

IndieFlow Creator Agreement

Last Revised: March 31, 2020

Welcome to the IndieFlow Creator Agreement (together with all of its exhibits, the “**Agreement**”), between you and IndieFlow (“**us**”, “**we**”, “**our**” or “**IndieFlow**”). This Agreement contains the general terms and conditions under which IndieFlow offers the “**Services**” (as defined below). The submission of the Creations and the use of the Services (both as defined below) constitutes your agreement to and acceptance of this Agreement.

THIS AGREEMENT, WHEN ACCEPTED BY YOU AFTER CLICKING “I AGREE”, WILL CREATE A BINDING AND LEGALLY ENFORCEABLE CONTRACT BETWEEN YOU AND US, WHETHER YOU ARE ACTING IN YOUR INDIVIDUAL CAPACITY OR AS THE AUTHORIZED LEGAL REPRESENTATIVE FOR AN ARTIST, BAND, GROUP OR CORPORATION, IN WHICH CASE “YOU” SHALL REFER TO THE ARTIST, BAND, GROUP OR CORPORATION ON WHOSE BEHALF YOU ARE ACTING AND AUTHORIZED TO ACT. PLEASE READ THIS AGREEMENT CAREFULLY AND CONSULT WITH YOUR BUSINESS AND LEGAL ADVISORS BEFORE CLICKING “I AGREE”. THE “**EFFECTIVE DATE**” OF THIS AGREEMENT IS THE DATE ON WHICH YOU CLICK THE “I AGREE” BUTTON.

We reserve the right to add, delete and/or modify any of the terms and conditions contained in this Agreement pursuant to the provisions of Section 11 below. Notwithstanding the preceding sentence, no modifications to this Agreement will apply to any dispute between you and IndieFlow that arose prior to the date of such modification. In the event of material changes to the terms of this Agreement, you will be notified by email or by a notice on the Platform (as defined below). If any modification is unacceptable to you, your only recourse is to discontinue the use of the Services. Your continued use of the Services following a change notice on the Platform or notice to you via email, will constitute your binding acceptance of the changes.

1. **Definitions.** The following capitalized terms shall have the following meanings for the purposes of this Agreement:

(a) “**Authorized Territory**” means worldwide, or more limited territories, to the extent so limited by you, during the IndieFlow Account registration process.

(b) “**Creation(s)**” means sound recordings, video and audiovisual content, and the musical works embodied in such sound recordings and video and audiovisual content, and any album related artwork, photos, liner notes, metadata and other material related to your sound recordings and video and audiovisual content that you have provided to IndieFlow, either by digital upload to the Platform or by delivery of a Physical Product, either directly or via a third party acting on your behalf. Any such sound recordings and video and audiovisual content, artwork, photos, liner notes, metadata, or other material provided by you to IndieFlow, must be owned or controlled by you and/or have been cleared by you for all purposes and rights granted and authorized under this Agreement. For the avoidance of doubt, the Creations encompass each sound recording and the musical work (i.e., the notes and lyrics) embodied in each sound recording.

(c) “**IndieFlow Widget**” means a: (i) software application available on the Platform that you may embed on third-party websites, (ii) link, code, script or any other software or instruction that you may embed or place on a third-party website that permits a user of such third-party website to access content hosted and/or streamed from servers owned or controlled by IndieFlow, including the Creations, or (iii) a standalone software available for use on mobile devices, smartphones, tablet computers, set-top boxes, and other hardware known today or developed in the future (collectively, the “**Hardware**”), that facilitates or enables the public performance, communication to the public or other transmission of the Creations via the Internet or any other transmission medium through such third-party websites or on or through any Hardware. The IndieFlow Widget may provide access to all of the Creations or give you the ability to control which of the Creations is available through third-party websites, as IndieFlow may choose in its sole discretion.

(d) “**Consignment Service**” means the service that enables you to market and sell Physical Products via the Platform and/or through IndieFlow’s distributors and retailers, on a consignment basis following your delivery of the Creations to IndieFlow as a Physical Product.

(e) “**Digital Download and Distribution Service**” means the online services operated by IndieFlow for the sale, distribution or licensing of the Creations and other content through the Platform or through websites and services operated by or on behalf of the Licensees, as further detailed under the Digital Distribution Exhibit.

(f) “**Copyright Management Information**” means the digital data conveying information regarding a Digital Master of the Creations, including, without limitation, the title of the applicable album, the name of the song, the International Standard Recording Code (ISRC), the marketing label and the record company name.

(g) “**Digital Master(s)**” means a copy or copies of the Creations in a digital form, whether created by you or IndieFlow.

(h) **“Digital Performance Rights”** means the rights to perform a copyrighted work publicly by means of a digital audio transmission.

(i) **“Digital Performance Rights Administration Service”** means the service that enables IndieFlow to administer and manage your Digital Performance Rights and to collect on your behalf monies derived from the exploitation of the Digital Performance Rights in the sound recordings you have submitted to IndieFlow, as further detailed under the Digital Distribution Exhibit.

