

END USER LICENSE AGREEMENT

This End User License Agreement (“**Agreement**”) is a binding agreement between you (collectively, together with each and every person whom you allow access to the Platform (defined below) using your Platform user ID and/or password, “**End User**,” “**you**,” or any pronoun similar to “**you**”) and Data Garden, Inc., a Delaware corporation (“**Company**”). This Agreement governs your use of the digital sound packs, soundfonts, plugins and synth sounds (the “**PlantWave Sounds**”) made available on and/or created by Company’s “PlantWave” mobile application platform (including all related programming and documentation, the “**Platform**”) on your mobile device and/or Company’s “PlantWave” hardware (“**Device**”), and all sound recordings and musical compositions created with the PlantWave Sounds. The applicable PlantWave Sounds are licensed, not sold, to you.

BY DOWNLOADING THE PLATFORM AND/OR PLANTWAVE SOUNDS, OR OTHERWISE ACCESSING THE PLANTWAVE SOUNDS, YOU (A) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT; (B) REPRESENT THAT YOU ARE AT LEAST 18 YEARS OF AGE AND YOU ARE LEGALLY ABLE TO ENTER INTO THIS AGREEMENT; AND (C) ACCEPT THIS AGREEMENT AND AGREE THAT YOU ARE LEGALLY BOUND BY ITS TERMS. IF YOU DO NOT AGREE TO THIS AGREEMENT, DO NOT DOWNLOAD, INSTALL, USE OR OTHERWISE ACCESS THE PLATFORM OR THE PLANTWAVE SOUNDS AND DELETE ANY AND ALL INSTANCES OF IT WITHIN YOUR POSSESSION OR CONTROL.

IF YOU ARE UNDER 18 YEARS OF AGE, YOUR PARENT AND/OR GUARDIAN MUST AGREE ON YOUR BEHALF TO ENTER INTO THIS AGREEMENT AND BE BOUND BY THESE TERMS. PLEASE REFER TO THE PRIVACY POLICY, INCORPORATED HEREIN BY REFERENCE, FOR INFORMATION REGARDING PERSONS UNDER THE AGE OF 18. IF YOU ARE UNDER 18 YEARS OF AGE AND YOUR PARENT AND/OR GUARDIAN DOES NOT EXPRESSLY CONSENT TO YOUR USE OF THE PLATFORM AND/OR PLANTWAVE SOUNDS, DO NOT DOWNLOAD, INSTALL, USE OR OTHERWISE ACCESS THE PLATFORM OR PLANTWAVE SOUNDS AND DELETE ANY INSTANCE OF IT OR ITS CONTENT WITHIN YOUR POSSESSION OR CONTROL. IF YOU ARE THE GUARDIAN OR PARENT OF A USER UNDER 18 YEARS OF AGE, AND YOU PROVIDE YOUR CHILD WITH CREDIT CARD INFORMATION TO BE USED IN CONNECTION WITH THE PLATFORM OF THE PLANTWAVE SOUNDS, SUCH USE OF A CREDIT CARD SHALL BE DEEMED TO BE YOUR ACCEPTANCE OF THIS AGREEMENT.

By creating an account on the Platform for your minor child or ward, you hereby agree and consent to the Agreement on the minor’s behalf, and you hereby assume any and all responsibility and liability for the minor's use of the Platform. You will be responsible for any breach of the above representations, warranties, covenants, or agreements in this Agreement or any attempt of the minor to disaffirm this Agreement. Furthermore, you hereby represent that

you are fully authorized to execute this Agreement on behalf of yourself and all other parents or legal guardians of the minor.

It is your responsibility to periodically review the terms of this Agreement. Further, Company reserves the right, at any time, to change the terms of use by publishing notices of such changes via the Platform. Any use or access of the Platform by you after Company's publication of any such changes shall constitute your acceptance of this Agreement, as modified. You agree that Company is permitted, in accordance with Company's privacy policy, located at <http://plantwave.com/privacy> and incorporated herein by this reference (the "**Privacy Policy**"), to access and use any information provided by you to utilize the PlantWave Sounds, including any Personally Identifiable Information (as defined in the Privacy Policy), and, if necessary, to access such information to obtain contact information in order to provide notifications relating to the PlantWave Sounds.

1. Content and License Terms.

1.1 "**Content**" includes the PlantWave Sounds and any text, message, data, photograph, image, graphic, information, audio/video files or other material used in, by, through or in connection with the PlantWave Sounds and any related trademarks, service marks, logos, insignias and other intellectual property contained therein. As between you and Company, the Content is owned by or licensed to Company, subject to copyright and other intellectual property rights under the law.

