

Soundwhale License Agreement

This Soundwhale License Agreement (this “Agreement”) is a binding contract between you (“Customer,” “you,” or “your”) and Mothlab, LLC (“Provider,” “we,” or “us”). This Agreement governs your access to and use of the Soundwhale Service. THIS AGREEMENT TAKES EFFECT WHEN YOU CLICK THE [“AGREE”] BUTTON IN THE SOFTWARE INSTALLER OR DOWNLOAD LINK ON THIS WEBSITE OR ACCESSING OR USING THE SOUNDWHALE SERVICE (such date the “Effective Date”). BY CLICKING ON THE [“AGREE”] BUTTON IN THE SOFTWARE INSTALLER OR DOWNLOAD LINK ON THIS WEBSITE OR ACCESSING OR USING THE SOUNDWHALE SERVICE YOU (A) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT; (B) REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT AND, IF ENTERING INTO THIS AGREEMENT FOR AN ORGANIZATION, THAT YOU HAVE THE LEGAL AUTHORITY TO BIND THAT ORGANIZATION; AND (C) ACCEPT THIS AGREEMENT AND AGREE THAT YOU ARE LEGALLY BOUND BY ITS TERMS.

IF YOU DO NOT AGREE TO THESE TERMS, PLEASE SELECT THE [“DISAGREE”] BUTTON IN THE SOFTWARE INSTALLER OR DOWNLOAD LINK ON THIS WEBSITE. IF YOU DO NOT ACCEPT THESE TERMS, YOU MAY NOT ACCESS OR USE THE SOUNDWHALE SERVICE.

1. Definitions.

- (a) **“Aggregated Statistics”** has the meaning set forth in Section 2(e).
- (b) **“Authorized User”** means Customer and Customer’s employees, consultants, contractors, and agents (i) who are authorized by Customer to access and use the Soundwhale Service under the rights granted to Customer pursuant to this Agreement and (ii) for whom access to the Soundwhale Service has been purchased hereunder.
- (c) **“Customer Data”** means, other than Aggregated Statistics, communications, materials, information, data, opinions, photos, profiles, messages, notes, website links, text information, music, videos, designs, graphics, sound information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer or any other Authorized User through the Soundwhale Service, except components or derivative works of the Soundwhale Service, the Soundwhale Software, and the Documentation.
- (d) **“Documentation”** means Provider’s user manuals, handbooks, and guides relating to the Soundwhale Service provided by Provider to Customer either electronically or in hard copy form/end user documentation relating to the Soundwhale Service available at soundwhale.com/manual.pdf.
- (e) **“Provider IP”** means the Soundwhale Service, the Soundwhale Software, the Documentation, and all intellectual property provided to Customer or any other Authorized User in connection with the foregoing. For the avoidance of doubt, Provider IP includes Aggregated Statistics and any information, data, or other content derived from Provider’s monitoring of Customer’s access to or use of the Soundwhale Service, but does not include Customer Data.
- (f) **“Soundwhale Service”** means the services and software provided by Provider under this Agreement that are detailed on Provider’s website available at www.Soundwhale.com.
- (g) **“Third-Party Products”** means any products, content, services, information, websites, or other materials that are owned by third parties and are incorporated into or accessible through the Soundwhale Service, including, without limitation the open source software listed at www.soundwhale.com/opensource.

2. Access and Use.

(a) **Provision of Access.** Subject to and conditioned on your payment of Fees and compliance with all other terms and conditions of this Agreement, Provider hereby grants you a revocable, non-exclusive, non-transferable, non-sublicensable, limited right for your Authorized Users to access and use the Soundwhale Service during the Term solely for your personal use or for your internal business operations in accordance with the terms and conditions herein. Provider shall provide you the necessary passwords and access credentials to allow you to access the Soundwhale Service.

(b) **Documentation License.** Subject to the terms and conditions contained in this Agreement, Provider hereby grants you a non-exclusive, non-sublicensable, non-transferable license for Authorized Users to use the Documentation during the Term solely for your personal use or for your internal business purposes in connection with use of the Soundwhale Service.

(c) **Downloadable Software.** Use of the Soundwhale Service includes use of downloadable software. Provider grants you a non-transferable, non-exclusive, non-assignable, limited right for Authorized Users to use downloadable software we provide as part of the Soundwhale Service. Any Third-Party Products that consist of downloadable software are subject to the terms of Section 3(e).

