

**KILLPHONIC RIGHTS LLC**  
**HIGHLIGHTS TO TERMS OF SERVICE**

Killphonic Rights LLC provides its customers with a website application (and, in the future, will provide its customers with a mobile application) (collectively, the “Service”). These highlights of our Terms of Service are to help you understand the terms by which you are bound when you use our Service. Please also read our full Terms of Service for details and defined terms.

**You Accept These Terms**

Each time you access and/or use the Service, you agree to be bound by these Terms of Service and any additional terms that will apply to you, prospectively. [More Info](#)

**Binding Arbitration of All Disputes; No Class Relief**

Any disputes under these Terms of Service will be resolved on an individual basis through binding arbitration, with no class relief. [More Info](#)

**Privacy**

You agree that we can retain the information collected for our business purposes as outlined in our Privacy Policy. We may also retain certain information for archival purposes and if required by law. [More Info](#)

**Disclaimer of Warranties**

We disclaim warranties and provide the Service "as is." [More Info](#)

**Changes to Terms of Service**

You agree that we may notify you about material changes to these Terms of Service by posting a new “Effective Date.” [More Info](#)

**Limitation of Liability**

Our liability is limited. [More Info](#)

**Contact**

Questions about our Terms of Service may be sent to [support@killphonic.com](mailto:support@killphonic.com) or as otherwise set forth in these Terms of Service. Use [More Info](#)

**KILLPHONIC RIGHTS LLC**  
**TERMS OF SERVICE**

***Effective Date: March 30<sup>th</sup>, 2020***

This Terms of Service (the “Terms of Service”) between you and Killphonic Rights LLC (“Killphonic Rights Direct,” “we,” “us,” and/or “our”) sets forth the legally binding terms for (1) your use of the website located at [direct.killphonicrights.com](http://direct.killphonicrights.com) (including all the areas of the website) and any successor websites, any mobile-enabled website with similar features and functionality, and any services, software, tools, and applications made available through any of the foregoing (collectively, the “Site”) and (2) your download, installation, and use of any Killphonic Rights Direct mobile application, including any updates thereto that we make available to you, and any services, software, tools, and applications made available through such mobile application (collectively, the “Application;” and together with the Site, the “Service”). By using the Service, you agree to the terms set forth in this Terms of Service.

This Terms of Service addresses your rights and obligations with respect to the Service and describes the acceptable use of the Service by you as well as any applicable rights, obligations, and restrictions regarding your use of the Service. Please see Killphonic Rights Direct’s Privacy Policy (the “Privacy Policy”) for more information about how we collect, use, and share your information on the Service.

Killphonic Rights Direct may modify this Terms of Service at any time and such modification will be effective upon posting by Killphonic Rights Direct on the Site. You agree to be bound by any changes to this Terms of Service when you use the Service after any such modification is posted. It is therefore important that you review this Terms of Service regularly to ensure you are updated as to any changes. If you do not agree with any of the terms of this Terms of Service, you must immediately discontinue your use of the Service.

In the event of any conflict or inconsistency between this Terms of Service, the Privacy Policy, and any other terms and/or conditions that may be posted at any time on the Service, or otherwise communicated to you, we reserve the right to use our sole discretion to resolve such conflicts or inconsistencies.

**IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, REMEDIES AND OBLIGATIONS.**

**THIS TERMS OF SERVICE, THE KILLPHONIC RIGHTS DIRECT PRIVACY POLICY, AND ALL OTHER TERMS AND CONDITIONS POSTED ON OUR SERVICE OR OTHERWISE COMMUNICATED TO YOU BY US SET OUT THE TERMS ON WHICH KILLPHONIC OFFERS YOU ACCESS TO AND USE OF OUR SERVICE. THE RIGHTS PRIVACY POLICY IS INCORPORATED INTO THIS TERMS OF SERVICE. YOU AGREE TO COMPLY WITH ALL THE ABOVE WHEN ACCESSING AND USING OUR SERVICE.**

**YOUR USE OF THE SERVICE ESTABLISHES AN ENFORCEABLE AGREEMENT BETWEEN YOU AND DIRECT. IF YOU DO ACCEPT THIS TERMS OF SERVICE, YOU CANNOT USE THE SERVICE.**

**1. THE SERVICE**

a. **Description.** The Service is designed to [enable songwriters who use the Service to collect publishing royalties that are owed to them.]

b. **Compliance with Laws.** You agree not to use the Service, in whole or in part, for any purpose that is unlawful. The Service is subject to, and you agree that you will at all times comply with, all local, state, and federal laws, statutes, rules, regulations, ordinances and the like that may be applicable to your use of the Service.