1.2 Subject to any and all restrictions on uses set forth below or on the Platform (including any and all payment obligations for such uses) and the other terms of this Agreement, Company grants you a limited, revocable, non-exclusive and non-transferable license to:

1.2.1 Access and publicly perform the PlantWave Sounds for your personal, non-commercial use via a Device owned or otherwise controlled by you strictly in accordance with the Platform's policies and this Agreement;

1.2.2 Access and publicly perform the PlantWave Sounds as on-premise background music for any business space under one thousand (1,000) square feet in size, provided that the PlantWave Sounds are not: (i) used in connection with any choreographed performance, dramatic performances, art exhibitions or instructional classes; or (ii) synchronized with any visual images;

1.2.3 Record, copy, reproduce, and synchronize the PlantWave Sounds in audio-only or audiovisual recordings for your personal, non-commercial use;

1.2.4 Modify, edit, and customize the PlantWave Sounds for use in combination with other sounds as part of a musical composition and master recording created by you embodying the PlantWave Sounds ("**User Content**") solely for you personal use; and

1.3 Any other uses of the PlantWave Sounds not expressly set forth above shall require a separate extended license (a “**Separate License**”) to be granted or withheld by Company in Company’s sole and absolute discretion.

1.4 The Content is provided to you “as is” in connection with your use of the Platform. Except as expressly stated in this Agreement, you are not granted any right or license, by implication, estoppel, or otherwise, in or to any patent, service mark, trademark, copyright, or proprietary right of Company or any third party, in connection with your use of the PlantWave Sounds and any Content provided by Company or any third party in the PlantWave Sounds. Elements of the PlantWave Sounds are protected by state and federal laws and may not be copied or imitated in whole or in part except as permitted hereunder. Violation of this Agreement, including without limitation modification or use of Content for any purpose other than those permitted in this Agreement, shall result in the automatic termination, without notice to you, of your license to access and use the PlantWave Sounds, and also may constitute the infringement of Company’s copyright, service mark, trademark and/or other rights. You shall not attempt to access any of Company’s systems, programs or data that are not made available for public use.

2. User Content. Company does not claim any ownership rights in any User Content in any form, provided, however, that you shall not own any underlying Content incorporated into your User Content. By distributing or performing any User Content, you hereby grant to Company and its designees the non-exclusive right to use, publicly perform, publicly display, reproduce, and distribute your User Content for any and all purposes, including, without limitation, for demonstration purposes, in Company’s sole discretion. Further, this license shall also grant to Company the right, but not the obligation or duty, to modify, delete from and add to such User Content. This license shall be non-exclusive, irrevocable, fully-paid and royalty-free, sublicensable, worldwide, and perpetual. None of the User Content will be subject to any obligation, whether of confidentiality, attribution or otherwise, on Company’s part and Company will not be liable for any use or disclosure of any User Content. If Company does decide, in its sole discretion, to attribute User Content to you, you hereby grant Company the right to use your name or user name with respect to such attribution, and waive any claims (including, without limitation, any privacy or publicity rights claims) with respect to such use of your name or user name.

YOU ARE SOLELY RESPONSIBLE FOR THE USER CONTENT THAT YOU CREATE, AND ANY MATERIAL OR INFORMATION THAT YOU TRANSMIT TO OTHER

PARTIES AND FOR YOUR INTERACTIONS WITH OTHER PARTIES (INCLUDING BUT NOT LIMITED TO THIRD-PARTY PROVIDERS).

Company is and shall be under no obligation to (a) pay you any compensation for any User Content, or (b) review or modify any User Content.

3. License Restrictions. Unless expressly granted by a Separate License, End User shall not:

3.1 Copy, reproduce, republish, upload, post, transmit, or distribute in any way the PlantWave Sounds or any Content without Company's written permission, other than as expressly allowed by Company hereunder.

3.2 Modify, adapt, sub-license, translate, sell, reverse engineer, decompile or disassemble any portion of the PlantWave Sounds or otherwise attempt to derive any source code or underlying ideas or algorithms of any part of the PlantWave Sounds.

3.3 Sell, license, or otherwise commercially exploit any PlantWave Sounds or User Content via a Major Record Label or Qualifying Independent Label. As used herein, a "**Major Record Label**" shall mean a record label or company: (i) which is a parent or subsidiary of, and/or is affiliated with (i.e., shares common ownership with), one of the "major" distributors in the United States (which distributors are presently Sony, Universal and the Warner Music Group/WEA), (ii) which is a parent or subsidiary of, and/or is affiliated with, one of the so-called "indie" distributors which provide national distribution (which "indie" distributors presently include, without limitation, Ryko, Caroline, Ingrooves, The Orchard, Rounder, Kobalt/AWAL, BMG, ADA and E1), and/or (iii) whose records are distributed by any such "major" or "indie" record label, company or distributor including without limitation, Company's own record label. A "**Qualifying Independent Label**" shall mean any record label or company not included in the definition of Major Record Label as provided above which has distributed any album and/or master which has exceeded an aggregate of One Hundred Thousand (100,000) streams on Apple Music, Spotify and YouTube in any given calendar month, or greater than an aggregate of One Million (1,000,000) streams on Apple Music, Spotify and YouTube in total.

