

# TERMS AND CONDITIONS OF USE

## 1 THE AGREEMENT AND OUR SERVICES

1.1 These terms and conditions (last updated on 09.11.2018) (“**Terms**”) and all the documents expressly referred to in them (the “**Agreement**”) are the terms and conditions of the agreement which you enter into with us when you use the **Soundmix** App, including but not limited to any software, updated and upgrades, user manuals, other electronic materials and any copies of such software and materials (the “**App**”).

1.2 Please read these Terms, together with all the documents referred to in it carefully before you access, install, start to use the App. By accessing, downloading and/or using the App, you indicate that you have read, understand and accept the terms and conditions of this Agreement and that you agree to abide by them each time you access and use the App. If you do not agree to this Agreement, please refrain from accessing, downloading and/or using the App. This Agreement applies to each user of the App (each a “**User**”, “**you**”, “**your**”).

## 2 INFORMATION ABOUT US

The App is operated by Soundmix Ltd (“**we**”, “**us**” and “**our**”), a company incorporated in Ireland under company number 633423 with registered office at 22 Northumberland Road, Ballsbridge, Dublin 4, Ireland.

## 3 YOUR ACCOUNT

3.1 You may only hold one account on the App. You may not sublicense, rent, lease, sell, trade, gift or otherwise transfer your account or use an account obtained in any of these ways.

3.2 Access to the App may also be permitted via third parties’ applications/websites which may imply that in order to access the App, you must be have a valid account on third parties’ Websites/Applications through which you will connect to the App. Creating an account with any third parties is regulated by the Terms of Services and Privacy Policies provided by the respective third parties and all such documents form a separate contract to this Agreement. We are not responsible and expressly exclude our liability for any loss or damage suffered by you arising from the use of any third parties websites and/or applications. Please read the terms and conditions of any such third party website/application carefully.

## 4 ACCESSING THE APP

4.1 Subject to this Agreement, you may only use the App for your own personal and non commercial use;

4.2 As a condition of your access and use of the App, you warrant to us that you have the right, authority and capacity to enter into and be bound by this Agreement.

4.3 You must be over 16 years old to use the App. Persons under 16 years of age are not entitled to use the App. The use of the App by a minor between the age of 16 and 18 is subject to the consent of their parent or guardian. By using the App, you declare that you are over 16 and/or that you have obtained the necessary consent to use the App in compliance with this agreement.

We reserve the right to close any user account if such consent has not been granted or if you cannot establish that it has not been granted to our satisfaction. We advise parents or guardians who permit their children to use the App that it is important that they communicate with their children about their safety online, as moderation is not foolproof. Minors who are using any interactive service should be made aware of the potential risks to them by their parents or guardians.

4.4 We have no obligation to monitor or moderate any user's activity or use of the App, however we retain the right at all times to monitor, retain and disclose any information as necessary to satisfy any applicable law, regulation, legal process or regulatory authority request.

4.5 We do encourage that you contact us at support@soundmix.live an email which allows you to report any Content that is in breach of this Agreement or in any other way objectionable and to notify moderators of any abuses or breaches of this Agreement.

4.6 Access to the App is permitted on a temporary basis, and we reserve the right to at any time and without liability withdraw, suspend or amend any aspect or feature of the App without notice or liability. Access to the App is provided on an "as is" basis. You should not rely on any Content and/or other material on the App to make (or refrain from making) any decision or to take (or refrain from taking) any action on which reliance should be placed. We disclaim all liability and responsibility arising from any reliance placed on such Content and/or materials by any user of the App, or by anyone who may be informed of any of the Contents. We accept no responsibility for keeping the information in the App up to date or complete or liability for any failure to do so.

4.7 When using the App, you must comply with the provisions of the Privacy Policy which forms part of this Agreement. The Privacy Policy sets out how we may use information about you collected during use of the App.

## 5 RESTRICTIONS ON RIGHT TO USE

5.1 You agree that you shall not (and you agree not to allow any third party to):

5.1.1 modify, adapt, translate, or reverse engineer any portion of the App;

5.1.2 remove any copyright, trademark or other proprietary rights notices contained in or on the App or on any Content or other material obtained via the App.