(d) **Use Restrictions.** You shall not, and shall not permit any Authorized Users to, use the Soundwhale Service, any software component of the Soundwhale Service, or Documentation for any purposes beyond the scope of the access granted in this Agreement. You shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of the Soundwhale Service, any software component of the Soundwhale Service, or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Soundwhale Service or Documentation except as expressly permitted under this Agreement; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Soundwhale Service, in whole or in part; (iv) remove any proprietary notices from the Soundwhale Service or Documentation; or (v) use the Soundwhale Service or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law, regulation, or rule. Notwithstanding the foregoing, you may reverse engineer the Soundwhale Service solely to the extent necessary to debug modifications you have made to software components used with the Soundwhale Service and licensed under the LGPL license as identified at www.soundwhale.com/opensource. To the extent that you do reverse engineer the Soundwhale Service as permitted by the foregoing sentence, you agree that the results of any permitted reverse engineering comprise the Confidential Information of Provider and may not be disclosed or used for any reason other than the debugging of your permitted modification of the foregoing files.

(e) **Aggregated Statistics.** Notwithstanding anything to the contrary in this Agreement, Provider may monitor Customer's use of the Soundwhale Service and collect and compile data and information related to Customer's use of the Soundwhale Service to be used by Provider in an aggregated and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Soundwhale Service ("Aggregated Statistics"). As between Provider and you, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Provider. You acknowledge that Provider may compile Aggregated Statistics based on Customer Data input into the Soundwhale Service. You agree that Provider may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law; provided that such Aggregated Statistics do not identify Customer or Customer's Confidential Information.

(f) **Reservation of Rights.** Provider reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Provider IP.

(g) **Suspension.** Notwithstanding anything to the contrary in this Agreement, Provider may temporarily suspend Customer's and any other Authorized User's access to any portion or all of the Soundwhale Service if: (i) Provider reasonably determines that (A) there is a threat or attack on any of the Provider IP; (B) Customer's or any other Authorized User's use of the Provider IP disrupts or poses a security risk to the Provider IP or to any other customer or vendor of Provider; (C) Customer or any other Authorized User is using the Provider IP for fraudulent or illegal activities; (D) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) Provider's provision of the Soundwhale Service to Customer or any other Authorized User is prohibited by applicable law; (ii) any vendor of Provider has suspended or terminated Provider's access to or use of any third-party services or products required to enable Customer to access the Soundwhale Service; or (iii) in accordance with Section 5 (any such suspension described in subclause (i), (ii), or (iii), a "Service Suspension"). Provider shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Soundwhale Service following any Service Suspension. Provider shall use commercially reasonable efforts to resume providing access to the Soundwhale Service as soon as reasonably possible after the event giving rise to the Soundwhale Service Suspension is cured. Provider will have no liability for any damage, liabilities, losses (including any loss of or profits), or any other consequences that Customer or any other Authorized User may incur as a result of a Service Suspension.

3. Customer Responsibilities.

(a) **Acceptable Use Policy.** The Soundwhale Service may not be used for unlawful, fraudulent, offensive, or obscene activity, as further described and set forth in Provider's acceptable use policy ("AUP") located at <https://soundwhale.com/terms.html> as may be amended from time to time, which is incorporated herein by reference. You are solely responsible for your use of the Soundwhale Service. You shall use the Soundwhale Service only in compliance with applicable local, state, federal, and international laws. You agree that you will not use the Soundwhale Service to: (a) engage in any communications that are unlawful, harassing, defamatory, offensive, libelous, abusive, threatening, harmful, vulgar, obscene, or otherwise objectionable, (b) encourage or engage in any criminal conduct, conduct that could give rise to civil liability, or otherwise violate any applicable local, state, national or international law or regulation, (c) gain or attempt to gain unauthorized access to other computer systems, or (d) interfere with any other person's use and enjoyment of the Soundwhale Service. You will comply with all terms and conditions of this Agreement, all applicable laws, rules, and regulations, and all guidelines, standards, and requirements that may be posted on <https://soundwhale.com/terms.html> from time to time, including the AUP.

(b) **Account Use.** You are responsible and liable for all uses of the Soundwhale Service and Documentation resulting from access provided by you, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, you are responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by you will be deemed a breach of this Agreement by you. You shall use reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Soundwhale Service, and shall cause Authorized Users to comply with such provisions.