3.4 Use the PlantWave Sounds in any sound library for any kind of synthesizer, virtual instrument, sample, loop or FX library, sample pack, sample-based product, musical instrument, or other similar or competitive products.

3.5 Distribute any individual samples, sound sets or audio loops using the PlantWave Sounds on a standalone basis.

3.6 Repackage any of the PlantWave Sounds in whole or in part as audio samples, sound libraries or sound effects.

3.7 Use the PlantWave Sounds in any internet, mobile or computer application, or video or computer game, where the PlantWave Sounds are played individually, in combination or sequenced together with other sounds or images by the end user.

3.8 Remove, delete, alter or obscure any trademarks or any copyright, trademark, patent or other intellectual property or proprietary rights notices from the PlantWave Sounds, including any copy thereof.

3.9 Rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the original versions of the PlantWave Sounds to any third party for any reason, including by making the original versions of the PlantWave Sounds available on a network where it is capable of being accessed by more than one device at any time, or which allows others to download, extract, or redistribute content as a standalone file (meaning just the content file itself, separate from the project or end use).

3.10 Use any PlantWave Sounds to create any sample packs or to distribute them through any mobile applications, plugins, or similar products.

3.11 Use any PlantWave Sounds as a trademark for any business.

3.12 Circumvent, disable or otherwise interfere with security-related features of the PlantWave Sounds or features that prevent or restrict use or copying of any Content, or enforce limitations on use of the PlantWave Sounds or the Content.

3.13 Transmit through, in or by the PlantWave Sounds, any software or other materials that contain any viruses, worms, Trojan horses, defects, date bombs, time bombs or other items of a destructive nature.

3.14 Use any data scraping, mining, robots, spiders, or similar data gathering and extraction methods within the PlantWave Sounds or in any way reproduce or circumvent the presentation of the Contents without Company's prior written consent.

3.15 Use any "hidden text" without Company's express written consent.

3.16 Take any action that imposes or may impose (in Company's sole discretion) an unreasonable or disproportionately large load on Company's (or Company's third-party providers') infrastructure.

3.17 Duplicate or create multiple user accounts in an attempt to circumvent Company's security and privacy measures and policies.

3.18 "Frame" or "mirror" any part of the PlantWave Sounds.

3.19 Provide to Company false or incorrect Personally Identifiable Information (as defined in Company's Privacy Policy).

3.20 Use the Content for any unlawful purpose.

3.21 Distribute User Content that violates the privacy rights, publicity rights, copyrights, contract rights or any other rights of any person or entity.

3.22 Distribute User Content that includes any Prohibited Content (as hereinafter defined). “**Prohibited Content**” includes, but is not limited to, any Content that: (i) is defamatory, abusive, harassing, threatening, or an invasion of a right of privacy of another person; (ii) is bigoted, hateful, or racially or otherwise offensive; (iii) is violent, vulgar, obscene, pornographic or otherwise sexually explicit; (iv) is harmful or can reasonably be expected to be harmful to any person or entity; (v) is illegal or encourages or advocates illegal activity or the discussion of illegal activities with the intent to commit them; (vi) infringes or violates any right of a third party including right of privacy, right of publicity, copyright, patent, trademark, service mark, trade secret or other proprietary or contractual rights; (vii) is commercial, business-related or solicits or advertises or offers to sell any products or services, whether or not for profit; or (viii) contains a virus or other harmful component, or otherwise tampers with, impairs or damages the PlantWave Sounds, or otherwise interferes with any person or entity’s use or enjoyment of the PlantWave Sounds.

4. Reservation of Rights. You acknowledge and agree that the PlantWave Sounds are provided under license, and not sold, to you. You do not acquire any ownership interest in the PlantWave Sounds under this Agreement, or any other rights thereto other than to use the PlantWave Sounds in accordance with the license granted, and subject to all terms, conditions and restrictions, under this Agreement. Company and its licensors and service providers reserve and shall retain their entire right, title and interest in and to the PlantWave Sounds, including all copyrights, trademarks and other intellectual property rights therein or relating thereto, except as expressly granted to you in this Agreement.

