

The SmallsLIVE artist revenue share agreement

This Agreement (the “Agreement”) is between SmallsLIVE LLC (“SmallsLIVE”) and you in regard to the SmallsLIVE Archive and the Artist Revenue Share Project.

TERMS OF USE:

By accepting this Agreement, you also agree to SmallsLIVE’s Terms of Use as they appear in the Site (as defined below). Should you have any questions concerning these Terms of Use or need technical support, you may contact us at info@smallslive.com

PARTICIPATION IN THE ARCHIVE AND DOWNLOADING:

The Archive:

The SmallsLIVE Archive (the “Archive”) consists of audio and audiovisual recordings (videos) produced by SmallsLIVE at the Smalls Jazz Club in the past (since 2007), now, or in the future.

Users of the SmallsLIVE’s website (“Site”) can access the Archive as subscribers (“Subscribers”) and play (stream) the individual sets of multiple, combined musical performances (“Dates”) by an individual artist and/or group (“Artist”). The Date may be audio only and/or audiovisual, and the embodiment of the Date in an audio or audiovisual medium shall hereafter be called the “Recording.” Subscribers will pay SmallsLIVE a monthly subscription fee (the “Subscription Fee”), to be determined by SmallsLIVE. Subscribers will also have the option of downloading individual, artist approved, tracks embodied in the Recordings of each Date (“Tracks”) for an additional fee to be determined by SmallsLIVE and sold as SmallsLIVE TRACKS.

Subscription Fees will be placed in a revenue pool to be distributed to the Artists as specified in Paragraph 4 below (“Revenue Share”). Monies received by SmallsLIVE TRACKS from downloads of Tracks shall also be subject to the Revenue Share set forth in Paragraph 4 below.

Your approval of this Agreement applies to any Date past, present, or future in which you participated or will participate as a Leader or as a Side Musician as those terms are defined below.

Artists' rights:

LEADERS & SIDE MUSICIANS: Each Date must have a designated leader (“Leader”), provided that in the event of a collective band, each member may be designated as a Leader. Any musician who plays on a Date who is not a Leader shall be deemed to be a “Side Musician.”

PERFORMANCE FEE: The Leader is paid a performance fee for the Date at Smalls Jazz Club, under a separate booking agreement.

COPYRIGHT IN THE RECORDINGS: Except for SmallsLIVE’s right, subject to paragraph 2(g) below, to include the Recording of each Date in the Archive as set forth herein the Leader of each Date shall retain all right, title and interest in and to each Recording including the copyright in the “sound recording” (as defined in the Copyright Act) in the Recording, and all renewals and extensions thereof, worldwide and for the full duration of the copyright. To effectuate this intent, SmallsLIVE and each Side Musician hereby transfer their interest in the copyright in each Recording to the Leader, including without limitation the authority to distribute or otherwise exploit each Recording as set forth in more detail in subparagraph 2(d) below. For avoidance of doubt, nothing in this Agreement will transfer the ownership or copyright in any underlying musical composition embedded in any Recording.

LEADER’S RIGHT TO EXPLOIT THE RECORDINGS: The Leader may use the Recording for any commercial or promotional purpose, including without limitation the right to sell, license or otherwise exploit the

Recording or any portion thereof. The Leader shall have the exclusive obligation to make any payment required to the Side Musicians or any third parties, including any third party writers or owners of musical compositions. For the avoidance of doubt, SmallsLIVE shall not be responsible for any payments to or permission from any Side Musicians or any third parties.

ARTIST ACCOUNT: Every Leader and Side Musician will have an account (accessible by password) on the SmallsLIVE Site. From this account page, Leaders will be able to download their Recording(s) for personal use or commercial exploitation in accordance with Subparagraph d. above. Leaders may also use their account to “tag”, i.e. add, the name of any Side Musician in regard to a Date for which SmallsLIVE inadvertently omits that Side Musician’s name. Leaders and Side Musicians may also use the account to update personal info such as address, telephone, email, etc. Leaders and Side Musicians will also be able to set up their banking information to receive royalty payments from Subscription Fees and paid downloads and to see SmallsLIVE’s metrics on usage and payout dates.

LEADER’S RIGHT TO KEEP DATES PRIVATE: Every Leader shall have the right to use his/her account to control which Recordings of Dates can be public, that is, accessed by Subscribers, and which Recordings of Dates shall remain private.

