

TERMS OF SERVICE - VIZFLY

Last Updated: 12/16/2019

Effective Date: 12/16/2019

These TERMS OF SERVICE (“Terms”) are a binding agreement between Tunebat LLC, a limited liability company formed under the laws of the State of Texas (“**Tunebat**”) and each user of the Vizfly apps, services, features, software, or website (the “**Vizfly Platform**”). All users are required to review and be bound by these Terms in order to participate on the Vizfly Platform. You agree to these Terms by installing, accessing, or using the Vizfly Platform. IF YOU DISAGREE WITH ANY PORTION OF THESE TERMS, YOU CANNOT PARTICIPATE AS A USER OF THE VIZFLY PLATFORM. PLEASE CAREFULLY REVIEW THESE TERMS BECAUSE THEY IMPACT YOUR RIGHTS, RELIEF, AND LIABILITY.

I. Scope of Vizfly Services.

- a. Vizfly is an online software as a service (SaaS) app where individuals can create videos to be paired with pre-created images and audio, or other customizations, and be exported or shared across various social media platforms, or engage in any other activities that may be provided by the Vizfly Platform from time to time (collectively the “**Services**” or “**Vizfly Services**”). Content may be accessed by users of the Vizfly Platform (“**Registered Users**”), which consist of both Users subscribing to free content or features on the Vizfly Platform, and Users who subscribe to premium content offered on the Vizfly Platform (“**Premium Users**”).
- b. As the provider of the Vizfly Platform, Tunebat is not acting as an agent in any capacity for any User.
- c. If you choose to use the Vizfly Platform, your relationship with Tunebat is limited to being an independent third-party user, and not an employee, agent, joint venturer, or partner of Tunebat for any reason, and you act exclusively on your own behalf and for your own benefit, and not on behalf, or for the benefit, of Tunebat.
- d. The Vizfly Platform may contain links to third-party websites or resources (“**Third-Party Services**”). Such Third-Party Services may be subject to different terms and conditions and privacy practices. Tunebat is not responsible or liable for the availability or accuracy of such Third-Party Services, or the content, products, or services available from such Third-Party Services. Links to such Third-Party Services are not an endorsement by Tunebat of such Third-Party Services.
- e. Due to the nature of the Internet, Tunebat cannot guarantee the continuous and uninterrupted availability and accessibility of the Vizfly Platform. Tunebat may restrict the availability of the Vizfly Platform or certain areas or features thereof, if this is necessary in view of capacity limits, the security or integrity of our servers, or to carry out maintenance measures that ensure the proper or improved functioning of the Vizfly

Platform. Tunebat may, at its sole discretion, improve, enhance, and modify the Vizfly Platform and introduce new Services from time to time.

II. Pricing. Tunebat may charge for the Services by collecting fees for any transactions made using the Vizfly Platform (“**Fees**”), payable by the purchaser. Currently, Registered Users have the option of choosing different Services. This includes the option to purchase and pay Fees for individual videos (“**A La Carte**”), or pay a monthly subscription amount, which provides Registered Users with the ability to create multiple videos per month for a single monthly Fee (“**Subscription Plan**”). Subscription plans may also include the option to purchase access to the Services for an entire year. The Vizfly Platform has different A La Carte and Subscription Plan options available at different price points, which Registered Users can select depending on specific Services required. Information related to the current Fees associated with the Services will be available on the Vizfly Platform and may change from time to time.

a. Refunds. If a Registered User who is signed up for a monthly Subscription Plan cancels such plan in a given month, and has not exported any videos in that month, such Registered User shall receive a full refund for the Fees paid in that month. If a Registered User has signed up for a yearly Subscription Plan, the Registered User must cancel the plan within the first month of starting or renewing the yearly plan in order to receive a full refund. Any other refunds shall be granted at the sole discretion of Tunebat, and Tunebat reserves the right to determine the amount of refunded payment necessary, whether full, partial, or none.