c. **Support Services.** Killphonic Rights Direct may, in its sole discretion, provide you with support services related to the Service or any portion thereof (“Support Services”). However, Killphonic Rights Direct is not required to provide Support Services to you. No failure to provide, or to continue to provide, Support Services will be a default by Killphonic Rights Direct under this Terms of Service.

d. **Modifications.** Killphonic Rights Direct reserves the right to (i) perform maintenance to the Service for any reason and at any time and (ii) modify, update, or discontinue, temporarily or permanently, the Service (or any part thereof) at any time, with or without notice, in Killphonic Rights Direct’s sole discretion. To keep any Killphonic Rights Direct Application up-to-date, we may offer automatic or manual updates at any time and without notice to you.

e. **Subscription Fee.** Killphonic Rights Direct charges a one-time subscription fee for setting up an account on the Service (“Subscription Fee”). Killphonic Rights Direct reserves the right to change the amount of that Subscription Fee at any time and for any reason.

f. **Commission.** Killphonic Rights Direct also charges its customers a commission of 15% (“Commission”) of any publishing royalty amounts collected by Killphonic Rights Direct on a customer’s behalf (“Royalties”), and Killphonic Rights Direct will subtract such Commission from any Royalty payments owed to you. [If Killphonic Rights Direct were to change the percentage of such Commission, it will provide its existing customers with reasonable advance notice of such change and the opportunity to opt-out of the Service if they do not wish to pay such increased Commission.] Royalties will generally be disbursed to you on a quarterly basis, although Killphonic Rights Direct reserves the right to disburse Royalties more or less frequently than quarterly.

g. **Third Party Payment Service Providers.** Killphonic Rights Direct currently relies on third party payment service providers to process Subscription Fees, Royalty payments, and Commissions. As such, you must (i) register for and/or agree to the respective third party payment service providers’ terms and (ii) permit Killphonic Rights Direct, within the third party payment platform, to access your account on such platform to enable Killphonic Rights Direct to process payment transactions for Subscription Fees, Royalty payments, and Commissions. The terms of your payments will therefore be based on the terms of the agreement between you and the applicable third party payment service provider. Killphonic Rights Direct currently uses Stripe and PayPal to process payments of Subscription Fees and Payment Rails to process Royalty payments and Commissions. Stripe’s Terms of Service and Privacy Policies can be found [here](#). Payment Rails’ Terms of Service and Privacy Policy can be found [here](#) and [here](#), respectively.

h. **Communications and Notifications to You.** By creating an account with Killphonic Rights Direct and providing your name, company, title, email address, phone number, and/or other contact information to us, you agree that this action constitutes a purchase or inquiry establishing a business relationship with us. You agree to provide accurate and complete information to us during the account registration process. You expressly consent to our use of your email address,

phone number, and other contact information to send you updates and communications about our products and services or other messages, such as newsletters, changes to features of the Service, or special offers. You may control receipt of marketing messages from us by emailing us at [support@killphonic.com](mailto:support@killphonic.com); however, you may not opt out of receiving account and servicing messages from us. You also represent and warrant that you have the legal authority over any telephone number you provide to us and have the right to provide us with the authorization to contact you. This means we may contact you, in person or by recorded message, by e-mail, and/or telephone (including use of automated dialing equipment), text (SMS) message, or any other means of communication that your wireless or other telecommunications device may be capable of receiving.

## 2. ACCESS TO THE SERVICE

a. **Eligibility.** You must be at least 18 years old (or the age of majority, as determined by the laws in the state in which you reside, whichever is older) to use the Service.

b. **Lack of Access.** Without limiting any other remedies available, we may at any time, with or without notice to you, and in our sole discretion, refuse to provide, limit, suspend, or terminate your use of the Service and take any technical and legal steps to keep you from using our Service. This Terms of Service will remain in effect after any such action has been taken. You agree that Killphonic Rights Direct will not be liable to you or any third-party for any limitation, suspension, or termination of your access to the Service.

c. **Availability and Use Outside of the United States.** The Service is controlled from facilities in the United States. Killphonic Rights Direct makes no representations that the Service or any portion thereof is appropriate or available for use in other locations. Those who access or use the Service or any portion thereof from other jurisdictions do so at their own volition and are responsible for compliance with local law.

d. **Registration.** To use our Service, you must register for an account with Killphonic Rights Direct and provide certain information. By registering for and using the Service, you represent and warrant that (i) all registration information you submit is truthful and accurate, (ii) you will maintain and update such registration information to keep it current, truthful, and accurate, (iii) you are at least 18 years old (or the age of majority, as determined by the laws in the state in which you reside, whichever is older), (iv) your use of the Service is for legal purposes only, and (v) you are not currently suspended by Killphonic Rights Direct from using the Service. You may register for the Service directly within the Service. You are only authorized to create and use one account for the Service and are prohibited from using alter egos or other disguised identities when using the Service. If we discover that you have multiple accounts with the Service, then all accounts will be closed immediately.

