

## Songflowr Member and Distribution Agreement

As of April 7, 2022

### 1. General

By creating an account with Songflowr.com (the "Site") you are entering a binding legal agreement (the "Agreement") between you ("You" or "Member") and Songflowr, LLC ("Songflowr" or "Us"), a Florida Limited Liability Company regarding Your use of the Songflowr service to distribute your musical recordings to selected digital services and stores (our "Service").

If you are entering into this Agreement on behalf of one or more other people, a group, or a company or other entity, then by accepting this Agreement you represent and warrant to Songflowr that you are duly authorized to do so on behalf of all such person(s)/entity(ies) and to bind them to this Agreement and that Songflowr is fully entitled to rely on that fact (in which case, the term "You" includes all such people and entities) in our performance under this Agreement.

By creating an account, You are accepting the terms and conditions below, so please read and understand them completely before doing so. Once you do so, this Agreement will automatically become effective as of the date the account is created. (the "Effective Date").

### 2. Member's Account

When Member registers for our Service, Member will establish a username/artist name and password that will provide access to an online user dashboard for Members account on the Site. *Member will be solely responsible for any Recordings and other content uploaded and for all financial transactions and other activity conducted through Member's account. Songflowr will not be responsible for any activity transacted through Member's account.*

Member will not be able to change the Artist Name associated with the account after the account is created.

### 3. The Songflowr Service and Your Recordings

- (a) The Songflowr Service enables you to upload to our servers digital files containing audio-only musical sound recordings and the underlying musical compositions embodied therein ("collectively, "Recordings") for distribution to your choice of digital stores, streaming services, and other digital services within our distribution network ("Digital Stores"; which shall include UGC Services [as defined below]), who may make your Recordings available to their customers and end users ("Customers"). Such musical compositions are sometimes referred to herein individually as the "Compositions").
- (b) Recordings must be musical sound recordings in single track, EP, or album configuration. *Please note, Digital Stores will make your Recordings available to Customers to Purchase or stream as individual tracks. You cannot require a Customer to purchase or stream an entire album or EP as a single unit.*

We typically do not accept or distribute ringtones, videos, audio books, spoken-word records, digital booklets, or other types of content; however, if we choose to do so, as determined by us on a case-by-case basis in our discretion, the terms of this Agreement shall apply to such formats.

- (c) Songflowr currently accepts Recordings in the following formats: AIF, AIFF, FLAC, MP3, M4A, OGG Or WAV, up to 192kHz, 16-bit, 24-bit, between 1 MB and 1GB in size.

Songflowr and/or the Digital Stores may require different formats or file sizes from time to time under this Agreement. Songflowr reserves the right to convert audio files of the Recordings as necessary.

- (d) When uploading each Recording, you must provide us with all accompanying data that we or a Digital Store may require (e.g., artist name, album title, each track title, genre), plus any available cover art (in JPG format with RGB color or any other format that we or a Digital Store may require). For purposes of this Agreement, all such data, metadata, information, image files, artwork and any other materials you provide to us are included in the definition of "Recordings." We may also require that you indicate if the Recording contains explicit content, in which case a Digital Store may tag it accordingly.
- (e) We will automatically generate unique identifying codes for each Recording and provide them to your chosen Digital Stores. If you want, you can choose to specify your own ISRC codes and UPC codes.
- (f) Once Member has uploaded a recording to the Site for distribution, Member can delete it at any time during the Term. *However, Member cannot remove a single track that was included as part of an entire album. If Member wants to remove a single track from an album, Member must remove the entire album and re-upload the entire album with the removed track(s).*

#### **4. Service and Intellectual Property Ownership**

Songflowr does not take any copyright or other interest in any of your music, only a limited license to distribute.