5.1.3 use any robot, spider, search/retrieval application, or other automated device, process or means to access, retrieve or index any portion of the App;

5.1.4 access, screen-scrape, retrieve or index any portion of the App for purposes of constructing or populating a searchable database of any of the information or Content ;

5.1.5 reformat or frame any portion of the Content part of the App;

5.1.6 create user accounts by automated means or under false or fraudulent pretences or create multiple log ins;

5.1.7 create or transmit unwanted electronic communications such as "spam", or make excessive challenges or invitations, to other users or otherwise interfere with other users enjoyment of the App;

5.1.8 use the App to violate the security of any network, crack passwords or security encryption codes, transfer or store illegal material including that are deemed threatening or obscene;

5.1.9 copy or store any Content offered on the App for other than your own use of the App;

5.1.10 use any device, software or routine that interferes with the proper working of the App, or otherwise attempt to interfere with the proper working of the App;

5.1.11 take any action that imposes, or may impose in our sole discretion, an unreasonable or disproportionately large load on our IT infrastructure;

5.1.12 use the App, intentionally or unintentionally, to violate any applicable law;

5.1.13 collect or store personal data about other users in connection with the prohibited activities described in this paragraph;

5.1.14 engage in or promote any surveys, contests, pyramid schemes, chain letters, unsolicited e-mailing or spamming via the App;

5.1.15 use the App for advertising, marketing, charitable, campaigning, for public relations or political purposes of any kind;

5.1.16 impersonate any person or entity; or

5.1.17 post, e-mail, transmit or otherwise make available using the App any material that you do not have a right to make available under any law or contractual obligation which includes a breach of third party intellectual property rights.

## **6 CONTENT STANDARDS AND LICENCE**

6.1 These provisions apply to any and all Content which you contribute to the App, and to any interactive services associated with it.

6.2 You must comply with the spirit of the following standards. The standards apply to each part of any Content as well as to its whole.

6.3 You are solely responsible for any Content that you submit on the App or transmit to other users. By uploading Content on the App, you hereby declare that you own all the applicable intellectual property rights as well as any other connected rights regarding the Content and that you are duly authorized to upload it on the App and to make it available to the public via the App. By uploading the Content on the App, you hereby agree to indemnify and hold us and our directors, officers, employees, agents and representatives harmless from any demand, claim, suit, loss, liability or damage, including attorneys' fees, that we may incur by reason of or arising out of any claim (i) resulting from your breach of this terms and conditions of use including without limitation a breach resulting from any act or omission yours; or (ii) that is made with respect to the infringement of the intellectual property of a third party by the Content you upload on the App.

6.4 You are solely responsible for all information or communications published on the App. You understand that all information publicly posted or privately transmitted through the App is the sole responsibility of the person from which such content originated and that we will not be liable

for any errors or omissions in any content or as a result of any user's use of the App. You understand that we cannot guarantee the identity of any other users with whom you may interact in the course of using the App. Additionally, we cannot guarantee the authenticity of any data provided by other users or relationships they may describe.

6.5 The following is a partial list of the type of Content that is prohibited on the App. Content must not:

6.5.1 defame, abuse, bully, harass, stalk, threaten or otherwise offend others;

6.5.2 be unlawful, obscene, defamatory, seditious, indecent, offensive, liable to incite racial hatred, liable to incite violence, discriminatory, menacing, scandalous, inflammatory, be in breach of confidence, be in breach of privacy or be inappropriate;

6.5.3 breach any applicable laws or regulations;

6.5.4 deceive or mislead any person and/or entity:

6.5.5 falsely state, impersonate, or otherwise misrepresent your identity, including but not limited to the use of a pseudonym, or misrepresenting your current or previous positions and qualifications, or your affiliations with a person or entity, past or present:

6.5.6 upload, transmit or otherwise make available any content or initiate communications which include information that you do not have the right to disclose or make available under any law or under contractual or fiduciary relationships (such as insider information, or proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements):