e. **Account Login Information and Security.** When you create an account with Killphonic Rights Direct, you will also be asked to input account login information. You are responsible for

maintaining the confidentiality of such login information and should protect it from disclosure to others. You agree not to use the account login information of any other user or to disclose your account login information to any third party. You agree to notify Killphonic Rights Direct immediately if you suspect any unauthorized use of your account or any other breach of security within the Service. You are solely responsible for any and all use of your account, and Killphonic Rights Direct will not be liable for your losses caused by any unauthorized use of your account. If you use a password that Killphonic Rights Direct considers insecure, Killphonic Rights Direct is entitled to require the password to be changed and/or to terminate your account. Although we provide a secure environment for the Service, no technology can provide complete security in the online environment, and we are not responsible to you for unauthorized intrusions by outside parties to the Service.

### 3. APPLICATION

a. **License.** Subject to the terms and conditions of this Terms of Service, we grant you a non-exclusive, revocable, limited license, to (a) download and install the object code version of the Application on a single mobile device, or other device, as applicable, that you own or control (each, a “Device”), and (b) use the Application that you download and install solely for your personal, non-commercial purposes. For clarity, the Application is being licensed, not sold, to you. We reserve all rights not expressly granted to you. This license does not allow you to use the Application on any mobile device or other device that you do not own or control, and you may not distribute or make the Application available over a network where it could be used by multiple devices at the same time. You may not rent, lease, lend, sell, redistribute or sublicense the Application. You may not copy (except as expressly permitted by this license), decompile, reverse engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the Application or any part thereof (except as and only to the extent any foregoing restriction is prohibited by applicable law or to the extent as may be permitted by the licensing terms governing use of any open sourced components included with the Application). Any attempt to do so is a violation of the rights of Killphonic Rights Direct and its licensors. If you breach this restriction, you may be subject to prosecution and damages. The terms of the license will govern any upgrades provided by us that replace and/or supplement the original Application, unless such upgrade is accompanied by a separate license in which case the terms of that license will govern.

b. **Mobile Devices.** You may access the Service on any mobile device. Killphonic Rights Direct reserves the right to develop a mobile Application at which time you may install the Application on certain mobile phones, which are subject to change. Downloading, installing, or using the Application may be prohibited or restricted by your mobile phone carrier. Therefore, you should check with your carrier to find out if the Application is available for your device and what restrictions, if any, may be applicable to your use of such Application. Furthermore, you acknowledge that the fact that the Application is compatible with a mobile phone in no way constitutes an endorsement, authorization, sponsorship or affiliation by or with the provider of such mobile phone. When you access the Service through a mobile device, your wireless service carrier's standard charges, data rates, and other fees may apply. Your carrier may prohibit or restrict the downloading, installing, or use of certain mobile services, and not all mobile services may work with all carriers or devices. You acknowledge and agree that your use of the Service must be in accordance with the usage rules established by your mobile device manufacturer and wireless service carrier.

c. **Uninstallation.** If you no longer wish to use the Application, you should uninstall the Application. If you uninstall the Application, we may still retain certain information associated with your account for analytical purposes and recordkeeping integrity, as well as to prevent fraud, resolve disputes, enforce this Terms of Service, and take actions we deem necessary due to technical and legal requirements and constraints related to the security, integrity and operation of the Application or the Service.

d. **Export Controls.** You may not use or otherwise export or re-export the Application except as authorized by United States law and the laws of the jurisdiction in which the Application was obtained. In particular, but without limitation, the Application may not be exported or re-exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By using the Application, you represent and warrant that you are not located in any such country and you are not on any such list.

#### 4. **PROHIBITED ACTIVITIES**

Your use of the Service is subject to all applicable laws and regulations, and you are solely responsible for your conduct with respect to the Service. The following are examples of the kind of activities that are illegal or prohibited on the Service. Killphonic Rights Direct reserves the right to investigate and take appropriate legal action against anyone who, in Killphonic Rights Direct' sole discretion, violates any of the provisions of this Terms of Service, including, without limitation, suspending use of the Service by any violators and reporting violators to the law enforcement authorities. Prohibited activities include, without limitation:

- a. criminal or tortious activity, including child pornography, fraud, trafficking in obscene material, drug dealing, gambling, harassment, stalking, spamming, spimming, sending of invalid data, worms, viruses or other harmful files, copyright, trademark, or patent infringement, or theft of trade secrets;
- b. transmitting any junk email to other users and using any information obtained from the Service in order to directly contact, advertise to, solicit, or sell to any user outside the Service without such user's prior explicit consent;
- c. any automated use of the system;
- d. interfering with, disrupting, or creating an undue burden on the Service or the networks or services connected to the Service;
- e. attempting to impersonate another person or providing any third party's information to Killphonic Rights Direct without permission;

- f. using the account, username, or password of another user at any time or disclosing your password to any third party or permitting any third party to access your account;
- g. selling or otherwise transferring your Killphonic Rights Direct account;
- h. aggregating, copying, or duplicating in any manner all or part of the Service or information available from the Service, without the express written consent of Killphonic Rights Direct;
- i. using any information obtained from the Service in order to harass, abuse, or harm another person;
- j. accepting payment or anything of value from a third person in exchange for your performing any commercial activity on or through the Service on behalf of that person;
- k. using the Service in a manner inconsistent with any and all applicable laws and regulations;
- l. using or launching any automated system, including without limitation, “robots,” “spiders,” “offline readers,” etc., that access the Service in a manner that sends more request messages to the Service servers than a human can reasonably produce in the same period by using a conventional on-line web browser;
- m. collecting or harvesting any personally identifiable information, including names or email addresses, from the Service, or use the Service for any commercial solicitation purposes without the prior written consent of Killphonic Rights Direct;
- n. using the Service to solicit business or to support any business or commercial activities;
- o. renting, leasing, transferring, selling, reselling, or otherwise exploiting for any commercial purpose, any portion of or access to the Service;

## **5. PROPRIETARY RIGHTS**

a. **User Feedback.** You acknowledge and agree that any questions, comments, suggestions, ideas, feedback or other information you provide to Killphonic Rights Direct about the Service (“Submissions”) are not confidential and Killphonic Rights Direct will be entitled to the unrestricted use and dissemination of these Submissions for any purpose, commercial or otherwise, without acknowledgment or compensation to you.

b. **Killphonic Rights Direct Content.** The Service contains information, files, images, photos, video, sounds, musical works, works of authorship, and other materials created by or on behalf of Killphonic Rights Direct and published by Killphonic Rights Direct in connection with the Service (collectively, “Killphonic Rights Direct Content”). Killphonic Rights Direct solely owns all rights, title, and interest in and to the Killphonic Rights Direct Content, including but not limited to graphics, design, compilation, computer code, products, software, visual interfaces, interactive features, and all other elements and components of the Service. Killphonic Rights Direct Content is protected by copyright, trademark, patent, trade secret and other laws, and Killphonic Rights Direct owns or licenses and retains all rights in the Killphonic Rights Direct Content and the Service. Killphonic Rights Direct hereby grants you a limited, revocable, non-sublicensable license to reproduce and display the Killphonic Rights Direct Content (excluding any software code) solely for your personal, non-commercial use in connection with using the Service in accordance with this Terms of Service. You agree not to copy, modify, translate, publish, broadcast, transmit, distribute, perform, display, frame, scrape, rent, lease, loan, sell, or create derivative works based on the Service or any Killphonic Rights Direct Content. Any use of the Service or the Killphonic Rights Direct Content other than as specifically authorized herein is strictly prohibited. You agree not to reverse engineer, reverse assemble or otherwise attempt to discover any source code, sell, assign, sublicense, or otherwise transfer any right in the Service (including the Application). Any rights not expressly granted herein are reserved by Killphonic Rights Direct.

c. **Personal Use of Service.** The Service and any portion thereof, including any Killphonic Rights Direct Content contained therein, are intended for your personal, non-commercial use in accordance with this Terms of Service. You agree that you will not, unless specifically permitted by us (i) copy, display or distribute any part of the Killphonic Rights Direct Content or Service, in any medium, without our prior written consent, or (ii) alter or modify any part of the Service other than as may be reasonably necessary to use the Service for its intended purpose. You will not use any automated devices, such as spiders, robots or data mining techniques, to catalog, download, store, reproduce, or distribute Killphonic Rights Direct Content available on the Service or to manipulate the Service in any manner not consistent with its intended purpose(s). Illegal and/or unauthorized use of the Service, including unauthorized framing of or linking to the Service is prohibited. Appropriate legal action may be taken for any illegal or unauthorized use of the Service.

d. **Trademarks.** Certain graphics, logos, page headers, button icons, scripts, and service names located on the Service are trademarks, registered trademarks, or trade dress of Killphonic Rights Direct (collectively the “Killphonic Rights Direct Trademarks”). The Killphonic Rights Direct Trademarks and trade dress may not be used in connection with any non-Killphonic Rights Direct product or service, in any manner that is likely to cause confusion among customers, or in any manner that disparages or discredits Killphonic Rights Direct. All other trademarks not owned by Killphonic Rights Direct that appear on the Service are the property of their respective owners, who may or may not be affiliated with, connected to, or sponsored by Killphonic Rights



Direct. Nothing in this Terms of Service or the Service should be construed as granting, by implication, estoppel, or otherwise, any license or right to use any Killphonic Rights Direct Trademarks or third-party trademarks or service marks displayed on the Service, without our prior written permission.