(j) **“Licensee(s)”** means any third party licensee that we may authorize to carry out the marketing, distribution, licensing, sale or other use of the Creations pursuant to the terms of this Agreement, including, without limitation, Apple iTunes, MediaNet, Rhapsody, online streaming services and others that IndieFlow may choose in its sole discretion.

(k) **“Physical Product”** means the Creations as fixed in physical products such as CDs, DVDs, LPs, etc.

(l) **“Sync Distribution Service”** means the service that enables you to have the Creations made available for synchronization and other licensing.

(m) **“Service(s)”** means either, any combination, or all of the Digital Download and Distribution Service, the Consignment Service and the Sync Distribution Service.

(n) **“Threshold Amount”** means the dollar amount set by you initially upon your registration with IndieFlow, or as subsequently modified by you, which amount shall in no event be less than \$10. [Note: Once this amount is reached and exceeded, IndieFlow’s payment obligation under Exhibit A will apply]

(o) **“Platform”** means IndieFlow’s Platform provided on a Software-as-a-Service (SaaS) basis, as such term is defined in the TOU.

(p) **“Account”** means your account registered by you for the purpose of using the Services, as further detailed in the TOU.

2. Terms of Service. This Agreement is incorporated into and subject to the Terms of Use available at: <https://artists.indieflow.me/terms>

(“TOU”). All capitalized terms not defined in this Agreement are defined in the TOU.

3. Authorizations and Grant of Rights. You hereby appoint us as your authorized representative for the sale and distribution of the Creations as described herein. Accordingly, you hereby grant us a non-exclusive, sublicenseable, transferable right, license, privilege and authority, during the Term and throughout the Authorized Territory, to:

(a) Store, reproduce and create derivative works of the Creations, including any Physical Product, by creating video files that embody the Creations and elements thereof and authorizing our Licensees to do the same (the **“Creation Cover”**), converting the Creations into Digital Masters, including full-length versions of sound recordings (the **“Bits”**) that can be used for promotional purposes as authorized herein and, if necessary, reproducing the Creations in a new Physical Product;

(b) Publicly perform, display, publish and make available the Creations and/or Bits, by means of digital audio transmissions through a Licensee website, the Platform or via an IndieFlow Widget you or any person authorized by you may place on any website or on or through any Hardware, to identify the availability of the Creations for license, sale or distribution and to promote the Creations, on a through-to-the-listener basis, without the payment of any fees or royalties to (i) the songwriters, composers, or music publishers owning any rights in and to the Creations; (ii) any performing artists, including non-featured vocalists and musicians, on the Creations; (iii) any other person involved in the creation of or owning any portion of the Creations, including, but not limited to a record label; and (iv) any agents for any of the foregoing, including, without limitation, performing rights organizations (**“PRO(s)”**) and unions or guilds, whether U.S. based or foreign;

(c) Place or embed the Creations in magazines, websites, IndieFlow advertisements, and any and all other media, known today or developed in the future, but specifically excluding television and movies, to promote the Service;

(d) Use and distribute Copyright Management Information as embodied in a Digital Master;

(e) Use the Creations (and related metadata) as may be reasonably necessary or desirable for us to exercise our rights under this Agreement or for any other legitimate business purposes and legal purposes;

(f) Reproduce, distribute, publicly perform and communicate to the public the Creations (including the Bits) as part of a downloaded program that may include multiple sound recordings and other content, commonly known as a “podcast”; and

(g) Authorize our Licensees to perform any one or more of the activities specified above or in the Digital Distribution Exhibit.

4. Term and Termination. The term of this Agreement will commence on the Effective Date and will continue until terminated by either party, upon a twenty-four (24) hours written notice via email (the “**Term**”). A termination notice may be sent by us to the last e-mail address provided by you to IndieFlow, and a termination notice may be sent by you to the following e-mail address: team@indieflow.me, which shall include your username, the e-mail address associated with your Account, all album titles for which you are requesting termination and which Services you wish to terminate (the “**Termination Notice**”). Any Termination Notice provided by you pursuant to this Section shall be permanent and irrevocable. Notwithstanding anything to the contrary herein, IndieFlow may at any time in its sole discretion, with or without notice to you, suspend or limit your access to or your use of the Services and/or suspend or limit your access to your Account. Upon termination of this Agreement: (i) all rights granted to you hereunder will automatically terminate, (ii) you must immediately cease all use of the Platform, and (iii) the provisions of this Agreement that, by their nature and content, must survive the termination of this Agreement in order to achieve the fundamental purposes of this Agreement shall so survive. You hereby acknowledge that cancelling or suspending your Account may cause the loss of certain information you provided us. We do not accept any liability for such loss. Furthermore, the termination of the Agreement will not relieve either you or us from our respective obligations incurred prior to the effective date of the termination of the Agreement.