III. Eligibility, Using the Vizfly Platform, Registered User Verification.

- a.** You must be at least 18 years old to access and use the Vizfly Platform. By accessing or using the Vizfly Platform, you represent and warrant that you are 18 or older.
- b.** Tunebat may make access to and use of the Vizfly Platform, or certain areas or features of the Vizfly Platform, subject to certain conditions or requirements, such as completing a registration process, and making payment of Fees.
- c.** User verification on the Internet is difficult and Tunebat does not assume any responsibility for the confirmation of any Registered User’s identity.

IV. Modification of These Terms. Tunebat reserves the right to modify these Terms at any time in accordance with this provision. If we make changes to the Terms, we may do so without prior notice by posting the revised terms on the Vizfly Platform and updating the “Last Updated” date at the top of them. If you disagree with the revised Terms, you must terminate your participation in the Vizfly Platform with immediate effect by deleting your account and ceasing all use of the Vizfly Services. If you do not terminate your use before the date the revised Terms become effective, your continued access to or use of the Vizfly Platform will constitute acceptance of the revised Terms.

V. Account Registration; Acceptable Devices or Software.

- a. You must register an account ("**Vizfly Account**") to access and use certain features of the Vizfly Platform. If you are registering a Vizfly Account for a company or other legal entity, you represent and warrant that you have the authority to legally bind that entity and grant us all permissions and licenses provided in these Terms.
- b. You can register Vizfly Account using an email address and creating a password, or through your account with certain third-party social networking services, such as Facebook or Google ("**SNS Account**"). You have the ability to disable the connection between your Vizfly Account and your SNS Account at any time through your Account Settings. You may be asked to provide additional information during the registration process for your Vizfly Account including, but not limited to, your name and location.
- c. You must provide accurate, current and complete information during the registration process and keep your Vizfly Account and profile page information up-to-date at all times.
- d. You cannot register more than one Vizfly Account unless Tunebat authorizes you to do so in writing. You may not assign or otherwise transfer your Vizfly Account to another party.
- e. You are responsible for maintaining the confidentiality and security of your Vizfly Account credentials and may not disclose your credentials to any third party. You must immediately notify Tunebat if you know or have any reason to suspect that your credentials have been lost, stolen, misappropriated, or otherwise compromised or in case of any actual or suspected unauthorized use of your Vizfly Account. You are liable for any and all activities conducted through your Vizfly Account, unless such activities are not authorized by you and you are not otherwise negligent (such as failing to report the unauthorized use or loss of your credentials).
- f. You must provide certain devices, software, and data connections to use the Vizfly Services, which we otherwise do not supply. Tunebat is not responsible, nor liable, directly or indirectly, for any download, installation, use, transmission failure, interruption, or delay of the Vizfly Services or the Vizfly Platform, or any third party content, services, or advertisements due to data, connectivity, or other internet issues due to such devices, software, and data connections. Tunebat is likewise not responsible, nor liable, directly or indirectly, for any data charges or service fees associated with such devices, software, and data connections.

VI. Content.

- a. Tunebat may, at its sole discretion, enable Registered Users to: (i) upload, save, send, receive and store content, such as text, photos, audio, video, or other materials and information on or through the Vizfly Platform ("**Registered User Content**"); and (ii) access and view Registered User Content and any content that Tunebat itself makes available on or through the Vizfly Platform, including proprietary Tunebat content and any content licensed or authorized for use by or through Tunebat from a third party ("**Vizfly Content**" and together with Registered User Content, "**Collective Content**").
- b. Tunebat is not responsible for any Registered User Content on or off the Vizfly Platform. Registered User Content is uploaded by Registered Users at their own risk and Registered Users must ensure their Registered User Content comply with these Terms. Additionally,

Tunebat may remove Registered User Content or Collective Content in its sole discretion. Although Collective Content created using the Services may be stored on the Vizfly Platform, Registered Users should also store a copy of its Registered User Content in a separate location and should not rely solely on the Content being available on the Vizfly Platform. Registered Users expressly acknowledge and agree that Tunebat shall not be liable for removal or deletion of any Registered User Content or Collective Content that Registered User did not store off the Vizfly Platform.