#### **5. Member Responsibilities**

Member is solely responsible for and must have obtained all necessary rights, licenses, waivers, clearances and permissions, including without limitation all music publishing rights and licenses, for all Recordings (including for purposes of clarity the Compositions) and other Materials in order to enable Songflowr and your selected Digital Stores to fully exploit all their rights hereunder free of any claims, liens, encumbrances or other restrictions.

Member, through uploading any Recordings and delivery of any other Materials, warrants and represents to Songflowr and selected Digital Stores to sell, distribute, publicly perform, promote, and otherwise exploit such Recordings and Materials as contemplated under this Agreement, including the waiver of all so-called "moral rights", under the laws of any jurisdiction, on your behalf as well as on behalf of any and all contributors involved in any manner with the creation and delivery of your Recordings.

Without limiting anything in this Agreement, you are solely responsible for and shall timely pay

- (i) any and all royalties, including without limitation all mechanical royalties, and all other amounts due to artists, producers, mixers, engineers, licensors and any other royalty participants from the sales, license, performance and/or other exploitation of your Recordings and Materials,
- (ii) any and all royalties, including without limitation all mechanical royalties, that may be payable by you to the owners or administrators of copyrighted recordings (e.g., samples) and/or musical compositions embodied in your Recordings,
- (iii) all payments that may be required under union, guild or other collective bargaining agreements applicable to you or third parties, and
- (iv) any other royalties (including without limitation mechanical royalties), fees and/or sums payable with respect to the Recordings or Materials, including, without limitation, any royalties that may be required to be paid, pursuant to the applicable laws of any jurisdiction, as a result of authorized exploitations by Songflowr or your selected Digital Stores of your Recordings (including for purposes of clarity the Compositions) for so-called performer's rights, equitable remuneration rights or neighboring rights, however characterized under local law.

If any portion of your Recordings are now or in the future administered in any territory(ies) by any performance rights society, or any other collection society, you are obligated to notify such third-party collection societies of this Agreement. You understand and acknowledge that Songflowr will not be making any such payments on your behalf or otherwise.

***WE DO NOT AND CANNOT PROVIDE YOU WITH LEGAL ADVICE REGARDING YOUR OBLIGATIONS TO THIRD PARTIES, SO PLEASE CONSULT A QUALIFIED LAWYER BEFORE ENTERING INTO THIS AGREEMENT AND UPLOADING ANY RECORDINGS TO OUR SERVICE.***

***PLEASE UNDERSTAND THAT YOU MUST OWN OR OTHERWISE HAVE THE LEGAL RIGHT TO REPRODUCE AND DISTRIBUTE 100% OF THE RECORDINGS, MUSICAL COMPOSITIONS, ARTWORK AND ANY OTHER MATERIAL THAT YOU INTEND TO UPLOAD AND DISTRIBUTE VIA THE SONGFLOWR SERVICE, INCLUDING THE RIGHT TO MAKE AND DISTRIBUTE DIGITAL DOWNLOADS EMBODYING THE MUSICAL COMPOSITIONS THEREIN, AND ELECTRONIC TRANSMISSIONS OF SUCH MUSICAL COMPOSITIONS (INCLUDING, WITHOUT LIMITATION, VIA STREAMING SERVICES), AS NECESSARY.***

***FOR EXAMPLE, YOU CANNOT DELIVER TO US ANY REMIXES, OR RECORDINGS THAT INCLUDE SAMPLES UNLESS YOU HAVE ALL NECESSARY WRITTEN PERMISSION FROM THE SONGWRITERS AND FROM THE OWNERS OF THE APPLICABLE ORIGINAL RECORDINGS.***