5. Payments to You. Except as otherwise set forth in the Agreement, you will have the discretion to set the pricing for the sale of the Creations on the Platform. Notwithstanding the foregoing, IndieFlow and its distributors and partners may set pricing differently for third-party websites, including, without limitation, to cover additional costs or to provide discounts for promotions. You will also be subject to additional set up fees and charges as further detailed on the Platform, including, but not limited to, fees for IndieFlow’s administering mechanical royalties for the reproduction and distribution of musical works, as such fees and charges may be updated by IndieFlow from time to time, and you are responsible for reviewing those fees and charges. Your acceptance of this Agreement is an acceptance of the IndieFlow fees and charges, which are available at: [\[link to IndieFlow’s fees and charges\]](#). Payments may be made by IndieFlow to you by our third-party processors (e.g. PayPal or Stripe), but we may add or change payment methods in our sole discretion. Please note that these third-party processors are independent contractors and are not under our control or affiliated with us and you must accept and respect their terms and conditions. IndieFlow is not responsible in any way for the actions or performance (or lack thereof) of the third-party processors. The use of the third-party processors is at your own risk. You acknowledge that you are fully assuming the risks of conducting any transactions via the third-party processors.

6. Recordkeeping; Audits. We will maintain books and records which report the sale or other licensed uses of the Creations. You may, but not more than once a year, at your own expense, engage a Certified Public Accountant (“**CPA**”) to examine those books and records directly related to the sale or other licensed uses of the Creations. You may have your CPA make those examinations only for the purpose of verifying the accuracy of the statements sent to you. All such examinations will be in accordance with generally accepted accounting principles (“**GAAP**”) procedures and regulations. Your CPA may make such an examination for a particular statement only once, and only within one (1) year after the date we send you that statement. Your CPA may make such an examination only during our usual business hours, and only at the place where such books and records are maintained in the ordinary course of business. You must provide us with thirty (30)-days written notice prior to commencing an audit and must identify the name, address, telephone number, and email address of the CPA conducting the audit on your behalf. You may not engage the CPA on a contingent fee basis (i.e., your CPA must be paid on a flat fee or time-based basis). Your CPA will not be entitled to examine any other records that do not specifically report sales or other licensed uses of the Creations for which IndieFlow has actually received payment. Your CPA may act only under an acceptable confidentiality agreement, which provides that any information derived from such audit or examination on your behalf will not be knowingly released, divulged, published or shared with any other person, firm or corporation, other than to you or to a judicial or administrative body in connection with any proceeding relating to this Agreement. Your CPA may not share the results of the examination conducted on your behalf with any third party without our express written permission.

If you have any objections to an IndieFlow accounting statement made available to you, you agree that you shall give us a specific written notice of that objection, including a copy of your CPA’s analysis of the accounting statement, and your reasons for it within eighteen (18) months after the date we send or make that statement available to you. Each statement shall become conclusively binding on you at the end of that eighteen (18)-month period, and you will no longer have any right to make any other objections to it notwithstanding any audit rights you may otherwise have under any applicable law or regulation. Any payments determined to be owed to you following an audit shall be paid within forty-five (45) days of the delivery of your CPA’s audit report, unless objected to in writing by IndieFlow, in which case any payments due shall be postponed pending the resolution of the audit dispute. A late fee of one-half percent (0.5%) shall be due for underpaid royalties. Unless otherwise prohibited by law, you will not have the right to sue us in connection with any statement, or to sue us for unpaid royalties for the period a statement covers, unless you commence the suit within that eighteen (18)-month period. If you commence suit on any controversy or claim concerning statements rendered to you under this Agreement in a court of competent jurisdiction, the scope of the proceeding will be limited to a determination of the amount of royalties due

for the accounting periods concerned, and the court shall have no authority to consider any other issues or award any relief except recovery of any royalties found owing, plus interest at the rate of one-half percent (0.5%) per month. Your recovery of any such royalties plus interest shall be the sole remedy available to you by reason of any claim related to our statements.

Nothing contained in this Agreement shall prohibit you from affiliating with any PRO for the receipt of royalty payments for the public performance or communication to the public of your sound recordings or musical works made by a third party, excluding only public performances or communications to the public of sound recordings or musical works made by IndieFlow pursuant to Section 3 of this Agreement.

IndieFlow will use its reasonable efforts to collect sales and other taxes owed on the sale of the Creations (“**Sales Tax**”), and to remit such Sales Tax on your behalf to relevant government authorities. Notwithstanding the above, in all events, you acknowledge and agree that you are ultimately responsible for the payment of any Sales Tax owed in connection with the sale or distribution of the Creations pursuant to this Agreement, and you shall indemnify IndieFlow for any Sales Tax that may be owed in addition to those amounts collected and remitted on your behalf by IndieFlow.