- c. The Vizfly Platform, Vizfly Content, and Registered User Content may in its entirety or in part be protected by copyright, trademark, and/or other laws of the United States and other countries. You acknowledge and agree that the Vizfly Platform and Vizfly Content, including all associated intellectual property rights, are the exclusive property of Tunebat and/or its licensors or authorizing third-parties. You will not remove, alter, reproduce, or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Vizfly Platform, Vizfly Content or Registered User Content, including but not limited to obscuring, removal, or alteration of any Vizfly watermarks or other marks placed on Collective Content. All trademarks, service marks, logos, trade names, and any other source identifiers of Tunebat used on or in connection with the Vizfly Platform and Vizfly Content are trademarks or registered trademarks of Tunebat in the United States. Trademarks, service marks, logos, trade names and any other proprietary designations of third parties used on or in connection with the Vizfly Platform, Vizfly Content, and/or Collective Content are used for identification purposes only and may be the property of their respective owners.
- d. You will not use, copy, adapt, modify, prepare derivative works of, distribute, license, sell, transfer, publicly display, publicly perform, transmit, broadcast or otherwise exploit the Vizfly Platform or Vizfly Content, except to the extent you are the legal owner of certain Registered User Content, Collective Content or as expressly permitted in these Terms. No licenses or rights are granted to you by implication or otherwise under any intellectual property rights owned or controlled by Tunebat or its licensors, except for the licenses and rights expressly granted in these Terms. Collective Content created by Registered User using the Services on the Vizfly Platform shall be the property of Registered User, with all rights of ownership granted therein, subject to: (1) the licenses and rights granted to Tunebat herein; and (2) limited resale rights in the Collective Content created using the Vizfly Platform as provided for in this Section. Registered User shall not sell or resell any Collective Content created using the Vizfly Platform without the express written approval of Tunebat.
- e. By creating, uploading, posting, sending, receiving, storing, or otherwise making available any Registered User Content on or through the Vizfly Platform, you grant to Tunebat a non-exclusive, worldwide, royalty-free, irrevocable, perpetual, sub-licensable, and transferable license to such Registered User Content to access, use, store, copy, modify, prepare derivative works of, distribute, publish, transmit, stream, broadcast, and otherwise exploit in any manner such Registered User Content to provide and/or promote the Vizfly Platform in any media or platform. By creating, uploading, posting, sending,

receiving, storing, or otherwise making available any Registered User Content on or through the Vizfly Platform, you also grant to Tunebat a non-exclusive, worldwide, royalty-free, irrevocable, perpetual, sub-licensable, and transferable license to such Registered User Content for all marketing, advertising, research, and development purposes, including, without limitation, the provision of such Registered User Content to third-parties as outlined in our Privacy Policy (<https://vizfly.com/privacy-policy/>). Unless you provide specific consent, Tunebat does not claim any ownership rights in any Registered User Content aside from the permissions granted in this Section VI(f) and nothing in these Terms will be deemed to restrict any rights that you may have to use or exploit your Registered User Content.

- f. You are solely responsible for all Registered User Content that you make available on or through the Vizfly Platform. Accordingly, you represent and warrant that: (i) you either are the sole and exclusive owner of all Registered User Content that you make available on or through the Vizfly Platform or you have all rights, licenses, consents and releases that are necessary to grant to Tunebat the rights in and to such Registered User Content, as contemplated under these Terms; and (ii) neither the Registered User Content nor your posting, uploading, publication, submission or transmittal of the Registered User Content or Tunebat's use of the Registered User Content (or any portion thereof) will infringe, misappropriate or violate a third party's patent, copyright, trademark, trade secret, moral rights or other proprietary or intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.
- g. You will not post, upload, publish, submit or transmit any Registered User Content that: (i) is fraudulent, false, misleading (directly or by omission or failure to update information), or deceptive; (ii) is defamatory, libelous, obscene, pornographic, vulgar or offensive; (iii) promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group; (iv) is violent or threatening or promotes violence or actions that are threatening to any other person; (v) promotes illegal or harmful activities or substances; or (vi) violates any Tunebat policy. Tunebat may, without prior notice, remove or disable access to any Registered User Content that Tunebat finds to be in violation of these Terms or Tunebat's then-current policies or standards, or otherwise may be harmful or objectionable to Tunebat, its Registered Users, third parties, or property.