6.5.7 upload, transmit or otherwise make available any content or initiate communication that infringes upon patents, trademarks, trade secrets, copyrights or other proprietary rights;

6.5.8 post, transmit or otherwise make available any unsolicited or unauthorized advertising, promotional materials, "**junk mail**," "**spam**," "**chain letters**," "**pyramid schemes**," or any other form of solicitation;

6.5.9 post, transmit or otherwise make available any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any software or hardware or telecommunications equipment;

6.5.10 interfere with or disrupt the App or servers or networks connected to the App, or disobey any requirements, procedures, policies or regulations of networks connected to the App; and/or

## 7 **SUSPENSION AND TERMINATION**

7.1 You agree that we may, with or without cause, immediately terminate your user account and access to the App without prior notice at our sole discretion. Without limiting the foregoing, the following may lead to a termination by us of a user's use of the App: (a) a breach of this Agreement, (b) a request by law enforcement authorities, gardai /police or other government agencies in respect of your Account, (c) a request by you (self-initiated account deletions), (d) unexpected technical issues or problems experienced by us, and (e) extended periods of inactivity

in respect of your Account. Termination of your user account includes removal of access to the App, all Content that we may determine and may also bar you from further use of the App. Furthermore, you agree that all terminations shall be made in our sole discretion and that we shall not be liable to you nor any third party for any termination of your account or access to the App.

7.2 You understand and agree that we may review and delete any Content that in our sole judgment breach this Agreement or which might be offensive, illegal, or that might violate the rights of, harm, or threaten the safety of other or us. We reserve the right to investigate and we will determine, in our discretion, whether there has been a breach of this Agreement through your use of the App. When a breach of this agreement has occurred, we may take such action as we deem appropriate.

7.3 Failure to comply with this Agreement may result in our taking all or any of the following actions:

7.3.1 immediate, temporary or permanent withdrawal of your right to use the App;

7.3.2 immediate, temporary or permanent removal of any posting or Content uploaded by you to the App;

7.3.3 issue of a public (via the App) or private warning to you;

7.3.4 limit the amount of postings or uploads you may make;

7.3.5 legal proceedings against you for reimbursement of all costs on an indemnity basis (including, but not limited to, reasonable administrative and legal costs) resulting from the breach;

7.3.6 other legal action against you; and/or

7.3.7 disclosure of such information to law enforcement authorities as we reasonably feel is necessary.

7.4 We exclude liability for actions taken in response to breaches of the content standards and restrictions of use. The responses described in this Agreement are not limited, and we may take any other action we reasonably deem appropriate.

## **8 COMPLAINTS**

If you believe that Content posted on the App breaches this Agreement or is in any other way objectionable, please notify us by email at [support@soundmix.live](mailto:support@soundmix.live) by specifying the full details of such Content and identifying all postings of such Content and specifying the reasons for your objections. If you do not provide us with sufficient information, we may be unable to process your complaint. We reserve the right to investigate and we will determine, in our discretion, what action (if any) to take. You are solely responsible for your interactions with other users of the App. While we reserve the right to monitor or to intervene in disputes between you and other users, we have no obligation to do so.

## **9 DISPUTES WITH THIRD PARTIES**

You must tell us immediately if anyone makes or threatens to make any claim or issue legal proceedings against you relating to your use of the App. You will, at our request, immediately

stop the act complained of. If we ask you to, you must confirm the details of the claim in writing. If you fail to stop the act or acts complained of we reserve the right to take any and all appropriate action against you under the terms of the Agreement.

## **10 INTELLECTUAL PROPERTY RIGHTS**

10.1 We are the owner or the licensee of all intellectual property rights in the App. Those works are protected by copyright laws, trademark laws, database laws and treaties around the world. All such rights are reserved.

10.2 The App (including, but not limited to, text, photographs, graphics, video and audio Content) is protected by copyright as collective works or compilations under the copyright laws of Ireland and other countries. Except for the Content uploaded or posted by users, the App and all aspects thereof, including all copyrights, trademarks, and other intellectual property or proprietary rights therein, is owned by us or our licensors. You acknowledge that the App and any underlying technology or software used in connection with the App contains our proprietary information. You may not modify, reproduce, distribute, create derivative works of, publicly display or in any way exploit, any of the content, software, and/or materials available on the App, in whole or in part except as expressly provided. Except as expressly and unambiguously provided herein, we and our suppliers do not grant you any express or implied rights, and all rights in any of the elements of the App not expressly granted by us to you are retained by us.