5. User Accounts. You may access and view certain Content without registering, but as a condition to using the PlantWave Sounds, you may be required to register with the Platform and select a password and username (“**User ID**”). You will provide Company with accurate, complete, and updated registration information. Failure to do so shall constitute a breach of this Agreement, which may result in immediate termination of your license. You shall not (a) select or use as a User ID a name of another person with the intent to impersonate that person; (b) use as a User ID a name that is subject to any rights of a person other than you without appropriate authorization; or (c) use as a User ID a name that is otherwise illegal, offensive, vulgar or obscene. Company reserves the right to refuse registration, cancel a User ID or terminate your right to use the PlantWave Sounds in its sole discretion. You are solely responsible for activity that occurs on your account and shall be responsible for maintaining the confidentiality of the password to your account. You shall never use another user’s account without such other user’s express written permission. You will immediately notify Company in writing of any unauthorized use of your account, or other account related security breach of which you are aware. Please read Company’s Privacy Policy, which describes the Personally Identifiable Information Company collects, uses, discloses, manages and stores. You will be responsible for the confidentiality and use of your User ID, and for any and all activities (including purchases, as applicable) that are conducted through your account, and agree not to transfer or resell your use of or access to the PlantWave Sounds to any third party. Company is not liable for any harm caused or related to the theft or misappropriation of your User ID, disclosure of your User ID, or your authorization of anyone else to use your User ID. If you have reason to believe that your

account with Company is no longer secure, you must promptly change your password and immediately notify Company of the problem.

6. Collection and Use of Your Information. You acknowledge that when you download, install or use the PlantWave Sounds, Company may use automatic means (including, for example, cookies and web beacons) to collect information about your Device (or other computing device) and about your use of the PlantWave Sounds. You also may be required to provide certain information about yourself as a condition to downloading, installing or using the PlantWave Sounds, and the Platform may provide you with opportunities to share information about yourself with others. Any information Company collects through or in connection with the PlantWave Sounds is subject to Company's Privacy Policy. By downloading, installing and using the PlantWave Sounds and/or providing information to or through this Platform, you consent to all actions taken by Company with respect to your information in compliance with the Privacy Policy, which is incorporated herein by this reference.

7. Website Content and Services. Company may provide you with access to Company's website located at <http://www.plantwave.com> (the "**Website**") and products and services accessible thereon, and certain Content accessible in or through the Platform may be hosted on the Website (collectively, "**Website Content and Services**"). Your access to and use of such Website Content and Services are governed by these Terms, the Privacy Policy, any other additional or supplementary policies or terms posted on the Website, including any other terms of use of the Website (collectively, the "**Website Policies**"). Your access to and use of such Website Content and Services may require you to acknowledge your acceptance of such Website Policies and/or to register with the Website and your failure to do so may restrict you from accessing or using certain features and functionality of the Platform. Any violation of such Website Policies will also be deemed a violation of this Agreement. The Website Content and Services are based in the state of California in the United States and are intended for access and use only by persons located in the United States. You acknowledge that you may not be able to access all or some of the Website Content and Services outside of the United States and that access thereto may not be legal by certain persons or in certain countries. If you access the Website Content and Services from outside the United States, you are responsible for compliance with local laws.

8. Limitations on Use. You acknowledge that Company may establish limits concerning use of the PlantWave Sounds and reserves the right at any time to modify or discontinue the PlantWave Sounds, your access to the PlantWave Sounds, or any part thereof, with or without notice, including but not limited to the functionality, the equipment needed for its access or use, or its pricing. Company shall not be liable to you or to any third party for any modification, suspension or discontinuance of the PlantWave Sounds or access to it. YOU ACKNOWLEDGE THAT COMPANY IS NOT RESPONSIBLE OR LIABLE FOR YOUR USE OF ANY OF THE PLANTWAVE SOUNDS. You acknowledge that any limitations on the PlantWave Sounds will not be cause for a refund for any of Company's services or products, except as expressly provided herein.

9. Updates. Company may from time to time in its sole discretion develop and provide updates to the PlantWave Sounds, which may include upgrades, bug fixes, patches and

other error corrections and/or new features (collectively, including related documentation, “**Updates**”). Updates may also modify or delete in their entirety certain features and functionality. You agree that Company has no obligation to provide any Updates or to continue to provide or enable any particular features or functionality. Based on your Device settings, when your Device is connected to the internet either: (a) the Platform will automatically download and install all available Updates; or (b) you may receive notice of or be prompted to download and install available Updates. You shall promptly download and install all Updates and acknowledge and agree that the PlantWave Sounds or portions thereof may not properly operate should you fail to do so. You further agree that all Updates will be deemed part of the PlantWave Sounds and be subject to all terms and conditions of this Agreement.

10. Ownership of Content.

10.1 PlantWave Sounds & Content. The PlantWave Sounds and Content are owned or licensed by Company. All right, title and interest in and to the Content, including but not limited to information, documents, logos, graphics, sounds, page headers, button icons, service marks, trade dress, trademarks and images are owned either by Company or by third-party authors, developers, or vendors (“**Third-Party Providers**”) and licensed to Company. The Content and materials provided in or in connection with the PlantWave Sounds are intended to facilitate your personal use and enjoyment of the PlantWave Sounds. Except as otherwise expressly provided by Company, none of the Content may be republished, reproduced, uploaded, displayed, posted, distributed, or transmitted, in any way, including without limitation in or on any other website, application or in a networked computer environment, and nothing in the PlantWave Sounds shall be construed to confer any license under any of Company’s intellectual property rights, whether by implication, estoppel, or otherwise. Subject to your compliance with this Agreement, you may download copies of any Content required to be downloaded in connection with the PlantWave Sounds you desire, and you may use such downloaded PlantWave Sounds solely for your personal, non-commercial use, provided that you retain all copyright and other proprietary notices contained on such materials. Company cannot guarantee that technical difficulties will not occur during the download of the Content or that the Content will download successfully. You further acknowledge that you do not acquire any ownership rights by using the Content or any content provided by any third party. Any rights not expressly granted herein to you are hereby reserved by Company.