VII. Relationship Between Tunebat, Registered Users, and Third Parties Recommended or Otherwise Suggested or Mentioned by Registered Users. The Vizfly Platform provides Users with the tools and content to create visual media to compliment Registered User files. Tunebat is not itself hereby a provider of any services outside the scope of Vizfly Services and the Vizfly Platform, and is not affiliated with any Registered User or third party that is recommended, rated, reviewed, or otherwise mentioned or suggested by Registered Users. AFTER THE VIZFLY SERVICES, TUNEBAT IS NO LONGER INVOLVED IN THE RELATIONSHIP BETWEEN ANY PARTY. IT IS YOUR RESPONSIBILITY TO EXERCISE DUE DILIGENCE AND CARE WHEN DECIDING WHETHER TO COMMUNICATE, INTERACT, TRANSACT, OR DO BUSINESS WITH OTHERS, WHETHER ONLINE OR IN PERSON.

TUNEBAT DOES NOT GUARANTEE, NOR ARE WE LIABLE FOR, THE OUTCOME OF ANY TRANSACTION INITIATED OR COMPLETED OUTSIDE THE VIZFLY PLATFORM.

- VIII. Third-Party Vendor.** All payments and Fees are processed through a third-party vendor, "Stripe." Registered Users acknowledge and agree that all accounts and monetary transactions are subject to the terms and conditions of Stripe and any fees Stripe may charge. Registered Users agree to abide by and not violate any separate terms and conditions required by third-party vendors, which are independent of these Terms. Registered Users expressly acknowledge and agree that Tunebat shall not be liable for any payments and monetary transactions that occur through use of the Vizfly Platform.
- IX. Currency Used.** All transactions on the Vizfly Platform are currently in United States currency (USD\$). Tunebat reserves the right to transact in other currencies in the future. Tunebat does not provide currency exchange services.
- X. Prohibited Activities.**
- a. You are solely responsible for compliance with any and all laws, rules, regulations, and tax obligations that may apply to your use of the Vizfly Platform and any sale or transaction consummated therein. In connection with your use of the Vizfly Platform, you will not and will not assist or enable others to:
 - i. Breach or circumvent any applicable laws or regulations, agreements with third-parties, third-party rights, or our Terms, policies, or standards;
 - ii. Use the Vizfly Platform for any purposes that are not expressly permitted by these Terms or in a manner that falsely implies Tunebat endorsement, partnership or otherwise misleads others as to your affiliation with Tunebat;
 - iii. Copy, store or otherwise access or use any information, including personally identifiable information about any other Registered User, contained on the Vizfly Platform in any way that is inconsistent with Tunebat's Privacy Policy (<https://vizfly.com/privacy-policy/>) or these Terms or that otherwise violates the privacy rights of Registered Users or third parties;
 - iv. Use the Vizfly Platform in connection with the distribution of unsolicited commercial messages ("spam");
 - v. Contact another Registered User for any purpose relating to recruiting or otherwise soliciting any Registered User to join third-party services, applications or websites, without our prior written approval;
 - vi. Discriminate against or harass anyone on the basis of race, national origin, religion, gender, gender identity, physical or mental disability, medical condition, marital status, age or sexual orientation, or otherwise engage in any abusive or disruptive behavior;
 - vii. Use, display, mirror, frame, reproduce, alter, or copy the Vizfly Platform or Collective Content, or any individual element within the Vizfly Platform, Tunebat's name, any Tunebat trademark, logo, copyrighted material, or other proprietary

information, or the layout and design of any page or form contained on a page in the Vizfly Platform, without Tunebat's express written consent;