7. Your Obligations. You will be solely responsible for obtaining and paying for any and all clearances or licenses required in the Authorized Territory for the use of any musical works embodied in the Creations. Without limiting the generality of the foregoing, you shall be solely responsible for and shall pay: (i) any royalties and other sums due to artists (featured and non-featured), authors, co-authors, copyright owners and co-owners, producers, engineers, and any other record royalty participants from sales or other uses of the Creations; (ii) all mechanical royalties or other sums payable to music publishers and/or authors or co-authors of musical compositions embodied in the Creations from sales or other uses of the Creations with regard to publishing issues; (iii) all payments that may be required by a PRO or under any other collective bargaining agreements applicable to you or any third party (e.g., to unions or guilds such as AFM or AFTRA); and (iv) any other royalties, fees and/or sums payable with respect to the Creations or other materials provided by you to us. You agree that the amount payable to you is inclusive of any so-called “artist royalties” that might otherwise be required to be paid for sales or exploitations pursuant to the applicable laws of any jurisdiction and for any public performances, public displays or communications to the public of the sound recordings and musical works constituting the Creations. You will be responsible for complying with the Recording Industry Association of America’s (“**RIAA**”) Parental Advisory Logo (“**PAL**”) Standards, as applicable, for so long as you use the Services. Information about the RIAA PAL Program is available here: <http://www.riaa.com/resources-learning/parental-advisory-label/>.

8. Right to Withdraw Material; Termination of Authorizations to Licensees. You have the right, at any time during the Term, to withdraw the authorizations set forth in Section 3 above for the sale or other uses of all or any portion of the Creations, upon a written notice to us (a “**Withdrawal Notice**”) or to send us a Termination Notice pursuant to Section 4 of this Agreement. Upon receipt of a Withdrawal Notice with respect to any of the Creations or a Termination Notice with respect to all of the Creations, we will promptly remove those elements of the Creations covered by such Withdrawal Notice or Termination Notice, as the case may be, from the Platform (and in no event more than five (5) business days following receipt of a Withdrawal Notice or Termination Notice), and shall, within five (5) business days following our receipt of a Withdrawal Notice or Termination Notice, advise our Licensees via a “**Takedown Notice**” that they are no longer authorized to sell or offer for any other use those elements of the Creations covered by such Takedown Notice. Your submission of a Withdrawal Notice or Termination Notice shall not in any way limit the authorizations granted to us or any Licensees prior to the implementation of your Withdrawal Notice or Termination Notice, and will not limit in any way the rights of end users who have acquired the Creations.

IndieFlow is not responsible for, and has no liability for, any delays of our Licensees in removing the Creations from any websites or services owned or operated by such Licensees. You shall remain solely responsible for enforcing the removal of the Creations from our Licensees’ websites and services in the event such Licensees fail to remove the Creations following receipt of a Takedown Notice or following the termination of any rights granted to such Licensees by IndieFlow; provided, however, that IndieFlow may, in its sole and absolute discretion, continue to assist you to effectuate the removal of the Creations from Licensees’ websites and services. IndieFlow may, in its sole discretion, provide you with notice in the event IndieFlow terminates or allows to expire any authorizations previously granted to a Licensee for the distribution of the Creations. Nothing in this Agreement shall limit any remedies you may have at law or in equity against any Licensee that is using the Creations in violation of the terms of any license granted to such Licensee by you or IndieFlow.

9. Names and Likenesses; Promotional Use and Opportunities. You hereby grant to IndieFlow during the Term the right to use and to authorize our Licensees to use the names and approved likenesses of, and biographical material concerning, any artists, bands, producers and/or songwriters, as well as track and/or album name, and all artwork related to your sound recordings or audiovisual works, in any marketing materials for the sale, promotion, and advertising of the Creations, which is offered for sale or other use under the terms of this Agreement (e.g., an artist or band name and likeness may be used in an informational fashion, such as by textual displays or other informational passages, to identify and represent authorship, production credits, and performances of the applicable artist or band in connection with the exploitation of the Creations).

You hereby grant to us and our Licensees the right to market, promote, and advertise the Creations as available for purchase or license, in any and all media, known today or developed in the future, as we and they determine in our and their discretion.

IndieFlow may, from time to time, provide you with information relating to customers that purchased the Creations, subject to our privacy policy and the preferences of our customers. You may only use, and disclose this information to a third party, for your internal record keeping purposes. You may not disclose any of this information to a third party or use it for any other purpose. In all events, you will comply with the terms of IndieFlow's privacy policy at: https://artists.indieflow.me/privacy_policy, in connection with the customer data provided under this Agreement.

10. Ownership. Subject to our rights hereunder or under any prior agreement between you and us, as between you and us, all right, title, and interest in and to the Creations, the Digital Masters, the Bits, the Physical Product (if applicable), all copyrights and equivalent rights embodied therein, and all materials furnished by you, will be yours.