## **6. Digital Stores**

- (a) The rights granted by you to Songflowr are non-exclusive. Be advised, however, that if you send your Recording(s) to the same Digital Stores via Songflowr and a separate service, the double listing of your Recordings may cause complications and/or problems in those Digital Stores.
- (b) Songflowr will provide Your Recordings to selected Digital Stores upon payment of required fees. *While Songflowr can provide the Recording to the Digital Stores, it cannot guarantee or provide any time-table on behalf of the Digital Stores for the uploaded Recordings to be accessible.*
- (c) Songflowr will distribute your Recordings to your selected Digital Stores on a worldwide basis (you can't specify only certain countries or territories for particular Recordings). The "Territory" of this Agreement is the universe, except where noted with respect to certain territories outside of the United States.
- (d) By opting into a Digital Store, you warrant to Songflowr that you have read, understand, and agree to be bound by all of the terms and conditions of that Digital Store, and that you and your Recordings and other content will comply fully with those terms and conditions.
- (e) Songflowr cannot guarantee that a Digital Store will approve Member's Recordings. Digital Stores may choose to not carry one or more of Member's Recordings in any or all Territories. Songflowr also retains the right to decline distribution of one or more Recordings from any or all Digital Stores if Songflowr is notified of any legal claims regarding any of Member's Recordings. *Songflowr also retains the right to refuse to distribute any Recording that may violate this Agreement, the Terms of Service, or the legal rights of any parties, including in Songflowr's professional judgement.*
- (f) If Songflowr or a Digital Store ceases to operate entirely or in a particular territory, Member's Recordings will no longer be available through that/those Digital Store(s).

## **7. Term**

Songflowr retains the right to terminate this agreement for any reason, including but not limited to if we reasonably believe that You or any of Your Recordings or any other content has violated this Agreement or the terms and conditions of any Digital Store, including uploading any Recordings that infringe the intellectual property or other rights of any person or entity.

At the conclusion of the Term, Songflowr will notify all applicable Digital Stores to remove your Recordings and will have no further obligation to You other than to pay for any earnings earned before the end of the Term.

## **8. Grant of Rights**

In order for Songflowr to distribute your Recordings and related content to selected Digital Stores through the Songflowr Service, You confirm that you grant Songflowr the non-exclusive, sub-licensable right and license during the Term throughout the Territory to:

- (a) Reproduce and distribute your Recordings to Digital Stores for the sale or sublicense to their Customers by any and all applicable digital formats, configurations, technologies and methods (including, without limitation, permanent downloads, temporary or "tethered" download, interactive and non-interactive streaming, "scan and match" services, and "cloud" services) to any and all capable devices (including, without limitation, to personal and tablet computers and smartphones),
- (b) Create and authorize Digital Stores to create, publicly perform, and/or make available as free sound clips via a streaming format,
- (c) Display and otherwise use your artist(s) and/or label name and logo and all artwork, song and album titles, trademarks, service marks, logos, and any associated trade names. This also includes all artist, songwriter, producer and mixer names and likenesses, each as found in the metadata within any Recordings or other material provided by you ("Materials"), on our Site, on the Digital Stores and their respective sites, including any marketing, advertising, or promotional materials for our Service, or that of the Digital Stores. Additionally, the Digital Stores may create editorial content on or about You or your Recording and may classify or categorize your Recording and Materials into a genre(s),
- (d) Collect income earned from the use of your Recordings on the Digital Stores platforms,
- (e) Notify any and all Digital Stores or related third parties of Songflowr's rights and the relationship between You and Songflowr under this Agreement, as well as listing You as a licensor of the Songflowr Service.
- (f) You also grant to Songflowr and Your selected Digital Stores the right and license during the Term and throughout the Territory to take all steps desired or required to effect the foregoing rights and to distribute your Recordings and Materials as contemplated in this Agreement, including without limitation, to store, host, cache, reproduce, convert, edit, serve, transmit and publicly perform such Recordings, and as otherwise required pursuant to our agreements with those Digital Stores, as may be amended from time to time during the Term. You understand that Digital Stores may grant to Customers rights to use your Recordings beyond the Term of this Agreement, even perpetual rights. As noted above, Digital Stores and/or we may decline to distribute or otherwise exploit any Recordings or other Materials (or to remove any Recordings that have already been distributed or offered to Customers) in our reasonable business judgment. You will be deemed to have approved any artwork, photographs, biographical material or other information or materials that you provide to us,
- (g) Authorize third-party partners and/or licensees of Songflowr, which offer services permitting the creation, use and exploitation of so-called "remixes" of your Recordings and so-called "user generated content" embodying your Recordings, including, without limitation, YouTube, Facebook

and Instagram (“UGC Services”). Without limiting the foregoing, you agree that Songflowr shall have the right to grant UGC Services the following related rights:

- a. to synchronize and authorize others to synchronize your Recordings (which again, solely for clarification, includes the Compositions), with visual images and/or combine excerpts of your Recordings with any series of still or moving images, either pre-capture, post-capture or as a live stream;
- b. to use and include your Recordings and/or remixes of your Recordings in “Mix Content” which shall mean the combination of two (2) or more whole or partial audio-only tracks which may be harmonically, rhythmically or otherwise mixed, remixed, edited or mashed up;
- c. to store, host, reformat, make on-demand streams of, make conditional (“limited” or “tethered”) downloads of, and display your Recordings as have been embodied in user videos, “art tracks,” audio-only tracks (including remixes), label videos and Mix Content, and to make your Recordings available on and through the UGC Services, including without limitation, in embedded YouTube video players;
- d. to reproduce, distribute, and prepare derivative works (including synchronization rights and remix rights) based upon your Recordings, to the extent necessary for the purpose of engaging in any of the foregoing activities, to collect all income from the foregoing activities, and to create reference files and fingerprints of the Recordings, and to store and use such files;
- e. grant the UGC Services all necessary rights to (and to pass through such rights to users as applicable) include the Recordings, in Google’s so-called “AudioSwap Library” (or any successor product thereto which is owned or controlled by Google) and similar “libraries” of the UGC Services, which consist of master recordings any of which users may add to their user videos and/or Mix Content, as applicable; and
- f. display album artwork in association with videos and audio-only tracks created in connection with the UGC Services. The UGC Services will also have the rights to (and to pass through such rights to labels and users as applicable):
  - i. create so-called “art tracks” using your Recordings;
  - ii. create reference files and fingerprints of your Recordings; and
  - iii. use your Recordings in Facebook properties that include musical emojis/stickers, video re-mix, send-a-lyric, virtual reality experiences, singalong with lyrics. “UGC Services” shall include all mirror and derivative sites, including mobile, all replacements or successor versions thereof, and all international versions thereof, and any features thereof made available to paying or non-paying users through application programming interfaces (or “apps,” as such term is commonly understood in the technology industry), and any other product, device or service (including mobile devices), including embeds and playback pages, capable of accessing the videos and audio-only tracks made available on or through the UGC Services websites, even if accessed through a means other than such websites.

## **9. Payment**

Songflowr, for use of Our Services, will accept payment via PayPal or by Credit/Debit card which will be processed using Stripe. Payment must be received and processed by Songflowr before Your Recordings will be distributed to the Digital Stores.

## **10. Royalty Disbursement Terms**

In consideration for the rights and licenses granted by You to Songflowr, Songflowr will disburse one hundred (100) percent of any and all monies earned and received from your selected Digital Stores which are directly attributable to the use of your Recordings after deducting;

- i. Applicable PayPal fees, and/or

ii. Applicable Credit Card processing fees

If Songflowr receives a payment from a Digital Store(s) that is not attributable to any specific artist account(s), Songflowr will, in its discretion, determine if and to what extent any portion of the payment shall be payable to an artist account(s).

