

## Terms & Conditions

Welcome to this website and related sites where this Terms of Service is posted (the “**Sites**”). This Terms of Service (this “**ToS**”) describes the terms and conditions applicable to your access and use of the Sites and the services provided through the Sites (collectively, the “**Service**”). This ToS sets forth the terms and conditions under which Songwhale LLC, a Pennsylvania company (“Songwhale,” “**we**,” or “**us**”), provides you access to the Sites and the Service.

Songwhale may amend this ToS at any time by posting the amended Terms of Service on the Sites and you agree that you will be bound by any changes to this ToS. Songwhale may make changes to the Sites and/or the Service at any time. You understand that Songwhale may discontinue or restrict your use of the Sites and/or Service for any reason or no reason with or without notice.

YOU REPRESENT THAT YOU ARE AN ADULT AND HAVE THE LEGAL CAPACITY TO ENTER A CONTRACT IN THE JURISDICTION WHERE YOU RESIDE.

YOUR USE OF THE SITES AND/OR THE SERVICE SIGNIFIES THAT YOU AGREE TO THIS TOS AND CONSTITUTES YOUR BINDING ACCEPTANCE OF THIS TOS, INCLUDING ANY MODIFICATIONS THAT SONGWHALE MAKES FROM TIME TO TIME.

THE TERMS TO WHICH YOU ARE CONSENTING CONTAIN A BINDING ARBITRATION PROVISION AND A CLASS-ACTION WAIVER. BY AGREEING TO PURCHASE THE PRODUCT (OR, IF APPLICABLE, BY KEEPING THE PRODUCT BEYOND THE STATED TRIAL PERIOD WITHOUT RETURNING IT) YOU FORFEIT CERTAIN LEGAL RIGHTS, INCLUDING THE RIGHT TO SUE IN COURT, THE RIGHT TO A JURY TRIAL, AND THE RIGHT TO BRING OR BE PART OF A CLASS-ACTION CASE.

1. **Privacy Policy**. By using the Sites or the Service, you represent that you have read our Privacy Policy. Songwhale may revise the Privacy Policy at any time, and the new versions will be available at the Privacy Policy link. If at any point you do not agree to any portion of the Privacy Policy, you must immediately stop using the Sites and/or Service.

2. **ToS Updates**. Songwhale will revise this ToS as the Sites and/or Service evolves. The next time you use the Service after such an update, you may be prompted to agree to or decline the revised ToS. You must agree to all revisions if you choose to continue using the Sites and/or Service. By using the Sites and/or Service, you agree to the then-current version of this ToS as posted on the Site. If at any point you do not agree to any portion of the then-current version of this ToS, you must immediately stop using the Sites and/or Service.

3. **Termination of Service**. Songwhale reserves the right to deny service to any user at Songwhale’s sole and absolute discretion. The Service is offered with the understanding that Songwhale may terminate the Service at any time, for any reason or no reason, including without limitation for any violation of the ToS. Songwhale may stop offering and/or supporting the Sites and/or Service at any time.

4. **Purchases, Replacements and Refunds**.

4.1. **Purchases**. You may purchase certain products through the Sites and/or Services provided you have given us valid credit card or other payment information. You acknowledge and agree that all information you provide with regards to a purchase, including, without limitation, credit card or other payment information, is accurate, current and complete. You represent and warrant that you have the legal right to use the payment method you provide to us or our payment processor, including, without limitation, any credit card you provide when completing a transaction. We reserve the right, with or without prior notice, to discontinue or limit the available quantity of any product or service, to honor, or impose conditions on the honoring of, any coupon, coupon code, promotional code or other similar

promotions; or to refuse to allow any user to purchase a product or service or deliver any product or service to a user. You agree to pay all fees and applicable taxes incurred by you or anyone using your payment information. Unless otherwise noted, all currency references are in U.S. dollars. All fees and charges are payable in accordance with payment terms in effect at the time the fee or the charge becomes payable. If you choose to purchase any products available on a recurring subscription basis, you acknowledge that payments will be processed automatically (e.g., debited from your account or charged to your credit card) until you cancel your subscription order. If there is a dispute regarding payment of fees to, or Service rendered by, Songwhale, you may be banned from making purchases from Songwhale in the future.