11. Modifications. We reserve the right to change, modify, add to, or remove all or part of this Agreement, in our sole discretion, at any time and from time to time. Notice of any material change will be sent to you by electronic mail or via the Platform prior to its effective date. The most recent date of this Agreement shall be identified on the first page hereof. In the event that you do not consent to any such proposed changes in the Agreement, your sole recourse shall be to terminate this Agreement by notice to us, and your failure to submit a Termination Notice in accordance with Section 4 above within fifteen (15) days of the date of our notice to you shall constitute your acceptance of such changes to the extent the Creations are still available through the Services.

12. Monitoring of The Creations; Removal of Content from Platform. IndieFlow does not control the Creations and does not have any obligation to monitor the Creations for any purpose. IndieFlow may choose, in its sole discretion, to monitor, review or otherwise access some or all of the Creations, but by doing so IndieFlow assumes no responsibility for the Creations, no obligation to modify or remove any inappropriate elements of the Creations, or to monitor, review or otherwise access any other artist's content or artwork.

IndieFlow reserves the right, in its sole discretion, to remove any of the Creations from the Platform if such content: (i) is offensive, pornographic or defamatory; (ii) is the subject of a dispute between you or us and a third party; (iii) is content to which you cannot document your rights therein upon IndieFlow's request; (iv) violates the intellectual property rights or other protected interests of a third party; (v) is the subject of a takedown notice by a party claiming to own the rights therein, or (vi) is the subject of any fraudulent activity, or for any other reason in IndieFlow's sole judgment is necessary to protect the business interests of IndieFlow and any of its business partners or Licensees. IndieFlow may also remove the Creations from the Platform if you are abusive, rude or provide false or intentionally misleading information to any IndieFlow employees or agents. IndieFlow shall have no liability to you for the removal of any of the Creations from the Platform or any Licensee website or service other than to provide you a credit (but not a refund) for any fees previously paid by you for making the Creations available via the Platform or through the Licensees. The removal of any of the Creations shall not relieve IndieFlow of the obligation to pay you any royalties that may have accrued prior to the removal of the Creations.

This Agreement shall not be terminated automatically by IndieFlow's removal of the Creations from the Platform or Licensee's websites or services. In order for you to terminate this Agreement following the removal of any of the Creations, you must send IndieFlow a Termination Notice.

13. Representations and Warranties by the parties. Each party represents and warrants to the other that it: (a) is authorized to enter into this Agreement on the terms and conditions set forth herein; (b) will not act in any manner that conflicts or interferes with any existing commitment or obligation of the other party, and that no agreement previously entered into by the party will interfere with the performance of its obligations under this Agreement; and (c) shall perform its obligations hereunder in full compliance with any applicable laws, rules, and regulations of any governmental authority having jurisdiction over such performance.

14. Representations and Warranties by You. You represent and warrant to IndieFlow that: (a) you have the full right, power, and authority to act on behalf of any and all owners of any right, title or interest in and to the Creations, including, but not limited to, all musical works embodied in the Creations, and that you are authorized to provide the Creations to us for the uses specified in this Agreement. For the avoidance of doubt, if you are acting on behalf of an artist, band, group or corporation, you hereby represent and warrant to IndieFlow that you are fully authorized to enter into this Agreement on behalf of such artist, band, group or corporation and to grant all of the rights and assume and fulfill all of the obligations, covenants, and representations and warranties set forth in this Agreement; (b) you own or control all of the necessary rights in the Creations in order to make the grant of rights, licenses, and permissions herein, and that you have permission to use the name and likeness of each identifiable individual person whose name or likeness is contained or used within the Creations, and to use such individual's identifying or personal information (to the extent such information is used or contained in the Creations) as contemplated by this Agreement; (c) the use or other exploitation of the Creations, including,

but not limited to, any musical works embodied in your sound recordings, by us and our Licensees as contemplated by this Agreement will not infringe or violate the rights of any third party, including, without limitation, any privacy rights, publicity rights, copyrights, contract rights, or any other intellectual property or proprietary rights; (d) to the extent you are the songwriter of any or all of the musical works embodied in the Creations, whether in whole or in part (e.g., as a co-writer), you have the full right, power, and authority to grant the rights set forth in this Agreement notwithstanding the provisions of any agreement you may have entered into with any PRO, whether based in the United States or elsewhere, or any music publisher, and that you are solely responsible for taking all steps necessary to inform such PRO or music publisher of your grant of a royalty free license to us and our Licensees for the public performance and communication to the public of the Creations, including Bits, and that no fees or payments of any kind whatsoever shall be due to any PRO or music publisher for the use of the musical works in the Creations when publicly performed, communicated or otherwise transmitted by IndieFlow or its Licensees; and (e) you have not assigned any of the rights in and to the sound recordings embodied in the Creations to any third party (e.g., a record label) that obtained exclusive rights in and to such sound recordings.