Once payment has been credited to Your artist account, You will be able to freely withdraw monies from your account at your discretion after the value is greater than \$20. **You will be responsible for any bank fees or other charges related to any withdrawal.**

Any Payments received by Songflowr in a foreign currency will be converted to U.S. Dollars at either the same rate received by us, or current exchange rate at the time of transaction from store to Songflowr, or from Songflowr to You. *Your payment is an "all-in" pay-through payment, from which you are solely responsible for paying and accounting to all applicable taxes, tariffs, licensors, songwriters, publishers, artists, producers, mixers and other third parties.*

**We cannot and WILL NOT offer any legal, tax, accounting and other advice; please consult your own advisors regarding those matters.**

### **11. Accounting Procedures**

After Songflowr has received payment from a Digital Store(s), Songflowr will notify You through your Songflowr account. You will manually have to withdrawal any funds from your Songflowr account.

Songflowr will also make available to you via your Account Dashboard any accounting documents we receive from the Digital Store(s). You will be solely responsible for making any payments to any other third parties.

You acknowledge that Digital Stores may retain a portion of any earned income and may withhold or deduct these sums from the monies paid to Songflowr. These sums may include but are not limited to, taxes, administrative fees, fees paid to third parties, transfer/processing fees and chargebacks.

Songflowr shall be allowed to rely on payments and accounting information received from the Digital Stores. You shall have no right to inspect or audit our books and records, and the same shall apply to Digital Stores.

If required by applicable law, we may withhold payments to you, in whole or in part, pending receipt of your correctly completed Form W-9 or any other applicable tax-related forms evidencing that no withholding is required. If any information provided on such tax forms is incomplete, incorrect or misrepresented, we reserve the right to withhold sums due to you until all appropriate and correct information is submitted to and received by us. You indemnify us and will be responsible for any costs, expenses and liabilities we may pay or incur as a result of any incorrect, inaccurate or misrepresented tax or financial information provided by you.

If Songflowr is notified of a claim that any of your Recordings or Materials infringe on a third parties rights or violates any laws, Songflowr retains the right to withhold payment of any monies earned by the infringing Recording or Material until any and all claims or conduct are resolved. You forfeit any distribution for monies attributable to any fraud, infringement, streaming manipulation, or other illegal activity.

(a) Streaming Manipulation: "Streaming Manipulation" means any activity and/or method which involves the creation or production, by human or non-human means, of online or offline plays or purchases of audio and/or audio-visual streaming services, where such plays or

purchases do not represent bona fide end-user listening and/or views initiated by genuine consumers on the streaming platform on which they take place and taking place in the reporting country. Streaming Manipulation may involve or include, but is not limited to, increasing, generating or manipulating play counts, sales, follow counts, engagement activity, or other key metrics used by the Services and/or any Consumer Store, through the use of promotional activity not provided by the streaming platform itself, bots, scripts, viruses, worms or any other computer codes, files, programs or automated processes, click-farms, troll-farms, inauthentic accounts, shared account information, and/or virtual private networks or chatrooms/discord groups. You should be aware that Streaming Manipulation may be the result of the actions of a third party, such as a promotion or marketing company, record label or music distributor, acting on behalf of an artist or on its own behalf. You are encouraged to investigate and vet any companies or individuals you may enlist, retain, or employ to promote or market your music, as you may be liable for Streaming Manipulation perpetrated by a third party on your behalf. For the avoidance of doubt, any Streaming Manipulation done by a third party on your behalf or that relates to your Recordings is a violation of Songflowr's Terms of Service.

(i) The factors used to determine whether any particular consumption or marketing activity is Streaming Manipulation will vary according to the specific circumstances of each case and the examples and descriptions of Streaming Manipulation set forth herein are not intended to be exhaustive. Streaming platforms that use your Recordings may also have policies related to streaming manipulation, fraud, and suspected fraudulent activities and you agree that it is your responsibility to become aware of and follow such policies, and such policies shall be binding upon you hereunder.