- viii. Dilute, tarnish or otherwise harm the Tunebat or Vizfly brand in any way, including through unauthorized use of Collective Content, registering and/or using Tunebat or Vizfly or derivative terms in domain names, trade names, trademarks, copyrighted material, or other source identifiers, or registering and/or using domains names, trade names, trademarks or other source identifiers that closely imitate or are confusingly similar to Tunebat or Vizfly domains, trademarks, taglines, promotional campaigns or Collective Content;
 - ix. Use any robots, spider, crawler, scraper or other automated means or processes to access, collect data or other content from or otherwise interact with the Vizfly Platform for any purpose;
 - x. Avoid, bypass, remove, deactivate, impair, descramble, or otherwise attempt to circumvent any technological measure implemented by Tunebat or any of Tunebat's providers or any other third party to protect the Vizfly Platform;
 - xi. Attempt to decipher, decompile, disassemble or reverse engineer any of the software used to provide the Vizfly Platform;
 - xii. Take any action that damages or adversely affects, or could damage or adversely affect the performance or proper functioning of the Vizfly Platform;
 - xiii. Export, re-export, import, or transfer the Vizfly Platform except as authorized by United States law, the export control laws of your jurisdiction, and any other applicable laws;
 - xiv. Violate or infringe anyone else's rights or otherwise cause harm to anyone; or
 - xv. Impersonate, stalk, threaten, or otherwise harass any other person or entity.
- b. You acknowledge that Tunebat has no obligation to monitor the access to or use of the Vizfly Platform by any Registered User or to review, disable access to, or edit any Registered User Content, but has the right to do so to: (i) operate, secure and improve the Vizfly Platform (including without limitation for fraud prevention, risk assessment, investigation and customer support purposes); (ii) ensure Registered Users' compliance with these Terms; (iii) comply with applicable law or the order or requirement of a court, law enforcement or other administrative agency or governmental body; (iv) respond to Registered User Content that it determines is harmful or objectionable; or (v) as otherwise set forth in these Terms. Registered Users agree to cooperate with and assist Tunebat in good faith, and to provide Tunebat with such information and take such actions as may be reasonably requested by Tunebat with respect to any investigation undertaken by Tunebat or a representative of Tunebat regarding the use or abuse of the Vizfly Platform.

XI. Term and Termination.

- a. Without limiting our rights specified below, Tunebat may terminate these Terms and your use of or access to the Vizfly Services a for convenience at any time and for any reason, without notice to you, including:
 - i. Your material breach of your obligations under these Terms;

- ii. Your violation of applicable laws, regulations, or third-party rights, or
 - iii. If Tunebat believes in good faith that such action is reasonably necessary to protect the personal safety or property of Tunebat, its Registered Users, or third parties (for example, in the case of fraudulent behavior of a Registered User).
 - b. In addition, Tunebat may take any of the following measures (i) to comply with applicable law, or the order or request of a court, law enforcement or other administrative agency or governmental body; (ii) if you have breached these Terms, applicable laws, regulations, or third party rights; (iii) if you have provided inaccurate, fraudulent, outdated or incomplete information during the Vizfly Account registration or thereafter; or (v) if Tunebat believes in good faith that such action is reasonably necessary to protect the personal safety or property of Tunebat, its Registered Users, or third parties, or to prevent fraud or other illegal activity:
 - i. Refuse to surface, delete, or delay any Registered User Content;
 - ii. Limit your access to or use of the Vizfly Platform;
 - iii. Temporarily or permanently revoke any special status associated with your Vizfly Account; or
 - iv. Temporarily or permanently suspend your Vizfly Account.
 - c. When these Terms and your use of or access to the Vizfly Services have been terminated, you are not entitled to a restoration of your Vizfly Account or any of your Registered User Content. If your access to or use of the Vizfly Platform has been limited or your Vizfly Account has been suspended or terminated by us, you may not register a new Vizfly Account or access and use the Vizfly Platform through an Vizfly Account of another Registered User.