4.2. Changes to Products, Pricing and Services. Songwhale may, at any time, revise or change the pricing, availability, specifications, content, descriptions or features of any products or services offered or sold through the Sites and/or Service. The inclusion of any products or services on the Sites and/or Service at a particular time does not imply or warrant that these products or services will be available at all times. Songwhale may, from time to time, modify, amend, or supplement its fees and fee-billing methods, and such changes shall be effective immediately upon posting in these ToS or elsewhere on the Sites.

4.3. Shipment of Products. Title and risk of loss for any purchases pass to you upon our delivery to our carrier. We reserve the right to ship partial orders (at no additional cost to you), and the portion of any order that is partially shipped may be charged at the time of shipment. Unless as a result of events outside of our direct control, orders of products purchased by you through the Site and/or Service will be delivered within the time period specified for the delivery method you have selected.

4.4. Refunds. If for any reason you are dissatisfied with the product that you receive, we may provide you with a refund of the price of the product less shipping and handling, provided you return the product with a postmark no later than 30 days from the date of shipment of your purchase as noted on your shipment invoice. Return the product to the address as provided on the packing slip. Provided that you have complied with the foregoing, you are not otherwise in violation of these ToS and we have received the applicable product, we will provide a full refund of the purchase price, less any shipping costs already charged to you. Prior to returning any products to us, we may ask you to complete a return form that we would provide to you.

WE DO NOT ISSUE ANY REFUNDS THAT ARE REQUESTED AFTER THE DATES SET FORTH IN THIS SECTION 4.4.

## **5. Restrictions and Conditions of Use.**

5.1. Use of Sites and Service. Songwhale permits you to view and use a single copy of the Sites for your personal, non-commercial use. You agree not to license, create derivative works from, transfer, sell or re-sell any information, content, or services obtained from the Sites and/or Service.

5.2. No Violation of Laws. You agree that you will not, in connection with your use of the Sites or the Service or your purchase of any products or services through any of the foregoing, violate any applicable law, rule or regulation. Without limiting the foregoing, you agree that you will not make available through the Sites and/or Service any material or information that infringes any copyright, trademark, patent, trade secret, or other right of any party (including rights of privacy or publicity).

5.3. Misuse of Sites and/or Service. You may not connect to or use the Sites and/or Service in any way not expressly permitted by this ToS. Without limiting the foregoing, you agree that you will not (a) institute, assist, or become involved in any type of attack, including without limitation denial of service attacks, upon the Sites and/or Service or otherwise attempt to disrupt the Sites and/or Service or any other person's use of the Sites and/or Service; or (b) attempt to gain unauthorized access to the Sites, Service, Accounts registered to other users, or the computer systems or networks connected to the Sites and/or Service. Furthermore, you may not use the Sites or Service to develop, generate, transmit, publish, display or store any information or content that: (i) is defamatory, harmful, abusive, obscene or hateful; (ii) in any way obstructs or otherwise interferes with the normal performance of another person's use of the Sites and/or Service, (iii) performs any unsolicited commercial communication not permitted by applicable law; (iv) constitutes harassment or a violation of privacy or threatens other people or groups of people; (v) is harmful to children in any manner; or (vi) constitutes phishing, pharming or impersonates any other person, or

steals or assumes any person's identity (whether a real identity or online nickname or alias).

5.4. **No Commercial Uses.** You agree that you will not use the Sites or the Service for any commercial purpose or the benefit of any third party or charge any person, or receive any compensation for, the use of the Sites or Service.

5.5. **No Data Mining or Harmful Code.** You agree that you will not (i) obtain or attempt to obtain any information from the Service, including without limitation information about other users, using any method not expressly permitted by Songwhale; (ii) intercept, examine or otherwise observe any proprietary communications protocol used by the Service, whether through the use of a network analyzer, packet sniffer or other device; (iii) use any type of bot, spider, virus, clock, timer, counter, worm, software lock, drop dead device, Trojan-horse routing, trap door, time bomb or any other codes, instructions or third-party software that is designed to provide a means of surreptitious or unauthorized access to, or distort, delete, damage or disassemble the Sites or the Service.