10.2 Copyrights. All of the Content designs, graphics, and the selection and arrangement thereof, are owned or licensed by Company. Copyright © 2021, DATA GARDEN, INC. ALL RIGHTS RESERVED.

10.3 Trademarks. Company’s logo, name and all images and text, and all page headers, custom graphics and button icons are service marks, trademarks and/or trade dress of Company. All other trademarks, service marks, product names and company names or logos cited herein are the property of their respective owners. The trademarks, logos, and service marks displayed in connection with the PlantWave Sounds (collectively the “**Trademarks**”) are the registered and unregistered trademarks of Company, Company’s licensors and suppliers, and others. Nothing contained in the PlantWave Sounds should be construed as granting, by implication, estoppel or otherwise, any license or right to use any Trademarks without the

express written permission of Company, Company's licensors or suppliers, or the third-party owner of any such Trademark. Misuse of any Trademarks is prohibited, and Company will aggressively enforce its intellectual property rights in such Trademarks, including via civil and criminal proceedings.

11. Third-Party Materials. In connection with the PlantWave Sounds, Company may incorporate, integrate, display, include or make available third-party content (including data, information, applications and other products services and/or materials) or provide links to third-party websites or services, including through third-party advertising ("**Third-Party Materials**"). You acknowledge and agree that Company is not responsible for Third-Party Materials, including their accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect thereof. Company does not assume and will not have any liability or responsibility to you or any other person or entity for any Third-Party Materials. Third-Party Materials and links thereto are provided solely as a convenience to you and your access and use of them are entirely at your own risk and subject to such third parties' terms and conditions.

12. Making Purchases.

12.1 If you wish to purchase a subscription plan or license for any PlantWave Sounds (each such purchase, a "**Transaction**"), you will be asked to supply certain information applicable to your Transaction, including, without limitation, information related to credit card, debit card, PayPal and/or whatever payment method is accepted by Company, as well as similar and/or other related information. You understand that any such information will be treated by Company in the manner described in Company's Privacy Policy. You agree that all information that you provide in connection with your purchase will be accurate, current and complete. You agree to pay all charges incurred by you or any users of your account and credit card (or other applicable payment mechanism) at the price(s) in effect when such charges are incurred. You will also be responsible for paying any applicable taxes relating to your purchases. The sale of certain products and services may be regulated by certain state, county and city laws or regulations. You acknowledge that complying with such laws is your responsibility, and YOU AGREE NOT TO HOLD COMPANY LIABLE FOR YOUR FAILURE TO COMPLY WITH ANY LAW OR COMPANY'S FAILURE TO NOTIFY YOU OF, OR PROPERLY APPLY, ANY LAW.

12.2 You represent and warrant that all information you provide, including but not limited to all information concerning your name, address, credit card number, and other identifying information of any nature will be true, complete and correct, and that you will update all information as it changes. You agree that you will only use credit cards belonging to you or an affiliated company. You further agree that you will not attempt to conceal your identity by using multiple Internet Protocol ("**IP**") addresses or email addresses to use or to purchase Company products or services. You grant Company the right to provide third parties with any information you submit for purposes of facilitating the completion of Transactions initiated by you or on your behalf. Verification of information may be required prior to the acknowledgment or completion of any Transaction.

13. Pricing and Fees. Prices posted in the Platform represent the fees which are payable to Company for your use of and/or access to certain services and/or Content. You agree to pay all charges to your account, including applicable taxes, in accordance with billing terms in effect at the time a charge is made. Company reserves the right to institute new fees or charges effective upon notice in the Platform. When prompted to do so, you must provide Company with valid payment information. If payments cannot be processed or are returned for any reason, Company reserves the right either to suspend or terminate your order, thereby terminating all further obligations by Company.

14. Term and Termination.

14.1 The term of this Agreement commences when you download the Platform or the applicable PlantWave Sounds and will continue in effect until terminated by you or Company as set forth in this Section 14.

14.2 You may terminate this Agreement by permanently deleting the PlantWave Sounds and all copies thereof from your Device(s).