XII. DISCLAIMERS.

- a. YOU USE OUR SERVICES AT YOUR OWN RISK AND SUBJECT TO THE FOLLOWING DISCLAIMERS. WE ARE PROVIDING OUR SERVICES ON AN "AS IS" BASIS WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND FREEDOM FROM COMPUTER VIRUS OR OTHER HARMFUL CODE. WE DO NOT WARRANT THAT ANY INFORMATION PROVIDED BY US IS ACCURATE, COMPLETE, OR USEFUL, THAT OUR SERVICES WILL BE OPERATIONAL, ERROR FREE, SECURE, OR SAFE, OR THAT OUR SERVICES WILL FUNCTION WITHOUT DISRUPTIONS, DELAYS, OR IMPERFECTIONS. WE DO NOT CONTROL, AND ARE NOT RESPONSIBLE FOR, CONTROLLING HOW OR WHEN OUR USERS USE OUR SERVICES OR THE FEATURES, SERVICES, AND INTERFACES OUR SERVICES PROVIDE. WE ARE NOT RESPONSIBLE FOR AND ARE NOT OBLIGATED TO CONTROL THE ACTIONS OR INFORMATION (INCLUDING CONTENT) OF OUR USERS OR OTHER THIRD PARTIES. YOU RELEASE US, OUR SUBSIDIARIES, AFFILIATES, AND OUR AND THEIR DIRECTORS, OFFICERS, EMPLOYEES, PARTNERS, AND AGENTS (TOGETHER, THE "TUNEBAT PARTIES") FROM ANY CLAIM, COMPLAINT, CAUSE OF ACTION, CONTROVERSY, OR DISPUTE (TOGETHER, "CLAIM") AND DAMAGES, KNOWN AND UNKNOWN, RELATING TO, ARISING OUT OF, OR IN ANY WAY CONNECTED WITH ANY

SUCH CLAIM YOU HAVE AGAINST ANY THIRD PARTIES. YOU WAIVE ANY RIGHTS YOU MAY HAVE UNDER APPLICABLE STATUTE OR LAW WHICH SAYS THAT: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

- b. YOU AGREE THAT YOU HAVE HAD WHATEVER OPPORTUNITY YOU DEEM NECESSARY TO INVESTIGATE THE VIZFLY SERVICES, LAWS, RULES, OR REGULATIONS THAT MAY BE APPLICABLE TO YOUR USE OF THE VIZFLY PLATFORM AND THAT YOU ARE NOT RELYING UPON ANY STATEMENT OF LAW OR FACT MADE BY TUNEBAT.
- c. THE FOREGOING DISCLAIMERS APPLY TO THE MAXIMUM EXTENT PERMITTED BY LAW. YOU MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

XIII. LIMITATION OF LIABILITY. THE TUNEBAT PARTIES WILL NOT BE LIABLE TO YOU FOR ANY LOST PROFITS OR CONSEQUENTIAL, SPECIAL, PUNITIVE, INDIRECT, OR INCIDENTAL DAMAGES RELATING TO, ARISING OUT OF, OR IN ANY WAY IN CONNECTION WITH OUR TERMS, US, OR OUR SERVICES, EVEN IF THE TUNEBAT PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. OUR AGGREGATE LIABILITY RELATING TO, ARISING OUT OF, OR IN ANY WAY IN CONNECTION WITH OUR TERMS, US, OR OUR SERVICES WILL NOT EXCEED THE GREATER OF ONE HUNDRED DOLLARS (\$100) OR THE AMOUNT YOU HAVE PAID US IN THE PAST TWELVE MONTHS, WHICHEVER IS LOWER. THE FOREGOING DISCLAIMER OF CERTAIN DAMAGES AND LIMITATION OF LIABILITY WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. THE LAWS OF SOME STATES OR JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES, SO SOME OR ALL OF THE EXCLUSIONS AND LIMITATIONS SET FORTH ABOVE MAY NOT APPLY TO YOU. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN OUR TERMS, IN SUCH CASES, THE LIABILITY OF THE TUNEBAT PARTIES WILL BE LIMITED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