6. **Ownership.** As between you and Songwhale and/or its licensors, Songwhale and/or its licensors own the Sites and the Service. You agree that you will not create any work of authorship or create any derivative works based on the Sites or the Service. Any reproduction or redistribution of the Sites or use of the Service not in accordance with this ToS is expressly prohibited by law, and may result in severe civil and criminal penalties.

#### 7. **Links.**

7.1. **Links from the Sites.** The Sites may contain links to websites operated by other parties. Songwhale provides these links to other websites as a convenience, and use of these sites is at your own risk. The linked sites are not under the control of Songwhale, and Songwhale is not responsible for the content available on the other sites. Such links do not imply Songwhale's endorsement of information or material on any other site and Songwhale disclaims all liability with regard to your access to and use of such linked websites.

7.2. **Links to the Sites.** Unless otherwise set forth in a written agreement between you and Songwhale, you must adhere to Songwhale's linking policy as follows: (i) the appearance, position and other aspects of the link may not be such as to damage or dilute the goodwill associated with Songwhale's and/or its licensors' names and trademarks, (ii) the appearance, position and other attributes of the link may not create the false appearance that your organization or entity is sponsored by, affiliated with, or associated with Songwhale, (iii) when selected by a user, the link must display the Sites on full-screen and not within a "frame" on the linking Sites, and (iv) Songwhale reserves the right to revoke its consent to the link at any time and in its sole discretion.

#### 8. **Intellectual Property.**

8.1. **Trademarks.** Songwhale and the Songwhale logo are trademarks/service marks of Songwhale. Unauthorized use of any Songwhale trademark, service mark or logo may be a violation of federal and state trademark laws.

8.2. **Copyright.** The Sites are protected by U.S. and international copyright laws. Except for your use as authorized above, you may not modify, reproduce or distribute the content, design or layout of the Sites or individual sections of the content, design or layout of the Sites without Songwhale's express prior written permission.

#### 9. **Location.**

The Sites and the Service are operated by Songwhale in the United States. Those who choose to access the Sites, and/or the Service from locations outside the United States do so on their own initiative and are responsible for compliance with applicable local laws.

#### 10. **Children.**

The Sites and the Service are not directed toward children less than 13 years of age nor does Songwhale knowingly collect information from children under 13. If you are under 13, please do not submit any personally identifiable information to Songwhale.

#### 11. **DISCLAIMER OF WARRANTIES**

THE SITES AND SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS FOR YOUR USE, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND THOSE ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. SONGWHALE MAKES NO WARRANTY AS TO THE ACCURACY, COMPLETENESS OR RELIABILITY OF ANY CONTENT AVAILABLE THROUGH THE SITES AND/OR SERVICE OR THAT RESULTS YOU EXPERIENCE FROM

THE PRODUCTS SOLD THROUGH THE SITES OR SERVICE WILL BE THE SAME AS THOSE DESCRIBED ON THE SITES. YOU ARE RESPONSIBLE FOR VERIFYING ANY INFORMATION BEFORE RELYING ON IT. USE OF THE SITES, THE SERVICE AND/OR THE CONTENT AVAILABLE ON THE SITES AND/OR SERVICE IS AT YOUR SOLE RISK. SONGWHALE DOES NOT WARRANT THAT YOU WILL BE ABLE TO ACCESS OR USE THE SITES AND/OR SERVICE AT THE TIMES OR LOCATIONS OF YOUR CHOOSING; THAT THE SITES, OR THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE; THAT DEFECTS WILL BE CORRECTED; OR THAT THE SITES OR THE SERVICE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

Because some states or jurisdictions do not allow the disclaimer of implied warranties, the foregoing disclaimer may not apply to you.