## 6. COPYRIGHT POLICY

a. **General.** Killphonic Rights Direct respects the legal rights of others, and we ask that our users do the same. Killphonic Rights Direct has registered an agent with the United States Copyright Office in accordance with the terms of the Digital Millennium Copyright Act (“DMCA”) and avails itself of the protections under the DMCA. It is the policy of Killphonic Rights Direct to terminate the right of a user to use the Service if such user repeatedly infringes the copyright rights of others upon receipt of prompt notification to Killphonic Rights Direct by the copyright owner or the copyright owner’s legal agent.

b. **Infringement Notice.** If you believe that your work has been copied and posted on the Service in a way that constitutes copyright infringement, to comply with the DMCA, you must provide Killphonic Rights Direct’ designated copyright agent set forth below with the following information: (i) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest, (ii) a description of the copyrighted work that you claim has been infringed, (iii) a description of where the material that you claim is infringing is located on the Service, (iv) your address, telephone number, and email address, (v) a written statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law, and (vi) a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner’s behalf. Please note that this procedure is exclusively for notifying Killphonic Rights Direct that your copyrighted material has been infringed.

c. **Counter-Notice.** We may provide a user with notice that we have removed or disabled access to certain content by means of a general notice on the Service, electronic mail to the user’s e-mail address in our records, or by written communication sent by first-class mail to the user’s physical address in our records. If you receive such a notice, you may provide counter-notification in writing to Killphonic Rights Direct’ designated copyright agent set forth below that includes the information below. To be effective under the DMCA, the counter-notification must be a written communication that includes the following: (a) your physical or electronic signature, (b) identification of the material that has been removed or to which access has been disabled, and the location at which the material appeared before it was removed or access to it was disabled, (c) a statement from you under the penalty of perjury, that you have a good faith belief that the material was removed or disabled as a result of a mistake or misidentification of the material to be removed or disabled, and (d) your name, physical address and telephone number, and a statement that you consent to the jurisdiction of a Federal District Court for the judicial district in which your physical address is located, or if your physical address is outside of the United States, for any judicial district in which Killphonic Rights Direct may be found, and that you will accept service of process from the person who provided notification of allegedly infringing material or an agent of such person.

**d. Copyright Agent.** Killphonic Rights Direct's copyright agent for notice of claims of copyright infringement can be contacted as follows:

Killphonic Rights LLC

Attn: Copyright Agent

1500 W. 12th Street

Los Angeles, CA 90015

## **7. DISCLAIMERS**

KILLPHONIC RIGHTS DIRECT AND ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, AND AFFILIATES (COLLECTIVELY, "AFFILIATES") ARE NOT RESPONSIBLE FOR ANY INCORRECT OR INACCURATE CONTENT ON THE SERVICE OR FOR ANY OF THE EQUIPMENT OR PROGRAMMING ASSOCIATED WITH OR UTILIZED IN THE OPERATION OF THE SERVICE.

KILLPHONIC RIGHTS DIRECT AND ITS AFFILIATES ARE NOT RESPONSIBLE FOR THE CONDUCT, WHETHER ONLINE OR OFFLINE, OF ANY USER OF THE SERVICE.

UNDER NO CIRCUMSTANCES WILL KILLPHONIC RIGHTS DIRECT AND ITS AFFILIATES BE RESPONSIBLE FOR ANY LOSS OR DAMAGE, INCLUDING LOST DATA, LOST INFORMATION, PERSONAL INJURY OR DEATH, RESULTING FROM ANYONE'S USE OF THE SERVICE, ANY KILLPHONIC RIGHTS DIRECT CONTENT, OR ANY INTERACTIONS BETWEEN OR AMONG USERS OF THE SERVICE, WHETHER ONLINE OR OFFLINE, WHETHER ON THE SERVICE OR ELSEWHERE.