14.3 Notwithstanding anything to the contrary in this Agreement, Company reserves the right, without notice and in Company's sole discretion, to terminate this Agreement and/or to suspend or terminate your ability to use the PlantWave Sounds (which would include deleting or deactivating your account and/or blocking or preventing your future access to and use of the PlantWave Sounds). You agree that Company shall not be liable to you or any third party for any suspension or termination of your access to the PlantWave Sounds. Further, you agree not to attempt to use the PlantWave Sounds after said suspension or termination unless you have received prior written permission from Company.

14.4 Upon termination:

14.4.1 all rights granted to you under this Agreement will also terminate;

14.4.2 you must promptly destroy all Content downloaded or otherwise obtained in connection with the PlantWave Sounds, as well as all copies of such Content, whether made under this Agreement or otherwise; and

14.4.3 you must cease all use of the PlantWave Sounds and delete all copies of the PlantWave Sounds from your Devices and account.

14.5 Termination will not limit any of Company's rights or remedies at law or in equity.

15. Disclaimer of Warranties. No representations or warranties, express or implied, are given regarding the Content or your use of the PlantWave Sounds. Company's liability is limited only to amounts paid by you to Company. If you are not satisfied with Company's service please contact Company's customer service department. Without limiting the generality of the foregoing, you agree that use of the PlantWave Sounds, the Content and Company's services, including without limitation User Content, is entirely at your own risk. Company

assumes no responsibility for errors or omissions in the Content or Company's services, the PlantWave Sounds or their Content, including any documents and User Content, or any third-party application. The PlantWave Sounds and the Content are provided on an "as is" or "as available" basis, without any warranties of any kind. Company does not warrant the quality, accuracy, security, reliability, completeness, or timeliness of the PlantWave Sounds, the Content, Company's services, or any other information, text, graphics, links or other items contained within the Content or any third-party application. To the fullest extent permitted by law, Company disclaims any warranties for and does not assume any responsibility for any incompleteness, errors, security, reliability, timeliness, viruses, harmful components or effects, vulnerabilities, bugs, problems, omissions, inaccuracies or other limitations in, or interruptions in the operation of the Platform, the PlantWave Sounds, the Content, Company's services, or any other information, text, graphics, links or other items contained within the Content or any third-party application, or any other services or goods advertised with the PlantWave Sounds. All express and implied warranties, including, without limitation, the warranties of merchantability, fitness for a particular purpose, and non-infringement of proprietary rights are expressly disclaimed to the fullest extent permitted by law. Company makes no commitment to update the PlantWave Sounds or any other Content. You acknowledge that you are responsible for obtaining and maintaining all telephone, computer hardware and/or other equipment needed to access and use the PlantWave Sounds, and all charges related thereto. Your use of the PlantWave Sounds, the Content and/or any of the services or products provided by Company or any third-party application are entirely done so at your own risk.

16. Limitations of Liability. Under no circumstances shall Company, its affiliates, officers, directors, advisory board members, employees, shareholders, members, managers, licensors, suppliers, advertisers, sponsors, attorneys or agents, and their respective successors and assigns ("**Company Parties**") be liable to you or any third party under any contract, negligence, strict liability or other theory arising out of or relating in any way to the PlantWave Sounds or Company's services, including without limitation the Content and any User Content, or any product or service purchased through the Platform or any other site, for any direct, indirect, incidental, punitive, special, consequential or exemplary damages (even if Company has been advised of the possibility of such damages), including without limitation, damages for loss of business, loss of data or lost profits) resulting from any aspect of your use of the PlantWave Sounds or Company's services, including without limitation the Content, whether the damages arise from use or misuse of the PlantWave Sounds or Company's services, from inability to use the PlantWave Sounds or Company's services, or the interruption, suspension, modification, alteration, or termination of the PlantWave Sounds or Company's services. Such limitation shall also apply with respect to damages incurred by reason of other services or products received through or advertised in connection with the PlantWave Sounds or Company's services, as well as by reason of any information received through or advertised in connection with the PlantWave Sounds or Company's services. These limitations shall apply to the fullest extent permitted by law. If your use of any Content results in the need for servicing, repair or correction of equipment or data, you assume any costs thereof. To the extent that the foregoing limitations on liability above are limited or restricted by law, your sole and exclusive remedy and Company's absolute limit of liability in connection with any lawsuit, claim or cause whatsoever directly or indirectly relating to or arising out of or relating in any way to the PlantWave Sounds and the

Content, whether based on contract, tort or any other legal theory of recovery, shall in all cases be strictly limited to the fees or price paid by you directly to Company in connection with such access to or use of the PlantWave Sounds and the Content. You acknowledge and agree that, if the limitations of liability set forth above are limited or restricted by law, the exclusive remedy set forth in this Section 16 shall be your sole remedy even if such remedy fails in its essential purpose for any reason whatsoever, and in no event shall Company be liable for any direct, indirect, incidental, punitive, special, consequential or exemplary damages (even if Company has been advised of the possibility of such damages), to you or any third party.