**12. LIMITATION OF LIABILITY; SOLE AND EXCLUSIVE REMEDY.**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, SONGWHALE, ITS AFFILIATES, LICENSORS AND BUSINESS PARTNERS (COLLECTIVELY, THE "RELATED PARTIES") DISCLAIM ALL LIABILITY, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND FURTHER DISCLAIMS ALL LOSSES, INCLUDING WITHOUT LIMITATION DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH ACCESS TO OR USE OF THE SITES, SERVICE AND/OR PRODUCTS SOLD THROUGH THE SITES OR SERVICE, EVEN IF SONGWHALE AND/OR RELATED PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, IN NO CASE SHALL THE LIABILITY OF SONGWHALE OR ANY OF THE RELATED PARTIES EXCEED THE AMOUNT THAT YOU PAID TO US OR OUR DESIGNEES DURING THE SIX (6) MONTHS PRIOR TO THE TIME YOUR CAUSE OF ACTION AROSE.

Because some states or jurisdictions do not allow the exclusion or the limitation of liability for consequential or incidental damages, in such states or jurisdictions, the liability of Songwhale and its affiliates shall be limited to the fullest extent permitted by law.

13. **Indemnification.** You agree to indemnify, defend and hold Songwhale and the Related Parties harmless from any claim, demand, damages or other losses, including reasonable attorneys' fees, asserted by any third-party resulting from or arising out of any breach by you of this ToS or any other policies that Songwhale may issue for the Sites and/or Service from time to time.

**14. Dispute Resolution and Governing Law.**

14.1. **Negotiations.** Before initiating any arbitration or court proceeding, you and Songwhale agree to first attempt to negotiate any dispute, controversy or claim related to these ToS ("**Claim**") (except those Claims expressly provided in Section 14.6 below) informally for at least thirty (30) days. Negotiations will begin upon written notice. Songwhale will send its notice to your billing address and email you a copy to the email address you have provided to us. You will send your notice to 100 43rd Street, Suite 115, Pittsburgh, PA 15201.

14.2. **Binding Arbitration.** If the parties fail to resolve a Claim through negotiations, within such thirty (30) day period, either you or Songwhale may elect to have the Claim (except as otherwise provided in Section 14.6) finally and exclusively resolved by binding arbitration by sending a written notice requesting arbitration to the other party. Any election to arbitrate by one party shall be final and binding on the other. The arbitration will be conducted through the services of the American Arbitration Association, hereinafter referred to as the "AAA." Notice of demand for an arbitration hearing shall be in writing and properly served upon the parties to this Agreement and under the terms set forth in this ToS. In the event of a conflict between the terms set forth in this Section 14.2 and the AAA, the terms in this Section 14.2 will control and prevail. Except as otherwise set forth in Section 14.6, you may seek any remedies available to you under federal, state or local laws in an arbitration action. As part of the arbitration, both you and we will have the opportunity for discovery of non-privileged information that is relevant to the Claim. The arbitrator will provide a written statement of the arbitrator's decision regarding the Claim, the award given and the arbitrator's findings and conclusions on which the arbitrator's decision is based. The determination of whether a Claim is subject to arbitration shall be governed by the Federal Arbitration Act and determined by a court rather than an arbitrator. Except as otherwise provided in this ToS, (i) you and Songwhale may litigate in court to compel arbitration, stay proceedings pending arbitration, or confirm, modify, vacate or enter judgment on the award entered by the arbitrator;

and (ii) the arbitrator's decision is final, binding on all parties and enforceable in any court that has jurisdiction, provided that any award may be challenged if the arbitrator fails to follow applicable law.

BY AGREEING TO THIS ARBITRATION PROVISION, YOU UNDERSTAND THAT YOU AND SONGWHALE ARE WAIVING THE RIGHT TO SUE IN COURT AND HAVE A JURY TRIAL.

14.3. Arbitration Fees. Each party shall bear the burden of its own counsel fees incurred in connection with any arbitration proceedings.

14.4. Location. The arbitration will be conducted in Allegheny County, Pennsylvania, unless the parties agree to video, phone and/or internet connection appearances. Any Claim not subject to arbitration (other than claims proceeding in any small claims court), or where no election to arbitrate has been made, shall be decided exclusively by a court of competent jurisdiction in Allegheny County, Pennsylvania, United States of America, and you and Songwhale agree to submit to the personal jurisdiction of that court.