KILLPHONIC RIGHTS DIRECT AND ITS AFFILIATES ASSUME NO RESPONSIBILITY FOR ANY ERROR, OMISSION, INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMMUNICATIONS LINE FAILURE, THEFT OR DESTRUCTION OR UNAUTHORIZED ACCESS TO, OR ALTERATION OF, THE SERVICE AND ARE NOT RESPONSIBLE FOR ANY PROBLEMS OR TECHNICAL MALFUNCTION OF ANY TELEPHONE NETWORK OR LINES, COMPUTER ONLINE SYSTEMS, SERVERS OR PROVIDERS, COMPUTER EQUIPMENT, SOFTWARE, FAILURE OF E-MAIL OR PLAYERS ON ACCOUNT OF TECHNICAL PROBLEMS OR TRAFFIC CONGESTION ON THE INTERNET OR AT ANY WEBSITE OR COMBINATION THEREOF. KILLPHONIC RIGHTS DIRECT AND ITS AFFILIATES ARE NOT RESPONSIBLE FOR ANY INJURY OR DAMAGE TO ANY COMPUTER EQUIPMENT BELONGING TO ANY USER OF THE SERVICE OR ANY OTHER PERSON RELATED TO OR RESULTING FROM USE OF THE SERVICE OR ANY KILLPHONIC RIGHTS DIRECT CONTENT, OR OTHERWISE IN CONNECTION WITH THE SERVICE.

THE SERVICE IS PROVIDED "AS-IS" AND "AS AVAILABLE" AND, EXCEPT AS OTHERWISE PROHIBITED BY APPLICABLE LAW, KILLPHONIC RIGHTS DIRECT EXPRESSLY DISCLAIMS ANY WARRANTY OF ANY KIND, INCLUDING, BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, OR THAT THE SERVICE WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, UNINTERRUPTED OR SECURE, OR THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED, OR THAT THE SERVICE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT YOUR USE OF THE SERVICE OR ANY PORTION THEREOF IS AT YOUR SOLE RISK (INCLUDING, WITHOUT LIMITATION, ANY LOSS

OF DATA OR OTHER DAMAGE TO YOUR COMPUTER OR OTHER DEVICE YOU EXPERIENCE FROM USING THE SERVICE) AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU. KILLPHONIC RIGHTS DIRECT DOES NOT GUARANTEE ANY SPECIFIC RESULTS FROM YOUR USE OF THE SERVICE. IF YOU ARE DISSATISFIED WITH ANY PART OF THE SERVICE OR WITH THE TERMS OF THIS TERMS OF SERVICE, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE ACCESSING AND USING THE SERVICE.

THE SERVICE MAY CONTAIN LINKS TO THIRD-PARTY WEBSITES THAT ARE NOT OWNED OR CONTROLLED BY KILLPHONIC RIGHTS DIRECT. KILLPHONIC RIGHTS DIRECT HAS NO CONTROL OVER, AND ASSUMES NO RESPONSIBILITY FOR, THE CONTENT, POLICIES, OR PRACTICES OF ANY THIRD-PARTY WEBSITES. YOU EXPRESSLY RELIEVE KILLPHONIC RIGHTS DIRECT FROM ANY AND ALL LIABILITY ARISING FROM YOUR USE OF ANY THIRD-PARTY WEBSITE OR SERVICES. KILLPHONIC RIGHTS DIRECT DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE SERVICE OR ANY HYPERLINKED WEBSITE. KILLPHONIC RIGHTS DIRECT WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES.

#### **8. KILLPHONIC RIGHTS DIRECT LIMITATION OF LIABILITY**

IN NO EVENT WILL KILLPHONIC RIGHTS DIRECT AND ITS AFFILIATES BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFIT DAMAGES ARISING FROM YOUR USE OF OR INABILITY TO USE THE SERVICE, EVEN IF KILLPHONIC RIGHTS DIRECT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, KILLPHONIC RIGHTS DIRECT' LIABILITY TO YOU OR ANY THIRD PARTY FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO DIRECT DAMAGES, NOT TO EXCEED \$500.

THE FOREGOING LIMITATIONS OF LIABILITY WILL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

#### **9. KILLPHONIC RIGHTS DIRECT INDEMNITY AND RELEASE**

You agree to indemnify and hold Killphonic Rights Direct, its parents, subsidiaries, and Affiliates, and their respective officers, directors, agents, partners and employees, harmless from any loss, liability, claim, or demand, including reasonable attorneys' fees, arising out of or relating to (a) your use of or access to the Service, (b) your breach of this Terms of Service or your violation of applicable law, (c) your acts and omissions, or (d) your violation of the rights of any third party. Killphonic Rights Direct reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify Killphonic Rights Direct and you agree to (i) cooperate with our defense of these claims and (ii) not to settle any matter without Killphonic Rights Direct' prior written consent. To the fullest extent permitted by law, the foregoing indemnity will apply regardless of any fault, negligence, or breach of warranty or contract of Killphonic Rights Direct or its Affiliates.