15. No Representations and Warranties with Respect to Sales and Distributions. IndieFlow makes no guarantees regarding the minimum number of unit sales or uses of the Creations. In addition, we cannot guarantee that the Licensees will perform under any agreement they enter into with IndieFlow for the sale, distribution or licensed use of the Creations, including by paying the applicable royalties they owe us for the distribution of the Creations. If a Licensee refuses to pay us for the use of the Creations, you agree that you will assume responsibility for collecting any payments that may be due from such non-compliant Licensees for any sale, distribution or licensed use of the Creations if such third party fails or refuses to pay such amounts to IndieFlow upon IndieFlow's request.

16. Indemnification. You hereby agree to indemnify, defend, and hold IndieFlow harmless from and against any and all damages, claims, liabilities, costs, losses, and expenses (including, but not limited to, legal costs and attorneys' fees) (collectively, the "Claims") arising out of any breach or alleged breach of any of the warranties, representations, covenants or agreements made by you in this Agreement, including, but not limited to, any Claims made by a PRO or a music publisher with respect to any public performances or communications to the public of any musical works embodied in the Creations, any contributor to any sound recording included within the Creations, including claims from any unions, guilds, background musicians or vocalists, engineers, etc., or any other party for any use or misuse of any other forms of intellectual property or proprietary rights in the Creations, including, but not limited to, trademark rights and invasions of the right of privacy or publicity. You agree to reimburse us, on demand, for any payment made by us at any time with respect to any Claims to which the foregoing indemnity applies. Pending the resolution of any claim, demand, or action, we may, at our election, withhold payment of any monies otherwise payable to you hereunder in an amount which does not exceed your potential liability to us pursuant to this Section.

If we make an indemnification request to you under this Section, we may permit you to control the defense, disposition or settlement of the matter at your own expenses, provided that you shall not, without our prior written consent, enter into any settlement or agree to any disposition that requires any admission of liability by IndieFlow or imposes any conditions or obligations on IndieFlow other than the payment of monies that are readily measurable for purposes of determining your monetary indemnification or reimbursement obligations to us. If we, in our reasonable and good faith judgment, conclude that you are not capable of defending your or our interests against any Claims, then we shall have the option to control the defense in any matter or litigation through counsel of our own choosing to defend against any such Claim for which you owe IndieFlow an indemnification, and the costs of such counsel, as well as any court costs, shall be at your expense.

17. Disclaimers. TO THE FULLEST EXTENT LEGALLY PERMISSIBLE, THE PLATFORM AND ANY THIRD-PARTY CONTENT, SOFTWARE, SERVICES OR APPLICATIONS MADE AVAILABLE IN CONJUNCTION WITH OR THROUGH THE PLATFORM, ARE PROVIDED ON AN "AS IS", "AS AVAILABLE", "WITH ALL FAULTS" BASIS WITHOUT REPRESENTATIONS AND WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE.

TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO ANY APPLICABLE LAW, INDIEFLOW AND ITS AFFILIATES, PARTNERS, LICENSORS AND SUPPLIERS HEREBY DISCLAIM ALL EXPRESS, IMPLIED AND STATUTORY WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, THOSE ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE AND NON-INFRINGEMENT. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM INDIEFLOW OR THROUGH THE PLATFORM WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN. INDIEFLOW AND ITS AFFILIATES, PARTNERS, LICENSORS, AND SUPPLIERS DO NOT WARRANT THAT THE PLATFORM OR ANY PART THEREOF, OR ANY

SERVICES PROVIDED BY INDIEFLOW, WILL BE SECURE, TIMELY, ACCURATE, COMPLETE, UNINTERRUPTED, OR FREE OF ERRORS, VIRUSES OR OTHER HARMFUL COMPONENTS AND DO NOT WARRANT THAT ANY OF THE FOREGOING WILL BE CORRECTED. YOU UNDERSTAND AND AGREE THAT YOU OFFER THE CREATIONS VIA THE SERVICES, AT YOUR OWN DISCRETION AND RISK, AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY (INCLUDING YOUR COMPUTER SYSTEM, HANDSET, OR ANY OTHER DEVICE OR PERIPHERAL USED IN CONNECTION WITH THE PLATFORM) OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OR USE OF SUCH MATERIAL OR DATA.

INASMUCH AS SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSIONS OR LIMITATIONS AS SET FORTH HEREIN, THE FULL EXTENT OF THE ABOVE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY.