10.3 If it is determined that you retain moral rights in the Content, you hereby declare that (a) you do not require that any personally identifying information be used in connection with the Content, or any derivative works of or upgrades or updates thereto; (b) you have no objection to the publication, use, modification, deletion and exploitation of the Content by us or our licensees, successors and assigns, or on other App; (c) you forever waive and agree not to claim or assert any entitlement to any and all moral rights of an author in any of the Content; and (d) you forever release us, and our licensees, successors and assigns, from any claims that you could otherwise assert against us by virtue of any such moral rights.

10.4 All product names mentioned on the App are the trademarks of their respective owners, and other trademarks may be displayed on the App from time to time. Some material on the App may contain other information containing intellectual property of a third party. Nothing displayed on the App should be construed as granting you any license or right of use of any logo, information or trademark displayed on it, without the express written permission of the relevant owner, save as expressly provided in this Agreement.

10.5 You must not cache any of the contents for access by third parties, nor mirror, scrape or frame any of the content of the App, nor incorporate it into another website, software or application without our express written permission except as permitted by us.

10.6 You must not copy nor modify any materials present on the App without our express written consent.

10.7 You must not use any part of the Content on the App for commercial or non-commercial purposes without obtaining a license to do so from us.

10.8 If you print off, copy or download any part of the App in breach of this Agreement, your right to use the App will cease immediately and you must, at our option, return or destroy any copies of the materials that you have made.

## 11 VIRTUAL ITEMS

11.1 Subject to this Agreement, you are granted a limited license right to use in-App virtual items, which are available for purchase or free distribution at our discretion. You agree that the in-App virtual items are not redeemable for money or money's worth at any time from us, another user of the App or a third party. You acknowledge that you are not entitled to claim refunds from us for any in-App virtual item purchased from us by you, other than where we have exercised our right to terminate your user account and termination was not caused by your breach of this Agreement. For the avoidance of doubt you are never entitled to a refund from us for any in-App virtual item given to you by us for free or given to you by another user of the App. You acknowledge that we reserve the right to regulate, modify, withdraw, suspend and otherwise control the in-App virtual items and the use of such items as we see fit and you agree that we will have no liability to you by reason of our regulation, modification, withdrawal, suspension and/or control of in-App virtual items.

11.2 **You may not** sublicense, rent, lease, sell, trade, **gift** or otherwise transfer **in-App virtual items of the specific in-App actions permitted by the App** and you cannot use virtual items obtained in any of the ways mentioned in this paragraph. You acknowledge that we may, at any time and at our sole discretion, add new services for additional fees and charges, or amend fees and charges for existing services and may determine that any fees and charges.

## 12 OUR LIABILITY

12.1 The Content and other material displayed, accessible from or used on the App are provided without any guarantees, conditions or warranties as to its accuracy. To the extent permitted by law, we expressly exclude:

12.1.1 all conditions, warranties and other terms which might otherwise be implied by statute, common law or the law of equity; and

12.1.2 any liability for any direct, indirect or consequential loss or damage incurred by any user in connection with the App or in connection with the use, inability to use, or results of the use of the App, any websites/applications linked to it and any materials posted on it, including, without limitation any liability for loss of income or revenue, loss of business, loss of profits or contracts, loss of anticipated savings, loss of data, loss of goodwill, wasted management or office time and for any other loss or damage of any kind, however arising and whether caused by tort (including negligence), breach of contract or otherwise, even if foreseeable.

12.2 This does not affect our liability for death or personal injury arising from our negligence, or our liability for fraudulent misrepresentation or misrepresentation as to a fundamental matter, or any other liability which cannot be excluded or limited under applicable law.