EDITING: Leaders shall have the right to “edit” their Recording(s) provided that any such edits shall be at their sole expense. SmallsLIVE is not responsible for editing, mixing and mastering of any Recording unless it is previously determined by SmallsLIVE and the Artist that the Date shall be a special project (“Special Project”). Special Projects are outside the terms of this Agreement and shall be subject to terms to be negotiated separately.

EDITED DATES: Leaders may “resubmit” their edited Recording for active use in the Archive, provided that the edited Recording must be a minimum of 20 minutes in length and must consist of the performance of at least two songs.

PAST DATES: You hereby agree to all the terms and conditions in this Agreement with regard to Recordings of Dates occurring prior to the date that you enter into this Agreement.

AUTHORIZED PAYEES: You shall have the right to assign your right to receive any income to you under this Agreement to any third party such as a business manager. Such authorization must be made in a writing signed by you and delivered to SmallsLIVE by certified mail. In case of your death or disability, monies earned under this Agreement shall be paid to your duly authorized representative after that representative has adduced any required legal documents confirming their authority.

SmallsLIVE's rights:

SmallsLIVE is hereby granted the non-exclusive perpetual right to include in the Archive any Recording of any Date in which the Leader or Side Musician participated or will participate in the future subject to the Leader’s right to keep the Recording of any Date private in accordance with Subparagraph 2(g) above.

SmallsLIVE is hereby granted the right to live broadcast (“Webcast”) each Date on the Site or any third party website or digital platform one time live and once as a rebroadcast. After that, a Recording of the Date, in Video/Audio will be added to the Archive for Leader’s approval and use. SmallsLIVE shall have the right to make the Webcasts available for no charge to viewers or Subscribers, and to include advertising and accept sponsorship in conjunction with the Webcasts and the Videos.

No Leader or Side Musician may use “Smalls”, “SmallsLIVE” or any logo or other mark associated with SmallsLIVE or Smalls Jazz Nightclub, in connection with the promotion, sale or license of any Recording, without the express prior written permission of SmallsLIVE.

You hereby give SmallsLIVE the right to use your name, image, likeness, and approved bio in the Site in connection with your Recordings, Webcasts and Videos, and in any advertising, promotion or marketing of such Recordings, Webcasts, Videos, the Site or the Archive.

Subscription revenue share & SmallsLIVE Tracks

Subscription Fees

All Subscription Fees collected from Subscribers for access to stream (but not download) the Archive shall be shared on a 50-50 basis between SmallsLIVE, on the one hand, and the Musicians (whether Leader or Side Musicians), on the other hand, after the deduction of operational Expenses (as defined below). All fees will be placed in a Revenue Pool.

The Musicians' share of the Revenue Pool will be determined by the number of minutes that the Recording of each Date is streamed within a pay period (either bi-annually or quarterly, to be determined by SmallsLIVE). Each Musician who plays on any Date, whether as a Leader or as a Side Musician, will be credited the number of minutes that Subscribers listen to the Date(s). Musicians must be "tagged" on the date to be credited with the Minutes. It is the responsibility of the Leader to tag all the Side Musicians on a date and the Side Musicians' responsibility to see that he or she does so.

The formula for determining a Musician's share of the Revenue Pool is:

Total Individual Musicians Minutes divided by the Total Archive usage minutes.

If, for Example in one three month period (pay period):

Peter gets 350 minutes listened to for all of his dates in the Archive as Leader or Side Musician

Stacy gets 5000 minutes listened to for all of his dates in the Archive as Leader or Side Musician

Grant gets 700 minutes listened to for all of his dates in the Archive as Leader or Side Musician

Tuomo gets 950 minutes listened to for all of his dates in the Archive as Leader or Side Musician

Miki gets 1200 minutes listened to for all of his dates in the Archive as Leader or Side Musician

Spike gets 30 minutes listened to for all of his dates in the Archive as Leader or Side Musician

Adding all these minutes together yields the Total Archive Usage, which in this example equals 8230 minutes.

To calculate the pay percentage attributable to each Musician ("Pay Percentage"), you must divide the individual minutes by the total usage.

Peter = .0425 (350/8230)

Stacy = .6075 (5000/8230)

Grant = .0851 (700/8230)

Tuomo = .1154 (950/8230)

Miki = .1458 (1200/8230)

Spike = .0036 (30/8230)

Payout = Revenue Pool Total X Individual Pay Percentage

Each Musician is paid an amount equal to the total amount collected from Subscription Fees (Revenue Pool) multiplied by his or her Pay Percentage.