(ii) In the event that Songflowr or a streaming platform or a consumer store has, in its good faith discretion, reason to suspect that your account or Recordings have been subjected to, involved in, or generated revenue from: violating the Terms of Service; fraud; infringement of copyright, trademark, right of publicity or any other intellectual property right; failure to comply with any third-party license requirement; or Streaming Manipulation (collectively, "Improper Conduct"), Songflowr reserves the right to (1) discontinue the posting of income, including any Net Income or other payments to your account, (2) block your ability to otherwise withdraw funds therefrom until resolution of the suspect activities to the satisfaction of Songflowr is obtained, and (3) remove any or all of your Recordings from any or all Consumer Stores. You further agree that such revenues will be forfeited by you if Songflowr, a streaming platform, or a consumer store, determines in its good faith discretion, that your account or recordings distributed from your account have been subjected to, involved in, or generated revenue from abovementioned conduct.

(iii) You further agree to the following: 1. You agree to provide Songflowr with any information reasonably requested by Songflowr as part of its investigation into Improper Conduct; 2. You agree that if a streaming platform or consumer store notifies Songflowr that any of your Recordings have generated revenue, plays, or streams as a result of Improper Conduct, such notice will serve as sufficient evidence for Songflowr to determine, in its good faith discretion, that such revenues or plays are the result of Improper Conduct; 3. Upon Songflowr's determination that your account or Recordings have been subjected to, involved in, or generated revenue from Improper Conduct, you agree that all revenue in your account that has been frozen by Songflowr is forfeited, regardless of whether it was generated from any specific Recording(s) or Consumer Store; 4. You agree that Songflowr's good faith determination of Improper Conduct can be based on streaming or other activity that is the same or similar to cases that the Songflowr has previously determined involved Improper Conduct; 5. The payment of revenues to you by Songflowr does not constitute Songflowr's

acknowledgement that such revenues were not the result of Improper Conduct; 6. Songflowr has no duty to investigate Improper Conduct unless and until it freezes revenues in your account; 7. If Songflowr determines that revenues generated to your account are the result of Improper Conduct, and such revenues have already been paid out to you, you agree to return such revenues to Songflowr; 8. You agree that you will not be entitled to reimbursement for any fees paid by you to Songflowr in the event Songflowr disables access to your account, your Recordings and/or any other materials you provide to Songflowr, or to any revenues forfeited by you as set forth in the preceding sentence; 9. To the extent that Songflowr, in its good faith discretion, determines that any Improper Conduct was caused by you or your affiliates' actions or omissions or by any third party acting on your behalf or at your direction, any costs incurred by Songflowr (including legal fees and expenses) in connection therewith may, in addition to its other remedies, be deducted by Songflowr from any monies otherwise payable to you; 10. If in Songflowr's reasonable business judgment it elects to engage an attorney to review potential Improper Conduct or review and/or respond to any third-party allegation of Improper Conduct by you or associated with your account or Recordings, Songflowr shall, in its sole discretion, have the right to deduct from your account or charge any alternate payment method you provide to Songflowr (such as a PayPal account, credit card or debit card) (each a "Payment Method") the cost of such engagement, but at a minimum Five Hundred Dollars (\$500), to offset the costs of associated legal fees and expenses.

(iv) Songflowr shall have the right, but not the obligation, to review and/or monitor any activity and content uploaded by You or an agent of You. Songflowr may investigate any complaints or any reported violation of its policies and may take any action that it deems appropriate. Such action may include, but is not limited to, issuing warnings, suspension or termination of service, denying access and/or removal of any materials you may have uploaded. You agree that Songflowr reserves the right and may terminate your account in its sole discretion for any reason and at any time, including if, in Songflowr's good faith discretion, you are believed to have engaged in Improper Conduct.

## **12. Dispute Resolution**

See Terms of Service.