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(c) **Customer Data.** The Soundwhale Service allows you to post, link, and store, share and otherwise make available certain information defined above as Customer Data. You hereby grant to Provider a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Provider to provide the Soundwhale Service to Customer. You will ensure that Customer Data and any Authorized User's use of Customer Data will not violate any policy or terms referenced in or incorporated into this Agreement or any applicable law. You are solely responsible for the development, content, operation, maintenance, and use of Customer Data. Provider does not prescreen Customer Data. Provider does not guarantee the Soundwhale Service will be free from Customer Data that is inaccurate, deceptive, offensive, threatening, defamatory, unlawful or otherwise objectionable. By posting Customer Data on or through the Service, You represent and warrant that: (i) the Customer Data is yours (you own it) and/or you have the right to use it and the right to grant us the rights and license as provided in these Terms, and (ii) that the posting of your Customer Data on or through the Service does not violate the privacy rights, publicity rights, copyrights, contract rights or any other rights of any person or entity. We reserve the right to terminate the account of anyone found to be infringing on a copyright or other intellectual property rights. Additionally, Provider is not responsible or liable for any synchronization of Customer Data or other Customer Data posted on the Soundwhale Service or create by our users. We take no responsibility and assume no liability for Customer Data you or any third party posts on or through the Service. Provider, is merely acting as a passive channel for such distribution and is not undertaking any obligation or liability relating to any Customer Data or activities of users on the Soundwhale Service. Even in the event Provider chooses to monitor any Customer Data, Provider assumes no responsibility for, or any obligation to monitor or remove, such Customer Data. Provider reserves the right to edit, remove, or refuse to post any Customer Data or terminate your registered account for any reason. Provider has the right but not the obligation to monitor and edit all Customer Data provided by users. You understand and agree that you download or otherwise obtain content or use our Site(s) at your own risk, and that you will be solely responsible for your use and any damage to your mobile device, computer system or other device with which you access our Site(s), loss of data or other harm of any kind that may result. Provider reserves the right to change any and all Customer Data and other items used or contained on our Site(s) at any time without notice.

(d) **Passwords and Access Credentials.** You are responsible for keeping your passwords and access credentials associated with the Soundwhale Service confidential. You will not sell or transfer them to any other person or entity. You will promptly notify us about any unauthorized access to your passwords or access credentials.

(e) **Third-Party Products.** The Services may permit access to or require the use of Third-Party Products. For purposes of this Agreement, such Third-Party Products are subject to their own terms and conditions presented to you for acceptance within the Soundwhale Service by website link, listed at www.soundwhale.com/opensource, or otherwise. If you do not agree to abide by the applicable terms for any such Third-Party Products, then you should not install, access, or use such Third-Party Products.

4. Fees and Payment.

Customer shall pay Provider the fees as described on www.soundwhale.com for the plan for which Customer has subscribed ("Fees") on a monthly or yearly basis through automatic deduction or charge against a payment or card which Customer has provided to Provider for this purpose. Customer shall notify Provider if Customer's payment card information changes, at least five (5) days before the next applicable payment is due. If Customer fails to make any payment when due, without limiting Provider's other rights and remedies: (i) Provider may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law; (ii) Customer shall reimburse Provider for all costs incurred by Provider in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and (iii) if Customer has not paid any amount when due, Provider may suspend, in accordance with Section 2(g), Customer's and all other Authorized Users' access to any portion or all of the Soundwhale Service until such amounts are paid in full. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Provider's income.

5. Confidential Information.

From time to time during the Term, Provider and Customer may disclose or make available to the other party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media/in written or electronic form or media, that is/and whether or not marked, designated, or otherwise identified as “confidential” at the time of disclosure (collectively, “Confidential Information”). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving party; (c) rightfully obtained by the receiving party on a non-confidential basis from a third party; or (d) independently developed by the receiving party without access to or use of the Confidential Information of the disclosing party. The receiving party shall not disclose the disclosing party’s Confidential Information to any person or entity, except to the receiving party’s employees, agents, or subcontractors who have a need to know the Confidential Information for the receiving party to exercise its rights or perform its obligations hereunder and who are required to protect the Confidential Information in a manner no less stringent than required under this Agreement. Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent required (i) to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the party making the disclosure pursuant to the order shall first have given written notice to the other party and made a reasonable effort to obtain a protective order; or (ii) to establish a party’s rights under this Agreement, including to make required court filings. Each party’s obligations of non-disclosure with regard to Confidential Information are effective as of the date such Confidential Information is first disclosed to the receiving party and will expire five years thereafter; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