If, by example, the Revenue Pool for the pay period is \$500 then the payments would be:

Peter = \$21.25 (500 X .0425)

Stacy = \$303.75 (500 X .6075)

Grant = \$42.55 (500 X .0851)

Tuomo = \$57.70 (500 X .1154)

Miki = \$72.90 (500 X .1458)

Spike = \$1.80 (500 X .0036)

Use of the Archive will be measured in minutes rounded downward. For example, if a Subscriber listens to a Date for ten (10) minutes and thirty (30) seconds then Artist would be credited with 10 minutes.

Paid Downloads (SmallsLIVE TRACKS):

SmallsLIVE TRACKS is an Artist Curated Store for licensing and selling for download any Track(s) Leader's designate from their Archive recording. Any Leader of any Date may choose individual Tracks embodying one song to make available for paid download to Subscribers. Artist may edit the track themselves or ask SmallsLIVE to do so. Artist must provide Title, Composer and Publishing information. The MP3 will be offered to Subscribers at a price to be determined by SmallsLIVE in consultation with the Leader. The area of the site where such downloads will be available shall be called "SmallsLIVE TRACKS," although this name is subject to change in the discretion of SmallsLIVE.

SmallsLIVE shall share any monies it receives from such downloads with the Leader on a 50-50 basis after deducting any transaction costs.

The Leader shall be responsible for making any required payments to the Side Musicians, for mechanical royalties, or to any other necessary third parties.

The Revenue Share set forth in Subparagraphs 4.a and 4.b above, shall be the total compensation payable by SmallsLIVE for the rights granted under this Agreement.

SmallsLIVE retains the right to not publish a track for any reason and maintains the final decision on tracks placed in the SmallsLIVE TRACKS store.

EXPENSES:

SmallsLIVE will be allowed to deduct the following expenses from Subscription Fees:

Transaction costs (for examples, PayPal or credit card fees);

Licensing fees payable to performance rights organizations;

Hosting and bandwidth fees; and

Sales and local taxes, and other applicable taxes, levies or fees.

Other fees that may in the future become required for the continued operation of the streaming and download services set forth in this Agreement, including without limitation any fees to third party rights-holders.

TAXES:

Each Artist who receives any monies under the Agreement shall be solely responsible for paying any applicable taxes.

ACCOUNTING:

SmallsLIVE shall make payments to each Artist on a calendar quarterly basis 30 days after each quarter. Such payments shall be made by check or automatic deposit at the election of the Artist.

Notwithstanding anything to the contrary above, SmallsLIVE shall have no obligation to make a payment to an Artist if the amount due is less than ten dollars (\$10) provided that when such monies exceed ten dollars (\$10) any monies withheld will be paid after any pay period in which the total amount due to the Artist

exceeds ten dollars (\$10).

Every Musician will have access to on-line accounting pages by using a password to be assigned by SmallsLIVE. The accounting pages will set forth the amounts that have accrued for the Musician.

AUDIT:

At any time within two (2) years after any payment is received by any Leader or Side Musician hereunder, that Leader or Side Musician shall have the right to give SmallsLIVE reasonable written notice of his or her intention to examine SmallsLIVE's books and records with respect to such statement. Such examination shall be commenced within one (1) month after the date of such notice, at the sole expense of such Leader or Side Musician, by any certified public accountant or attorney designated by such Leader or Side Musician, provided he or she is not then engaged in an outstanding examination of SmallsLIVE's books and records on behalf of a person other than such Leader or Side Musician. Such examination shall be made during SmallsLIVE's usual business hours at the place where SmallsLIVE maintains the books and records which relate to such Leader or Side Musician and which are necessary to verify the accuracy of the statement or statements specified in the notice to SmallsLIVE and the examination shall be limited to the foregoing. A Leader or Side Musician's right to inspect SmallsLIVE's books and records shall be only as set forth in this subparagraph 7(a) and SmallsLIVE shall have no obligation to produce such books and records more than once with respect to each statement.

Unless notice shall have been given to SmallsLIVE in accordance with subparagraph 7(a) above, each payment rendered to Artist shall be final, conclusive and binding the Artist and shall constitute an account stated. Artist shall be foreclosed from maintaining any action, claim or proceeding against SmallsLIVE in any forum or tribunal with respect to any payment or accounting rendered hereunder unless such action, claim or proceeding is commenced against SmallsLIVE in a court of competent jurisdiction within three (3) years after the date such payment is received by Artist.

Artist acknowledges that SmallsLIVE's books and records contain confidential trade information. Neither Artist nor Artist's representatives will communicate to others or use on behalf of any other person any facts or information obtained as a result of such examination of SmallsLIVE's books and records, except as may be required by law or judicial decree.