## **13. Representations and Warranties; Indemnification**

You represent and warrant to Songflowr that:

- i. You have the legal capacity, right and authority to enter into this Agreement;
- ii. You own fully or are otherwise fully vested of the necessary copyrights and any other rights in order to provide a grant of rights, licenses and permissions herein to Songflowr, selected Digital Stores, and our and their respective permitted successors and assigns shall not violate or infringe any applicable law, rule or regulation or the rights of any third party;
- iii. You have secured all third-party grants of rights, consents, licenses and permissions necessary, including without limitation mechanical licenses from copyright owners or proprietors, to grant all rights and licenses and otherwise fully perform all obligations hereunder, and shall make all payments and otherwise comply with all of your obligations under this Agreement;
- iv. Your Recordings and Materials do not and will not, and the authorized use thereof by Songflowr, Digital Stores and their Customers shall not, infringe any copyright, trademark or other intellectual property or other rights, including but not limited to, rights of publicity, privacy or moral rights, of any third party, or violate any applicable treaty, statute, law, order, rule or regulation;
- v. the files containing the Recordings and Materials that you upload or otherwise provide to us do not and will not contain any bugs, viruses, trojan horses or other defects or harmful elements or digital rights management restrictions;



- vi. all data, metadata, and information provided by you under or in connection with this Agreement is and will be true, accurate and complete, and you agree to update the same promptly as necessary during the Term;
- vii. You will make, and Songflowr will not be responsible for, any payments other than those specified in paragraph 10 above in connection with the Recordings and Materials;
- viii. You will use the Site and Service only in accordance with this Agreement and not for any fraudulent, infringing or inappropriate purposes;
- ix. any sale, assignment, transfer, mortgage or other grant of rights in or to your interest in any of the Recordings or Materials shall be subject to our rights hereunder and the terms and conditions hereof;
- x. there are not any actual or threatened claims, litigation, administrative proceedings regarding any Recordings or Materials that would prevent full exploitation of all rights and licenses granted hereunder;
- xi. there is not any existing agreement, and you will not enter into any agreement or perform any act, which materially interferes or is inconsistent with the rights granted to us hereunder;
- xii. You covenant and agree not make any claim or bring any legal action related to this Agreement, against any Digital Store or UGC Service so long as such entities are not in violation of the rights you have granted to Songflowr hereunder; and
- xiii. you have read and understand this Agreement and have had the opportunity to consult with independent legal counsel in connection with them.

You shall indemnify and hold harmless, and upon our request, defend, Songflowr and our affiliates, sublicensees (including your selected Digital Stores and their Customers), successors and assigns, and the respective directors, officers, shareholders, members, managers, employees, agents and representatives of the foregoing, from and against any and all claims, suits, proceedings, disputes, controversies, losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees and costs) resulting from:

- i. a breach or alleged breach of any of your warranties, representations, covenants or obligations under this Agreement;
- ii. any claim that the Recordings, Materials, data or information provided or authorized by You or on your behalf hereunder or the use thereof by Songflowr, a Digital Store, or an ID Service (if applicable) violates or infringes the rights of another party;
- iii. any other act or omission by you or any of your licensors, agents or representatives.

You will promptly reimburse Songflowr and any other indemnified parties on demand for any amounts subject to indemnification. We shall notify you of any such claim and shall control the defense thereof, though you may participate in such defense at your own expense. You may not settle any claim for which we may be liable without our prior written consent, which we will not withhold unreasonably. If any facts, claims, proceedings or other circumstances arise that would be subject to indemnification, then Songflowr, in addition to any other right or remedy, shall have the right to withhold from any payments otherwise due to you an amount reasonably related thereto until the claim, proceeding or circumstance has been finally resolved, settled or fully adjudicated and the judgment satisfied, or that the statute of limitations on such claim has run, or when you have provided reasonable and adequate security for the claim. Songflowr reserves the right to charge you (or deduct from monies payable to you) for any legal fees incurred by Songflowr as a result of your violation of this Agreement.