XIV. INDEMNIFICATION. YOU AGREE TO RELEASE, DEFEND (AT TUNEBAT'S OPTION), INDEMNIFY, AND HOLD TUNEBAT AND ITS AFFILIATES AND SUBSIDIARIES, AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS, HARMLESS FROM AND AGAINST ANY CLAIMS, LIABILITIES, DAMAGES, LOSSES, AND EXPENSES, INCLUDING, WITHOUT LIMITATION, REASONABLE LEGAL AND ACCOUNTING FEES, ARISING OUT OF OR IN ANY WAY CONNECTED WITH:

- a. YOUR BREACH OF THESE TERMS OR OUR POLICIES OR STANDARDS;
- b. YOUR IMPROPER USE OF THE VIZFLY PLATFORM OR ANY VIZFLY SERVICES;
- c. YOUR INTERACTION WITH ANY REGISTERED USER, INCLUDING WITHOUT LIMITATION ANY INJURIES, LOSSES OR DAMAGES (WHETHER COMPENSATORY, DIRECT, INCIDENTAL, CONSEQUENTIAL OR OTHERWISE) OF ANY KIND ARISING IN CONNECTION WITH OR AS A RESULT OF SUCH INTERACTION; OR
- d. YOUR BREACH OF ANY LAWS, REGULATIONS, OR THIRD-PARTY RIGHTS.

XV. Dispute Resolution.

- a. This Dispute Resolution and Arbitration Agreement shall apply if you (i) reside in the United States; or (ii) do not reside in the United States, but bring any claim against Tunebat in the United States (to the extent not in conflict with Section XIV(a), below).
- b. **Overview of Dispute Resolution Process.** Tunebat is committed to participating in a consumer-friendly dispute resolution process. To that end, these Terms provide for a two-part process for individuals to whom Section XIII(a) applies: (1) an informal negotiation directly with Tunebat's customer service team, and (2) a binding arbitration administered by the American Arbitration Association ("**AAA**") using its specially designed Consumer Arbitration Rules (as modified by this Section).
- c. **Pre-Arbitration Dispute Resolution and Notification.** Prior to initiating an arbitration, you and Tunebat each agree to notify the other party of the dispute and attempt to negotiate an informal resolution to it first. We will contact you at the email address you have provided to us; you can contact Tunebat's customer service team by emailing us. If after a good faith effort to negotiate one of us feels the dispute has not and cannot be resolved informally, the party intending to pursue arbitration agrees to notify the other party via email prior to initiating the arbitration. In order to initiate arbitration, a claim must be filed with the AAA and the written Demand for Arbitration (available at www.adr.org) provided to the other party, as specified in the AAA Rules.
- d. **Agreement to Arbitrate.** You and Tunebat mutually agree that any dispute, claim or controversy arising out of or relating to these Terms or the breach, termination, enforcement or interpretation thereof, or to the use of the Vizfly Platform or the Collective Content (collectively, "Disputes") will be settled by binding arbitration (the "Arbitration Agreement"). If there is a dispute about whether this Arbitration Agreement can be enforced or applies to our Dispute, you and Tunebat agree that the arbitrator will decide that issue.
- e. **Exceptions to Arbitration Agreement.** You and Tunebat each agree that the following claims are exceptions to the Arbitration Agreement and will be brought in a judicial proceeding in a court of competent jurisdiction:
 - i. (i) Any claim related to actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents, or other intellectual property rights; and
 - ii. (ii) Any claim seeking emergency injunctive relief based on exigent circumstances (e.g., imminent danger or commission of a crime, hacking, cyber-attack).
- f. **Arbitration Rules and Governing Law.** This Arbitration Agreement evidences a transaction in interstate commerce and thus the Federal Arbitration Act governs the interpretation and enforcement of this provision. The arbitration will be administered by AAA in accordance with the Consumer Arbitration Rules (the "**AAA Rules**") then in effect, except as modified here. The AAA Rules are available at www.adr.org or by calling the AAA at 1-800-778-7879.