12.3 We shall not be liable for any failure to perform any of our obligations under this Agreement caused by matters beyond our reasonable control. Under no circumstances will we be liable in any way for any Content, including, but not limited to, any errors or omissions in any Content, or any loss or damage of any kind incurred as a result of the use of, access to, or denial of access to any Content on the App.

12.4 We will not be liable for any loss or damage caused by a distributed denial-of-service attack, viruses, malicious or impairing computer programs or other technologically harmful material that may infect your equipment or device, computer programs, data or other proprietary

material due to your use of the App or to your downloading of any material posted on it, or on any website/application linked to it.

12.5 We do not guarantee the security of the services or any systems connected with the use of the App (including the internet and your hardware and software) used in accessing the services, or any information passed through such systems. We do not guarantee access to the App or any systems used in accessing our services will be continuous or virus or error free.

12.6 Any material downloaded or otherwise obtained through the use of the App is done at your own discretion and risk and that you will be solely responsible for any damage to your computer/device or loss of data that results from the download of any such material. No advice or information, whether oral or written, obtained by you from us or through or from the App shall create any warranty not expressly stated in this Agreement.

### **13 INDEMNITY**

You agree to indemnify and hold us, our parent, subsidiaries, officers, directors, shareholders and employees, harmless, including costs and legal fees, from any claim or demand made by any third party due to or arising out of (i) your access to App, (ii) your use of any of our Services, (iii) the violation of this Agreement by you, or (iv) the infringement by you, or any third party using your account or user identification name or password, of any intellectual property or other right of any person or entity.

### **14 CONTACT FROM US**

In the course of providing you services and in respect of your use of the App, we may need to communicate with you via email or the other details that you have submitted to us directly or through different applications that link third parties' websites or applications to the App. You agree to receive emails which are specific to your account and necessary for the normal functioning of the App, including emails which help inform users about functionality of the App. You also agree to receive emails containing information regarding new Apps and/or applications developed by our company or any of our partners and/or affiliates.

### **15 JURISDICTION AND APPLICABLE LAW**

The Irish courts will have exclusive jurisdiction over any claim arising from, or related to, a visit to the App although we retain the right to bring proceedings against you for breach of this Agreement in your country of residence or any other relevant country. This Agreement is governed by Irish law. The rights and remedies contained in this Agreement are cumulative and not exclusive of rights or remedies provided by law.

### **16 VARIATIONS**

We may revise this Agreement at any time by amending the pages upon which they appear on the App without giving notice of such modifications. Such modifications become effective immediately upon posting of the modified terms on the App. You agree to review the Agreement periodically so that you are aware of any modifications. Your continued use of the App after any modifications indicates your acceptance of the modified Agreement.

### **17 WAIVER**

A failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No



single or partial exercise of a right or remedy provided by this Agreement or by law prevents further exercise of that right or remedy or the exercise of another right or remedy.

## **18 SEVERABILITY**

In the event that any clause or any part of any clause in this Agreement is declared invalid or unenforceable, by the judgment or decree by consent or otherwise of a court of competent jurisdiction from whose decision no appeal is or can be taken, all other provisions contained in this agreement shall remain in full force and effect and shall not be affected by such finding for the term of this Agreement.

## **19 ASSIGNMENT AND ENTIRE AGREEMENT**

19.1 We may assign or subcontract any or all of our rights and obligations of our Agreement with you to a third party at any time, at our discretion. You may not, without our prior written consent, assign or dispose of any of your rights or obligations arising under this Agreement.

19.2 This Agreement contains the entire agreement and understanding between the parties relating to the App, and supersedes any and all prior agreements, arrangements, statements and understandings, except for any fraud or fraudulent representation by either you or us. In the event of any inconsistency between the Privacy Policy and these Terms then these Terms take priority.

## **20 SUBMISSIONS**

You acknowledge and agree that any questions, comments, suggestions, ideas, feedback and other information about the App provided by you to us are non-confidential and may be used by us at our discretion.

## **21 YOUR CONCERNS AND COMPLAINTS**

If you have any concerns about material that appears on the App, please contact us at [support@soundmix.live](mailto:support@soundmix.live).