#### **10. RESOLUTION OF DISPUTES FOR U.S. RESIDENTS**

**PLEASE READ THIS SECTION 10 VERY CAREFULLY AS IT WILL HAVE A SUBSTANTIAL IMPACT ON HOW LEGAL CLAIMS THAT YOU AND WE HAVE AGAINST EACH OTHER ARE RESOLVED.**

a. **Governing Law.** These Terms of Service will be governed by and construed in accordance with the laws of the State of California without application of conflict of laws rules, except that the arbitration provisions will be governed by the Federal Arbitration Act.

b. **Resolution of Any Dispute.** In the event a dispute arises between you and Killphonic Rights Direct, we want to provide you with an efficient, neutral and cost-effective means of resolving the dispute. Most customer concerns can be resolved quickly and to the customer's satisfaction by contacting our customer care department or calling [phone number] or writing us at Killphonic Rights LLC, Attn: Legal Department, 1500 W. 12th Street, Los Angeles, CA 90015, United States. If, however, there is an issue that needs to be resolved, the following provisions of this Section 10 describe how both of us will proceed.

c. **Limitation of Legal Remedies.** If there is a dispute that remains unresolved, INSTEAD OF SUING IN COURT, YOU AND KILLPHONIC RIGHTS DIRECT EACH AGREE TO THE FULLEST EXTENT PERMITTED BY LAW TO ARBITRATE DISPUTES THROUGH BINDING ARBITRATION PURSUANT TO THE JAMS ARBITRATION RULES AND PROCEDURES, ON AN INDIVIDUAL BASIS, WITHOUT CLASS RELIEF, EXCEPT FOR DISPUTES PERTAINING TO KILLPHONIC RIGHTS DIRECT' INTELLECTUAL PROPERTY RIGHTS, STATUTORY CLAIMS THAT PURSUANT TO LAW ARE NOT ARBITRABLE, INDEMNIFICATION, CONTRIBUTION, INTERPLEADER, OR INJUNCTIVE RELIEF ARISING OUT OF A CLAIM. This agreement to arbitrate is intended to be broadly interpreted. It includes claims based in contract, tort, statute, fraud, misrepresentation or any other legal theory ("Claims"). The arbitrator's decision and award is final and binding, with some exceptions under the Federal Arbitration Act, 9 U.S.C. 1, et seq., and judgment on the award may be entered in any court with jurisdiction.

d. **Jury Trial Waiver.** YOU AND KILLPHONIC RIGHTS DIRECT EACH VOLUNTARILY WAIVE THE RIGHT TO TRIAL BY JURY IN RESOLVING ANY DISPUTE BETWEEN US ARISING OUT OF THESE TERMS OF SERVICE OR THE SERVICE.

e. **Class Action Waiver.** YOU AND KILLPHONIC RIGHTS DIRECT EACH AGREE THAT CLAIMS AGAINST THE OTHER MAY ONLY BE BROUGHT IN AN INDIVIDUAL CAPACITY AND NOT IN A CLASS ACTION OR REPRESENTATIVE PROCEEDING. All arbitrations under these Terms of Service must be conducted on an individual (and not a class-wide) basis, and an arbitrator will have no authority to award class-wide relief. You acknowledge and agree that these Terms of Service specifically prohibit you from commencing any legal proceedings as a representative of others, participating in a class, representative, or collective action as a class representative, class member or an opt-in party, acting as a private attorney general, or joining or consolidating Claims with claims or proceedings brought by any other person ("Class Action Waiver").

f. **Arbitration Procedures.** A party who intends to seek arbitration must first send to the other a written notice of dispute describing the nature and basis of the Claim and setting forth the specific relief sought (a "Notice"). All Notices to Killphonic Rights Direct must be sent to the following address: Killphonic Rights LLC, Attn: Legal Department, 1500 W. 12th Street, Los Angeles, CA 90015, United States.