- g. Modification to AAA Rules - Arbitration Hearing/Location.** Any required arbitration hearing may be conducted (a) in Harris County; (b) in any other location to which you and Tunebat both agree; (d) via phone or video conference; or (e) for any claim or counterclaim under \$25,000, by solely the submission of documents to the arbitrator.
- h. Arbitrator's Decision.** The arbitrator's decision will include the essential findings and conclusions upon which the arbitrator based the award. Judgment on the arbitration award may be entered in any court with proper jurisdiction. The arbitrator may award declaratory or injunctive relief only on an individual basis and only to the extent necessary to provide relief warranted by the claimant's individual claim.
- i. Jury Trial Waiver. You and Tunebat acknowledge and agree that we are each waiving the right to a trial by jury as to all arbitrable Disputes.**
- j. No Class Actions or Representative Proceedings. You and Tunebat acknowledge and agree that we are each waiving the right to participate as a plaintiff or class User in any purported class action lawsuit, class-wide arbitration, private attorney-general action, or any other representative proceeding as to all Disputes. Further, unless you and Tunebat both otherwise agree in writing, in an arbitration proceeding, the arbitrator may not consolidate more than one party's claims and may not otherwise preside over any form of any class or representative proceeding. If this paragraph is held unenforceable with respect to any Dispute, then the entirety of the Arbitration Agreement will be deemed void with respect to such Dispute.**
- k. Severability.** In the event that any portion of this Arbitration Agreement is deemed illegal or unenforceable, such provision shall be severed and the remainder of the Arbitration Agreement shall be given full force and effect.
- l. Changes.** Notwithstanding the provisions of Section IV, if Tunebat changes this Section XV after the date you last accepted these Terms (or accepted any subsequent changes to these Terms), you may reject any such change by sending us written notice (including by email) within thirty (30) days of the date such change became effective, as indicated in the "Last Updated" date above or in the date of Tunebat's email to you notifying you of such change. By rejecting any change, you are agreeing that you will arbitrate any Dispute between you and Tunebat in accordance with the provisions of the "Dispute Resolution and Arbitration Agreement" section as of the date you last accepted these Terms (or accepted any subsequent changes to these Terms).
- m.** Except as provided in Section XV(k), this Section XV will survive any termination of these Terms and will continue to apply even if you stop using the Vizfly Platform or terminate your Vizfly Account.

XVI. General Provisions.

- a. Governing Law.** These Terms will be interpreted in accordance with the laws of the State of Texas and the United States of America, without regard to conflict-of-law provisions. Judicial proceedings (other than small claims actions) that are excluded from the Arbitration Agreement in Section XIV must be brought in state or federal court in Houston,

Texas, unless we both agree to some other location. You and we both consent to venue and personal jurisdiction in Houston, Texas.

- b. Entire Agreement.** Except as they may be supplemented by additional terms and conditions, policies, guidelines or standards, these Terms constitute the entire Agreement between Tunebat and you pertaining to the subject matter hereof, and supersede any and all prior oral or written understandings or agreements between Tunebat and you in relation to the access to and use of the Vizfly Platform.
- c. Restriction on Assignability or Transfer.** These Terms do not and are not intended to confer any rights or remedies upon any person other than the parties. You may not assign, transfer, or delegate these Terms and your rights and obligations hereunder without Tunebat's prior written consent. Tunebat may without restriction assign, transfer or delegate these Terms and any rights and obligations hereunder, at its sole discretion, with 30 days prior notice. Your right to terminate these Terms by immediately discontinuing your use of and access to the Vizfly Services and the Vizfly Platform at any time remains unaffected.
- d. Severability.** If any provision of these Terms is held to be invalid or unenforceable, such provision will be struck and will not affect the validity and enforceability of the remaining provisions.
- e. Waivers.** Tunebat's failure to enforce any right or provision in these Terms will not constitute a waiver of such right or provision unless acknowledged and agreed to by us in writing. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise permitted under law.
- f. Notices.** Unless specified otherwise, any notices or other communications to Registered Users permitted or required under these Terms, will be in writing and given by Tunebat via email, Vizfly Platform notification, or messaging service.
- g. Questions?** If you have any questions about these Terms please email us at help@vizfly.com.