6. Privacy Policy.

Provider complies with its privacy policy available at [URL] (“Privacy Policy”), in providing the Soundwhale Service. The Privacy Policy is subject to change as described therein. By accessing, using, and providing information to or through the Soundwhale Service, you acknowledge that you have reviewed and accepted our Privacy Policy, and you consent to all actions taken by us with respect to your information in compliance with the then-current version of our Privacy Policy.

7. Intellectual Property Ownership; Feedback.

As between you and us, (a) we own all right, title, and interest, including all intellectual property rights, in and to the Soundwhale Service and any derivative work, modification, enhancement or update thereto and (b) you own all right, title, and interest, including all intellectual property rights, in and to Customer Data. If you or any of your employees, contractors, and agents sends or transmits any communications or materials to us by mail, email, telephone, or otherwise, suggesting or recommending changes to the Soundwhale Service, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like (“Feedback”), all such Feedback is and will be treated as non-confidential. You hereby assign to us on your behalf, and shall cause your employees, contractors, and agents to assign, all right, title, and interest in, and we are free to use, without any attribution or compensation to you or any third party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although we are not required to use any Feedback.

8. Limited Warranty and Warranty Disclaimer.

(a) Provider warrants that it provides Soundwhale using a commercially reasonable level of care and skill. THE FOREGOING WARRANTY DOES NOT APPLY, AND PROVIDER STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY PRODUCTS.

(b) **Customer Warranty.** You warrant that you own all right, title, and interest, including all intellectual property rights, in and to Customer Data and that both the Customer Data and your use of the Soundwhale Service are in compliance with the AUP.

(c) EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 9(a), THE SOUNDWHALE SERVICE ARE PROVIDED “AS IS” AND PROVIDER SPECIFICALLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE SOUNDWHALE SERVICE, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET YOUR OR ANY OTHER PERSON’S OR ENTITY’S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY OF YOUR OR ANY THIRD PARTY’S SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR-FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

9. Indemnification.

(a) Provider Indemnification.

(i) Provider shall indemnify, defend, and hold harmless Customer from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys’ fees (“Losses”), incurred by Customer resulting from any third-party claim, suit, action, or proceeding (“Third-Party Claim”) that the Soundwhale Service, or any use of the Soundwhale Service in accordance with this Agreement, infringes or misappropriates such third party’s copyrights, or trade secrets, provided that Customer promptly notifies Provider in writing of the Third-Party Claim, cooperates with Provider, and allows Provider sole authority to control the defense and settlement of such Third-Party Claim.

(ii) If such a Third-Party Claim is made or Provider anticipates such a Third-Party Claim will be made, Customer agrees to permit Provider, at Provider’s sole discretion, to (A) modify or replace the Soundwhale Service, or component or part thereof, to make it non-infringing, or (B) obtain the right for Customer to continue use. If Provider determines that neither alternative is reasonably available, Provider may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer. This Section 10(a)(ii) sets forth your sole remedies and our sole liability and obligation for any actual, threatened, or alleged Third-Party Claims that the Soundwhale Service infringe, misappropriate, or otherwise violate any intellectual property rights of any third party.

(iii) This Section 10(a) will not apply to the extent that any such Third-Party Claim arises from Customer Data or Third-Party Products.

(b) **Customer Indemnification.** Customer shall indemnify, hold harmless, and, at Provider’s option, defend Provider and its officers, directors, employees, agents, affiliates, successors, and assigns from and against any and all Losses arising from or relating to any Third-Party Claim (i) that the Customer Data, or any use of the Customer Data in accordance with this Agreement, infringes or misappropriates such third party’s intellectual property rights; or (ii) based on Customer’s or any Authorized User’s negligence or willful misconduct or use of the Soundwhale Service in a manner not authorized by this Agreement; provided that Customer may not settle any Third-Party Claim against Provider unless Provider consents to such settlement, and further provided that Provider will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

10. Limitations of Liability.

IN NO EVENT WILL PROVIDER BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER PROVIDER WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE EXCEED THE TOTAL AMOUNTS PAID TO PROVIDER UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. The exclusions and limitations in this Section 11 do not apply to the parties' obligations under Section 10.