18. Limitation of Liability; Basis of the Bargain. TO THE MAXIMUM EXTENT LEGALLY PERMISSIBLE, INDIEFLOW SHALL NOT BE LIABLE TO YOU FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY NATURE, FOR ANY REASON, INCLUDING, WITHOUT LIMITATION, THE BREACH OF THIS AGREEMENT OR ANY TERMINATION OF THIS AGREEMENT, UNDER ANY LEGAL THEORY, (INCLUDING, WITHOUT LIMITATION, CONTRACT, TORT, NEGLIGENCE OR STRICT LIABILITY) (INCLUDING WITHOUT LIMITATION, LOSS OF GOODWILL, PROFITS OR DATA AND BUSINESS INTERRUPTION) OR OTHERWISE, EVEN IF WE HAVE BEEN WARNED OF THE POSSIBILITY OF SUCH DAMAGES. INDIEFLOW SHALL ALSO NOT BE LIABLE FOR ANY ROYALTIES, FEES, PAYMENTS OR DAMAGES ARISING OUT OF THE FAILURE OF ANY LICENSEE TO PAY INDIEFLOW OR YOU ANY ROYALTIES THAT ARE DUE FOR ANY USE OR MISUSE OF THE CREATIONS, WHETHER PURSUANT TO AN EXISTING, EXPIRED OR TERMINATED AGREEMENT WITH INDIEFLOW OR OTHERWISE. INDIEFLOW'S TOTAL LIABILITY TO YOU FOR ANY BREACH OF THIS AGREEMENT SHALL IN ALL INSTANCES BE LIMITED TO THE AMOUNT OF MONIES ACTUALLY PAID TO YOU BY INDIEFLOW FOR THE DISTRIBUTION OR LICENSING OF THE CREATIONS DURING THE SIX (6)-MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF YOUR CLAIM AGAINST INDIEFLOW.

APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. IN SUCH CASES, YOU AGREE THAT BECAUSE SUCH DISCLAIMERS AND LIMITATIONS OF LIABILITY REFLECT A REASONABLE AND FAIR ALLOCATION OF RISK BETWEEN YOU AND INDIEFLOW AND ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN YOU AND INDIEFLOW, INDIEFLOW'S LIABILITY SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW. YOU UNDERSTAND AND AGREE THAT INDIEFLOW WOULD NOT BE ABLE TO OFFER ITS SERVICES TO YOU ON AN ECONOMICALLY FEASIBLE BASIS WITHOUT THESE LIMITATIONS AND WOULD NOT OFFER SUCH SERVICES ABSENT A LIMITATION OF LIABILITY.

19. Governing Law; Dispute Resolution. This Agreement will be governed and interpreted in accordance with the laws of the State of Delaware, without regard to conflict of laws principles. Any and all disputes arising out of this Agreement shall be resolved in the manner set forth in the TOU.

20. Relationship of the Parties. The parties hereto agree and acknowledge that the relationship between them is that of independent contractors. This Agreement shall not be deemed to create an agency, partnership or joint venture between you and IndieFlow, and IndieFlow shall not have a fiduciary obligation to you as a result of your entering into this Agreement.

21. Entire Agreement. This Agreement (including the Digital Distribution Exhibit) together with the TOU contains the entire understanding of the parties relating to the subject matter hereof. This Agreement supersedes all previous agreements or arrangements between you and IndieFlow pertaining to the Services. This Agreement cannot be changed or modified except as provided herein.

22. Waiver; Severability. A waiver by either party of any term or condition of this Agreement will not be deemed or construed as a waiver of such term or condition, or of any subsequent breach thereof. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable, such determination shall not affect any other provision hereof, and the unenforceable provision shall be replaced by an enforceable provision that most closely meets the commercial intent of the parties.

23. Binding Effect. This Agreement will be binding on the assigns, heirs, executors, affiliates, agents, personal representatives, administrators, and successors (whether through merger, operation of law, or otherwise) of each of the parties.

24. **Notice.** Any notice, approval, request, authorization, direction or other communication under this Agreement shall be given in writing and shall be deemed to have been delivered and given for all purposes on the delivery date if sent by electronic mail to the addresses provided to and by you upon registration with IndieFlow, or as properly updated, or, in the absence of a valid electronic mail address, via any other method IndieFlow may elect in its sole discretion, including, but not limited to, via posting on the Platform.

25. **Assignment.** IndieFlow may assign its rights and obligations under this Agreement at any time to any party. You may not assign your rights and/or obligations under this Agreement without obtaining IndieFlow's prior written consent.

26. **Rights Cumulative.** To the extent permitted by applicable law, the rights and remedies of the parties provided under this Agreement are cumulative and are in addition to any other rights and remedies of the parties at law or equity.

27. **No Third Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their authorized successors and permitted assigns. Nothing herein, express or implied, is intended to or shall confer upon any person or entity, other than the parties hereto and their authorized successors and permitted assigns, any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Digital Distribution Exhibit

Welcome to the IndieFlow Digital Distribution Exhibit between you and IndieFlow. This Digital Distribution Exhibit is part of and incorporates the terms of the IndieFlow Creator Agreement and contains additional terms and conditions under which IndieFlow offers the Digital Download and Distribution Service and the Digital Performance Rights Administration Service.