17. General Release of Claims. As such may apply to your usage of the PlantWave Sounds and the Content, you, for valuable consideration in the form of each instance of your use of the PlantWave Sounds, on behalf of yourself, your spouse, and each of your heirs, beneficiaries, executors, administrators, attorneys, agents, representatives, successors and assigns, hereby forever release and discharge Company, and each of its employees, members, managers, officers, contractors, attorneys, agents, representatives, successors and assigns, and any person or entity acting by, though, under or in concert with any of them, from and against, and forever waive, forfeit and relinquish, each and every claim, action, demand, right, lien, covenant, agreement, contract, representation, warranty, indemnity, obligation, debt, cause of action, liability, lawsuit, litigation, loss, damage (including consequential damages and penalties), fee, cost and expense (including costs and expenses of counsel), of every and whatever type, kind, nature, description or character, whether sounding in law, equity, contract, tort, statute or otherwise, and whether or not presently or later known, existing, asserted, suspected, liquidated, fixed, contingent, matured or anticipated, that arises out of, relates to or otherwise is in any way connected with your access or use of the PlantWave Sounds and/or the Content, including without limitation, any User Content (each a “**Claim**,” collectively, “**Claims**”).

You intend for this Section 17 to serve as a general release, and you recognize that you may have Claims of which you are totally unaware and unsuspecting, but that which you are nevertheless releasing and giving up by consenting to this Agreement and using the PlantWave Sounds, and providing the foregoing general release. In furtherance of such understanding and intention, as applicable, you acknowledge that you are familiar with the provisions of California Civil Code Section 1542, and you waive all such provisions of California Civil Code Section 1542, which provides as follows:

SECTION 1542. (EXTENT OF GENERAL RELEASE.) A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

You also acknowledge and agree that nothing contained in this Section 17 shall release or discharge you from your representations, warranties, covenants and agreements set forth in, and from your duties and obligations assumed under, this Agreement.

You shall forever refrain and forebear from commencing, instituting or prosecuting any lawsuit, action or other proceeding against Company and other parties released hereunder arising out of or in any way connected with any Claim that is released or discharged under this Agreement.

You represent and warrant to Company that you have not assigned any Claim released or discharged under this Agreement, and you shall indemnify, defend, protect and hold harmless Company and other parties from and against any and all Claims that Company and/or other parties shall suffer or incur as a result of or arising in connection with any breach of the foregoing representation and warranty.

The release contained in this Section 17 shall operate to effectively renew upon each use by you of the PlantWave Sounds, releasing Claims arising from each such use by you of the PlantWave Sounds.

18. Indemnity. You agree to defend, indemnify and hold each of the Company Parties harmless from any claim, action, loss, expense, or demand, including attorneys' fees and court costs, made by any third party due to or arising out of your use of the PlantWave Sounds and the Content, your violation of this Agreement and/or Privacy Policy, or your breach of any of the representations, warranties, covenants, and/or agreements herein.

19. Essential Basis of Bargain. YOU ACKNOWLEDGE THAT COMPANY HAS SET ITS PRICES AND PROVIDED ACCESS TO OR USE OF THE PLANTWAVE SOUNDS, COMPANY'S SERVICES, DOCUMENTS INTEGRATED THEREIN, AND/OR ANY CONTENT IN RELIANCE OF THE LIMITATIONS OF LIABILITY, THE DISCLAIMERS OF WARRANTIES AND DAMAGES, THE GENERAL RELEASE, AND THE INDEMNITY SET FORTH HEREIN, AND THAT THE SAME FORM AN ESSENTIAL BASIS UPON WHICH THIS AGREEMENT IS ESTABLISHED, AND UPON WHICH COMPANY HAS PROVIDED TO YOU ACCESS TO OR USE OF THE PLANTWAVE SOUNDS, COMPANY'S SERVICES AND/OR CONTENT. YOU AGREE THAT THE LIMITATIONS OF LIABILITY, THE DISCLAIMERS OF WARRANTIES AND DAMAGES, THE GENERAL RELEASE, AND THE INDEMNITY SET FORTH HEREIN IN SECTIONS 15-18 WILL SURVIVE AND APPLY EVEN IF FOUND TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

20. Force Majeure. Company expressly disclaims all, and assumes no, responsibility for problems relating to the PlantWave Sounds or Content or the delivery of Company's services that are beyond Company's reasonable or actual control, including, without limitation, natural disasters, storms, disruption of shipping channels or carriers, terrorism, regulations or governmental acts, fires, riot or civil disturbances, electrical power outages, computer viruses, strikes or general labor force disruptions, networking or Internet failures, or other failures affecting the Services.

21. Technical Support Issues. If you encounter a technical problem when attempting to utilize the PlantWave Sounds, Company's customer service representatives may be able to assist you with your problem. If you contact Company's customer service representatives and request that a customer service representative assist you, Company will not be liable for any technical problems that may persist or arise with your Device (or other computing device) after doing so.