11. Term and Termination.

(a) **Term.** The term of this Agreement begins on the date Provider notifies Customer it can access the Soundwhale Service and continues until terminated. Customers that are specified to automatically renew will renew for up to the number of additional successive one year term[s] that were set forth at the time of your subscription, unless earlier terminated pursuant to this Agreement's express provisions or either party gives the other party written notice of non-renewal at least [NUMBER] days prior to the expiration of the then-current services period.

(b) **Termination.** In addition to any other express termination right set forth in this Agreement:

(i) Provider may terminate this Agreement, for any reason upon thirty (30) days' advance notice. You may terminate this Agreement for any reason upon thirty (30) days' advance notice.

(ii) either party may terminate this Agreement, effective on written notice to the other party, if the other party [materially] breaches this Agreement, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach; or

(iii) either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

(c) **Effect of Termination.** Upon termination of this Agreement, Customer shall immediately discontinue use of the Provider IP. No termination of this Agreement will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination, or entitle Customer to any refund (11d).

(d) Refunds. Certain refund requests for Subscriptions may be considered by Provider on a case-by-case basis and granted in sole discretion of Provider.

(e) **Survival.** This Section 12(d), Sections 5, 10, 11, and any right, obligation, or required performance of the parties in this Agreement which, by its express terms or nature and context is intended to survive termination or expiration of this Agreement, will survive any such termination or expiration.



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12. Modifications.

You acknowledge and agree that we have the right, in our sole discretion, to modify this Agreement from time to time, and that modified terms become effective on posting. You will be notified of modifications through notifications or posts on www.soundwhale.com [alternative: direct email communication from us]. You are responsible for reviewing and becoming familiar with any such modifications. Your continued use of the Soundwhale Service after the effective date of the modifications will be deemed acceptance of the modified terms. Provider will provide at least 30 days' advance notice of changes to any service level that Provider reasonably anticipates may result in a material reduction in quality or services.

13. Export Regulation.

The Soundwhale Service utilize software and technology that may be subject to US export control laws, including the US Export Administration Act and its associated regulations. You shall not, directly or indirectly, export, re-export, or release the Soundwhale Service or the software or technology included in the Soundwhale Service to, or make the Soundwhale Service or the software or technology included in the Soundwhale Service accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, regulation, or rule. You shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Soundwhale Service or the software or technology included in the Soundwhale Service available outside the US.

14. US Government Rights.

Each of the software components that constitute the Soundwhale Service and the Documentation is a “commercial item” as that term is defined at 48 C.F.R. § 2.101, consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. § 12.212. Accordingly, if you are an agency of the US Government or any contractor therefor, you receive only those rights with respect to the Soundwhale Service and Documentation as are granted to all other end users, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other US Government customers and their contractors.

15. Governing Law and Jurisdiction.

This agreement is governed by and construed in accordance with the internal laws of the Commonwealth of Massachusetts without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the Commonwealth of Massachusetts. Any legal suit, action, or proceeding arising out of or related to this agreement or the rights granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the Commonwealth of Massachusetts in each case located in the city of Boston and County of Suffolk, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

16. Miscellaneous.

This Agreement constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. Any notices to us must be sent to our corporate headquarters address available by contacting us at soundwhale.com and must be delivered either in person, by certified or registered mail, return receipt requested and postage prepaid, or by recognized overnight courier service, and are deemed given upon receipt by us. Notwithstanding the foregoing, you hereby consent to receiving electronic communications from us. These electronic communications may include notices about applicable fees and charges, transactional information, and other information concerning or related to the Soundwhale Service. You agree that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that such communications be in writing. The invalidity, illegality, or unenforceability of any provision herein does not affect any other provision herein or the validity, legality, or enforceability of such provision in any other jurisdiction. Any failure to act by us with respect to a breach of this Agreement by you or others does not constitute a waiver and will not limit our rights with respect to such breach or any subsequent breaches. This Agreement is personal to you and may not be assigned or transferred for any reason whatsoever without our prior written consent and any action or conduct in violation of the foregoing will be void and without effect. We expressly reserve the right to assign this Agreement and to delegate any of its obligations hereunder.