO PARTICIPANT(S).**

7. Entire Agreement; Amendment: This represents the entire agreement between the Parties and supersedes all prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof. Any changes or additions must be made in a writing signed by both Parties. Vendor shall provide any further documentation reasonably requested by USA Cheer to enforce the terms of this Agreement at no cost to USA Cheer.

8. Severability; Assignment: Each provision of this Agreement shall be separately enforceable, and the invalidity of one provision shall not affect the validity or enforceability of any other provision. Neither Party may assign transfer, pledge, or delegate its rights or obligations under this Agreement to any third party without the other Party's written consent and any such attempt shall be void.

9. Relationship; Expenses: Nothing herein shall create any association, joint venture, partnership, or agency relationship of any kind between the Parties. Each Party is responsible for its own operating, overhead, and other expenses related to the performance of obligations and services described herein.

10. No Waiver: The failure of a Party to insist upon strict performance of any term or condition contained herein shall not be deemed a waiver of any right or remedy that either Party may have and shall not be deemed a waiver of any subsequent breach of such term or condition.

11. Notice: All notice shall be given in writing by mail or to the email addresses set forth below, unless notification of a change of address is given in writing. Any notice sent by email shall be deemed received upon proof of receipt.

12. Counterparts: This Agreement may be executed by the Parties in counterpart and may be transmitted to the other Party electronically in portable document format (pdf).

Accepted and agreed to by:

USA Federation for Sport Cheering

Music Directory Provider Name

X _____
 Authorized Representative

 Print Name & Title

 Print Notice Email Address

 Date

 Date