#### **14. No Warranty; Limitations of Liability**

THE SITE AND SERVICE ARE OFFERED AND PROVIDED TO YOU AS-IS. SONGFLOWR MAKES NO GUARANTEES, REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION AS TO THE AMOUNT OF INCOME THAT MAY BE EARNED BY OR PAYABLE TO YOU HEREUNDER, OR AS TO THE CONDITION, QUALITY, CONTINUITY OF OPERATION, PERFORMANCE, MERCHANTABILITY

OR FITNESS FOR A PARTICULAR PURPOSE OF OUR SITE OR SERVICE. WE DO NOT GUARANTEE THAT ACCESS TO OR USE OF THE SITE OR SERVICE WILL BE CONTINUOUS, UNINTERRUPTED, ERROR-FREE OR SECURE. ANY AND ALL WARRANTIES ARE EXPRESSLY DISCLAIMED AND EXCLUDED.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER SONGFLOWR NOR ANY OF ITS AFFILIATES, EMPLOYEES, OWNERS, EMPLOYEES, REPRESENTATIVES OR AGENTS WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, LOST SALES, LOSS OF DATA OR LOSS OF GOODWILL, FOR ANY ACTS OR OMISSIONS OF DIGITAL STORES OR THEIR CUSTOMERS, ID SERVICES, OR FOR YOUR USE OF OR ACCESS TO THE SITE OR SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT WE HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. IN NO EVENT WILL SONGFLOWR'S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE SUMS ACTUALLY DUE TO YOU IN ACCORDANCE WITH PARAGRAPH 10 ABOVE. THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE AGREEMENT BETWEEN SONGFLOWR AND YOU.

#### **15. Miscellaneous**

This Agreement, together with the Privacy Policy and Terms of Service, contains the parties' entire understanding and supersedes any prior or contemporaneous correspondence, agreements or understandings regarding the subject matter herein. We may amend the terms of this Agreement from time to time, in which case we will notify you by changing the date at the top of this Agreement (so please be sure to check back often) and/or via e-mail or by notice to your dashboard on the Site. You must terminate your account if you do not agree to the revised Agreement; your continued use of the Site or Service will be deemed your acceptance.

A party's waiver of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach of the same provision or any other provision of this Agreement. If any provision hereof is found invalid or unenforceable pursuant to judicial decree or decision, the remainder of this Agreement shall remain valid and enforceable according to its terms, such determination shall not affect any other provision hereof, and the unenforceable provision shall be limited solely as necessary or replaced by an enforceable provision that most closely meets the commercial intent of the parties.

Songflowr will not be liable for a curable breach of this Agreement unless you provide us with written notice specifying the alleged breach that we confirm receipt of, and we fail to cure such breach within ninety (90) days thereafter.

We may direct all notices and communications to you via the email address or street address associated with your account and/or via your dashboard account on the Site. All notices to Songflowr shall be sent to us at both [support@Songflowr.com](mailto:support@Songflowr.com) and [admin@Songflowr.com](mailto:admin@Songflowr.com). You may not assign, transfer or delegate any of your rights or obligations hereunder without our prior written consent, and any purported attempt otherwise will be null and void ab initio. We may assign, delegate, pledge, encumber, sublicense and otherwise transfer, this Agreement and/or any or all of our rights and obligations in order to operate the Service and Site. This Agreement will be binding on and inure to the benefit of the parties and their respective assigns and successors in interest.

The relationship between the parties is that of independent contractors. This Agreement shall not be deemed to create a partnership or joint venture, and neither party is the other's agent, partner, employee, or representative.

This Agreement shall be construed and enforced exclusively in accordance with the laws of the State of Florida, without regard to its conflict of laws principles. Any action or proceeding brought by either party against the other arising out of or related to this Agreement shall be brought only in a state or federal court of competent jurisdiction located in the State of Florida, and the parties irrevocably consent to the in personam jurisdiction and venue of said courts. You agree that service of process by us to you by one of the methods designated above for the giving of notices will be deemed effective as personal service within Florida, and hereby consent to service of process by such methods.