1. **Additional Authorization.** While selling the Creations on the Platform is non-exclusive (meaning you have the right to sell your music and videos directly), the rights granted by you to us under this Digital Distribution Exhibit are **exclusive** with respect to serving as your authorized representative for distributing the Creations to third party distributors for online redistribution, because online retailers (e.g., iTunes, Amazon, etc.) will refuse content that may be delivered by multiple parties. The rights granted are also **exclusive** as to acting as your collection agent with respect to royalties owed to you as the sound recording copyright owner by third party licensing organizations (such as Sound Exchange) for the exploitation of your Digital Performance Rights under the compulsory license (“**Digital Performance Royalties**”). However, you may opt out of our collection of such Digital Performance Royalties as described in Section 3 below.

2. **Additional Grant.** In addition to the rights granted in the IndieFlow Creator Agreement, You hereby grant to us the **exclusive** right (as explained below), and to our Licensees the non-exclusive right, during the Term and throughout the Authorized Territory, to:

(a) Reproduce, promote, sell, distribute, and deliver the Creations and Creation Cover as Digital Masters to purchasers and resellers who may use such Digital Masters in accordance with usage rules approved by us and pursuant to any limitations imposed by your distribution preferences (e.g., only Digital Master sales);

(b) Use and authorize others to license the use and sale of the Creations and Creation Cover in connection with all manner of phone services, such as, but not limited to, sales or licenses of the Creations as downloads (including, without limitation, downloads to cell phones) and for use as ringtones (including master tones) and ring back tones;

(c) Use so-called “kiosks” to reproduce, distribute, market, and promote the Creations, including, without limitation, by allowing the burning of compact disc and DVD copies of any of the Creations (to the extent not expressly prohibited by you) or by allowing a copy of the Creations to be transferred to digital storage devices, including smartphones and other handheld devices (e.g., iPods, USB drives, etc.);

(d) Use and authorize others to allow copies of the Creations to be distributed as so-called “conditional” downloads, whether tethered to a device, time limited, play limited or otherwise;

(e) “Stream” and authorize others to “stream” the Creations on-demand as part of an Internet radio service, on a multi-channel video programming distribution service, or via any other interactive distribution platform or technology, known today or and developed in the future, or as part of a non-interactive service;

(f) Reproduce, distribute, and publicly display visual elements of the Creations (e.g., album cover artwork, images, etc.) in connection with the promotion, advertisement, sale, and distribution of the Creations;

(g) Create and authorize others to create fingerprints of the Creations for purposes of audio recognition, which shall remain the property of IndieFlow and/or its third party partners; and

(h) Use and authorize others to license the use of any album related artwork, photos, liner notes, metadata and other material related to, but not including, your sound recordings and video content that you have provided to IndieFlow in perpetuity.

3. **Digital Performance Rights Administration Services.** In addition, you hereby grant to us the sole and exclusive rights throughout the Authorized Territory to administer, promote and manage your Digital Performance Rights in the sound recordings you submit to IndieFlow (the “**Sound Recordings**”), including without limitation the sublicensable right to:

(a) Register, on your behalf, with Sound Exchange and other similar organizations and licensing agencies which collect Digital Performance Royalties and for which IndieFlow may offer such registration services, unless you opt out of as described below;

(b) Collect, on your behalf, all Digital Performance Royalties, unless you opt out as describe below, and other amounts owed to you for the exercise and exploitation of your Digital Performance Rights in the Sound Recordings; and

(c) Otherwise exercise and exploit, and allow others to exercise and exploit, your Digital Performance Rights in any manner or media, whether interactive or non-interactive, including digitally performing and licensing others to digitally perform the Sound Recordings publicly or privately, for profit or otherwise, by any means or media whatsoever, known today or conceived or developed in the future.

If you do not want IndieFlow to collect Digital Performance Royalties from, or register with, Sound Exchange (or any other similar licensing agencies) on your behalf, you may opt out of such collection and registration by emailing us at: team@indieflow.me

4. Payments to You. We will pay you an amount equal to one-hundred percent (100%) of the Digital Performance Royalties and other amounts actually collected by us on your behalf in connection with your Digital Performance Rights. If we incur any out-of pocket expenses, costs or fees in connection with the collection or distribution of such Digital Performance Royalties or the management or administration of your Digital Performance Rights, we may deduct such amounts from the amounts payable to you.

We will attempt to provide you with accounting details on a monthly basis in a designated area in your Account. We will use commercially reasonable efforts to provide you with payments for digital distribution (including for Digital Performance Rights) (by electronic transfer subject to the W9 form filing) . Fees for returned direct deposit (ACH) transactions, for your bank account deposits and/or for payment processors will be your responsibility. Such payment shall constitute full and adequate consideration for all rights granted, and all obligations undertaken, by you in this Agreement. Our recordkeeping obligations and your audit rights shall be as set forth in Section 6 of the IndieFlow Creator Agreement.