14.5. Limitations. You and Songwhale agree that any arbitration shall be limited to the Claim between Songwhale and you individually. YOU AND SONGWHALE AGREE THAT (A) THERE IS NO RIGHT OR AUTHORITY FOR ANY DISPUTE TO BE ARBITRATED ON A CLASS-ACTION BASIS OR TO UTILIZE CLASS ACTION PROCEDURES; (B) THERE IS NO RIGHT OR AUTHORITY FOR ANY DISPUTE TO BE BROUGHT IN A PURPORTED REPRESENTATIVE CAPACITY OR AS A PRIVATE ATTORNEY GENERAL; AND (C) NO ARBITRATION SHALL BE JOINED WITH ANY OTHER.

14.6. Exceptions to Negotiations and Arbitration. You and Songwhale agree that the following Claims are not subject to the above provisions concerning negotiations and binding arbitration: (i) any Claims seeking to enforce or protect, or concerning the validity of, any of your or Songwhale's intellectual property rights; (ii) any Claim related to, or arising from, allegations of theft, piracy, invasion of privacy or unauthorized use; and (iii) any claim for equitable relief. In addition to the foregoing, either party may assert an individual action in small claims court for Claims that are within the scope of such courts' jurisdiction in lieu of arbitration.

14.7. Governing Law. Except as otherwise provided in this ToS, this ToS shall be is governed by, and will be construed under, the laws of the United States of America and the law of the State of Pennsylvania, without regard to choice of law principles. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

14.8. Severability. You and Songwhale agree that if any portion this Section 14 is found illegal or unenforceable (except any portion of Section 14.6), that portion shall be severed and the remainder of the Section shall be given full force and effect. If Section 14.6 is found to be illegal or unenforceable then neither you nor Songwhale will elect to arbitrate any Claim falling within that portion of Section 14.6 found to be illegal or unenforceable and such Claim shall be exclusively decided by a court of competent jurisdiction within Pittsburgh, State of Pennsylvania, United States of America, and you and Songwhale agree to submit to the personal jurisdiction of that court.

## 15. General

15.1. ToS Revisions. This ToS may only be revised in a writing signed by Songwhale, or published by Songwhale on the Sites.

15.2. No Partnership. You agree that no joint venture, partnership, employment, or agency relationship exists between you and Songwhale as a result of this ToS or your use of the Service.

15.3. Assignment. Songwhale may assign this ToS, in whole or in part, to any person or entity at any time with or without your consent. You may not assign the ToS without Songwhale's prior written consent, and any unauthorized assignment by you shall be null and void.

15.4. Severability. If any part of this ToS is determined to be invalid or unenforceable, then that portion shall be severed, and the remainder of the ToS shall be given full force and effect.

15.5. Attorneys' Fees. In the event any litigation is brought by either party in connection with this ToS, the prevailing party in such litigation shall be entitled to recover from the other party all the reasonable costs, attorneys' fees and other expenses incurred by such prevailing party in the litigation.

15.6. No Waiver. Our failure to enforce any provision of this ToS shall in no way be construed to be a present or future waiver of such provision, nor in any way affect the right of any party to enforce each and every such

provision thereafter. The express waiver by us of any provision, condition or requirement of this ToS shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement.

15.7. Notices. All notices given by you or required under this ToS shall be in writing and addressed to: Songwhale, 100 43rd Street, Suite 115, Pittsburgh, PA 15201.

15.8. Equitable Remedies. You hereby agree that Songwhale would be irreparably damaged if the terms of this ToS were not specifically enforced, and therefore you agree that we shall be entitled, without bond, other security, or proof of damages, to appropriate equitable remedies with respect to breaches of this ToS, in addition to such other remedies as we may otherwise have available to us under applicable laws.

15.9. Entire Agreement. This ToS, including the documents expressly incorporated by reference, constitutes the entire agreement between you and us with respect to the Sites and/or Service and supersedes all prior or contemporaneous communications, whether electronic, oral or written, between you and us with respect to the Sites and/or Service.