All notices to you will be sent to the email or street address provided by you to Killphonic Rights Direct, if available. Upon receipt of such Notice, the receiving party will have a 60 day period in which it may satisfy the Claim against it by fully curing the Claim, providing all the relief requested in the Notice, or entering into a settlement to resolve the Claim to the mutual satisfaction of the parties. After the expiration of such sixty-day cure period, you or Killphonic Rights Direct may commence an arbitration proceeding. Unless otherwise agreed to by you and Killphonic Rights Direct in writing, the arbitration will be governed and conducted by JAMS before a single arbitrator with substantial experience in the music industry and will follow substantive law in adjudicating the dispute, except that this section will be construed as a written agreement to arbitrate pursuant to the Federal Arbitration Act (“FAA”). You and Killphonic Rights Direct agree that this section satisfies the writing requirement of the FAA. The arbitration of any claim will be conducted in the State of California, and for any non-frivolous claim that does not exceed \$10,000.00, you will have the choice as to whether the hearing is conducted in person or by telephone. For those claims that the arbitrator decides are not frivolous, Killphonic Rights Direct will: (1) pay all costs of the arbitration; (2) if you prefer, will conduct the arbitration by telephone, and (3) will not seek attorneys’ fees in the event Killphonic Rights Direct prevails. Each party will pay the fees and costs of its own counsel, experts and witnesses. The JAMS rules are available on its website at [www.jamsadr.com](http://www.jamsadr.com). To the extent that this dispute resolution section conflicts with JAMS minimum standards for procedural fairness, the JAMS rules and/or minimum standards for arbitration procedures in that regard will control. Neither party will sue the other party other than as provided herein or for enforcement of this clause or for the arbitrator’s award, and any such suit may be brought only in Federal District Court or, if any such court lacks jurisdiction, in any state court that has jurisdiction. The arbitrator, and not any federal, state, or local court, will have exclusive authority to resolve any dispute relating to the interpretation, applicability, unconscionability, arbitrability, or enforceability of these Terms of Service including any claim that all or any part of these Terms of Service are void or voidable. However, the preceding sentence will not apply to the clause entitled “Class Action Waiver”.

g. **Survival.** This arbitration provision will survive termination of these Terms of Service.

h. **Severability.** If any provision of this Section 10 is declared or found by a court of competent jurisdiction or arbitrator to be unlawful, unenforceable or void, such provision will be ineffective only to the extent that it is found unlawful, unenforceable or void, and the remainder of the provision and all other provisions will remain fully enforceable, except that if the Class Action Waiver for any Claim cannot be enforced, then the provision to arbitrate will not apply.

## 11. RESOLUTION OF DISPUTES FOR NON-US RESIDENTS

If any controversy, allegation, or claim (including any non-contractual claim) arises out of or relates to the Service or Terms of Service and you are a non-U.S. resident, then you and we agree to send a written notice to the other providing a reasonable description of the dispute, along with a proposed resolution of it. Our notice to you will be sent to you based on the most recent contact information that you provide us but if no such information exists or if such information is not current, then we have no obligation under this section. Your notice to us must be sent to [support@killphonic.com](mailto:support@killphonic.com) or to Killphonic Rights LLC, Attn: Legal Department, 1500 W. 12th Street, Los Angeles, CA 90015, United States. For a period of sixty (60) days from the date of receipt of notice from the other party, Killphonic Rights Direct and you will engage in a dialogue in order to attempt to resolve the dispute, though nothing will require either you or Killphonic Rights Direct to resolve the dispute on terms either you or Killphonic Rights Direct, in each of our sole discretion, are unsatisfactory. Nothing in this section will prevent a party from pursuing their claims in court or another complaint process.

## ***12. KILLPHONIC RIGHTS DIRECT PRIVACY***

At Killphonic Rights Direct, we respect the privacy of our users. For details please see our Privacy Policy. By using the Service, you consent to our collection and use of personal data as outlined therein.

***13. NOTIFICATION PROCEDURES***NOIS may provide notifications, whether such notifications are required by law or are for marketing or other business related purposes, to users of our Service via email, text message, written or hard copy notice, or through conspicuous posting of such notice on the Service, as determined by Killphonic Rights Direct in its sole discretion. Killphonic Rights Direct reserves the right to determine the form and means of providing notifications to our users, provided that you may opt out of certain means of notification as described in this Terms of Service. You agree that all agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing.

## ***14. NOTICE FOR CALIFORNIA USERS***

Under California Civil Code Section 1789.3, users of the Service from California are entitled to the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 North Market Blvd., Suite N 112, Sacramento, CA 95834, or by telephone at (800) 952-5210.

## ***15. MISCELLANEOUS TERMS***

These Terms of Service constitute the entire agreement between you and Killphonic Rights Direct and govern your use of the Service, superseding any prior agreements between you and Killphonic Rights Direct with respect to the Service. You also may be subject to additional terms and conditions that may apply when you use affiliate or third-party services, third-party content or third-party software. The failure of Killphonic Rights Direct to exercise or enforce any right or provision of these Terms of Service will not constitute a waiver of such right or provision. This Terms of Service does not create third party beneficiary rights enforceable by any third party. A printed version of this agreement and of any notice given in electronic form will be admissible in judicial or administrative proceedings based upon or relating to this agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. The section titles in this Terms of Service are for convenience only and have no legal or contractual effect.

## ***16. QUESTIONS?***

Please contact us at [support@killphonic.com](mailto:support@killphonic.com) to report any violations of this Terms of Service or to ask any questions you have regarding this Terms of Service.