TERM, TERRITORY, AND TERMINATION:

SmallsLIVE's non-exclusive rights as set forth herein shall be perpetual and shall extend throughout the world. You shall have a right to terminate this Agreement in regard to your grant of such non-exclusive rights upon notice of three months (3) months for future Dates only provided that SmallsLIVE reserves the right not to book you for future Dates. SmallsLIVE reserves the right to take down any Date from the Archive.

WARRANTIES AND INDEMNITIES:

You warrant and represent that:

You are under no disability, restriction or prohibition, whether contractual or otherwise, with respect to your right to (A) enter into this Agreement, and (B) convey the rights granted to SmallsLIVE hereunder, to perform each and every material term and provision hereof, and to record each and every musical composition hereunder;

To the extent of your contributions hereunder, SmallsLIVE shall not be required to make any payments of any nature for, or in connection with, the acquisition, exercise or exploitation of rights granted to SmallsLIVE by you pursuant to this Agreement, except as specifically provided in this Agreement;

To the extent of your contributions hereunder, neither the Materials (as defined immediately below) nor any use of the Materials by SmallsLIVE will violate or infringe upon the rights of any person. "Materials" as used

in this subparagraph means any musical, artistic and literary materials, ideas and other intellectual properties furnished by you, including any copyright, trademarks or rights of publicity, contained in or used in connection with any Recordings made hereunder, which have not been supplied by the SmallsLIVE. Among other obligations, you shall not sample any third party work without the express written approval of SmallsLIVE;

All of your representations and warranties shall be true and correct upon execution hereof, and shall remain in effect in perpetuity. SmallsLIVE's use of the Recordings or Materials hereunder shall not constitute a waiver of any of your representations, warranties or agreements in respect thereof.

You shall at all times indemnify and hold harmless SmallsLIVE and any licensee of SmallsLIVE from and against any and all third party claims, damages, liabilities, costs and expenses, including legal expenses and reasonable counsel fees, arising out of breach by you of any warranty, representation or agreement made by you herein.

SmallsLIVE warrants and represents that:

SmallsLIVE is under no disability, restriction or prohibition, whether contractual or otherwise, with respect to its right to enter into this Agreement, and to perform each and every term and provision hereof;

All of SmallsLIVE's representations and warranties shall be true and correct upon execution hereof, and shall remain in effect in perpetuity.

ASSIGNMENT AND RIGHT TO EXPLOIT ARCHIVE:

SmallsLIVE shall only stream (in terms of the Archive) and sell downloads (in terms of SmallsLIVE TRACKS) exclusively from the SmallsLIVE website (www.smallslive.com). SmallsLIVE shall have no right to assign, transfer, sell or license this Agreement or any of its rights or obligations under this Agreement to any third party without the express consent of the Artist(s) and under a separate agreement.

AGREEMENT:

This Agreement shall be fully valid and enforceable by the Leader or Side Musicians by clicking the "Accept" button in the Site and providing all the information required by SmallsLIVE in the Site.

ESCROW:

If SmallsLIVE cannot locate any Leader or Side Musician at any time, it shall put any amount due to such Leader or Side Musician in escrow until the time that SmallsLIVE can find such person or he or she provides accurate information to SmallsLIVE.

NOTICE:

SmallsLIVE may provide notifications, whether such notifications are required by law or are for marketing or other business related purposes, to you via email, mobile text message, written or hard copy notice, or through conspicuous posting of such notice on Site, as determined by SmallsLIVE in its sole discretion. SmallsLIVE reserves the right to determine the form and means of providing notifications to you.

JURISDICTION:

This Agreement will be governed by the laws of the State of New York applying to contracts made and to be performed in New York. The exclusive jurisdiction for any claim, action or dispute with SmallsLIVE or relating in any way to your use of the Site will be in the state and federal courts of the State of New York.

>MISCELLANEOUS:

Should you have any questions concerning this Agreement or need technical support, you may contact SmallsLIVE at the following email address: info@smallslive.com

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT AND WILL BE BOUND BY ITS TERMS AND CONDITIONS. YOU FURTHER ACKNOWLEDGE THAT THIS AGREEMENT, IN ADDITION TO THE SMALLSLIVE TERMS AND CONDITIONS, REPRESENTS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN US AND THAT IT SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT ORAL OR WRITTEN, AND ANY OTHER COMMUNICATIONS BETWEEN US RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.