22. Inaccuracy. From time to time there may be information provided by Company in connection with the PlantWave Sounds that contains typographical errors, inaccuracies, or omissions. Company may correct errors, inaccuracies, or omissions and change or update information at any time without notice. Company apologizes for any inconvenience this may cause you. Notwithstanding anything else herein, you are not entitled to rely on any error, inaccuracy, or omission, and as such relate to quotations, pricing, or other aspects of any transactions, you hereby authorize Company to charge the correct amounts to your account in each instance.

23. General Information. This Agreement does not limit any rights that Company may have under trade secret, copyright, patent, trademark or other laws. The employees of Company are not authorized to make modifications to this Agreement, or to make any additional representations, commitments, or warranties binding on Company, except in a writing signed by an authorized officer of Company. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of this Agreement remain in full force and effect.

24. Construction. For purposes of this Agreement: (a) the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and *vice versa*; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits, schedules, attachments and appendices mean the sections of, and exhibits, schedules, attachments and appendices to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

25. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other person any legal or equitable right,

benefit or remedy of any nature whatsoever under or by reason of this Agreement. This Agreement, and the duties and obligations arising under it, may not be assigned by End User. Company may freely assign this Agreement.

26. Modifications and Updates of this Agreement and Acceptance. The agents, employees and contractors of Company are not authorized to make modifications to this Agreement, or to make any additional representations, commitments, or warranties binding on Company. Company reserves the right to modify, add, alter or otherwise update this Agreement from time to time, and you are highly encouraged to review this Agreement from time to time. Each time you use the Platform, the current version of this Agreement will apply. In the event of any modification to or update of this Agreement, Company will provide notice to you in accordance with this Agreement. You can determine whether this Agreement has been revised since your last use of the Platform by referring to the “Last Updated” legend at the bottom of this Agreement. Please read this Agreement carefully. Your use of the Platform or PlantWave Sounds or Content after any modification to or update of this Agreement constitutes your acceptance to be bound by this Agreement in the form it then exists, including any modifications or updates. If at any time you do not accept all the terms and conditions contained herein, you must immediately discontinue use of the Platform and contact Company regarding your voluntary termination of this Agreement.

27. Governing Law. This Agreement and the relationship between you and Company shall be governed by the laws of the State of California without regard to any conflicts of laws principles. Further, to the extent the arbitration provisions of this Agreement are void, unenforceable, or inapplicable, you agree that all actions or proceedings arising in connection with your use of the PlantWave Sounds and this Agreement shall be tried and litigated exclusively in the State and Federal courts located in the County of Los Angeles, State of California. The aforementioned choice of venue is intended to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between you and Company with respect to or arising out of this Agreement in any jurisdiction other than that specified in this paragraph. You hereby waive any right you may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this paragraph, and stipulate that the State and Federal courts located in the County of Los Angeles, State of California shall have in personam jurisdiction and venue over you for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to your use of the PlantWave Sounds or this Agreement. You hereby authorize and accept service of process sufficient for personal jurisdiction in any action against you as contemplated by this paragraph by registered or certified mail, return receipt requested, postage prepaid. Any final judgment rendered against a party in any action or proceeding shall be conclusive as to the subject of such final judgment and may be enforced in other jurisdictions in any manner provided by law. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to the use of the PlantWave Sounds or the Content and/or this Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred. You also agree that this Agreement shall not be construed against the drafting party, i.e., Company.

EACH OF THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION (INCLUDING BUT NOT LIMITED TO ANY CLAIMS, COUNTERCLAIMS, CROSS-CLAIMS, OR THIRD-PARTY CLAIMS) ARISING OUT OF, UNDER OR IN CONNECTION WITH THESE TERMS. FURTHER, EACH PARTY HERETO CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF EITHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH PARTY WOULD NOT IN THE EVENT OF SUCH LITIGATION SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION. EACH OF THE PARTIES ACKNOWLEDGES THAT THIS SECTION IS A MATERIAL INDUCEMENT FOR THE OTHER PARTY'S ENTERING INTO THIS AGREEMENT.

YOU AGREE THAT YOU MAY BRING A CLAIM AGAINST COMPANY ONLY IN YOUR INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.

Further, unless both you and Company agree otherwise, the trier of fact may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.

28. Equitable Relief. In addition, in the event of a breach of this Agreement by you, Company will, in addition to all other remedies available to it, be entitled to equitable relief by way of a temporary restraining order, or preliminary or permanent injunction and any other legal or equitable remedies. This provision will not be construed as a waiver of the rights which Company may have for damages under this Agreement or otherwise, and all of Company's rights and remedies will be unrestricted.

29. No Non-US Representations. Company makes no representation with respect to the laws of nations other than the United States, or that the PlantWave Sounds or Content, or any part thereof, is appropriate or available for use in any particular jurisdiction. Those who choose to purchase, install, and/or use the Platform do so on their own initiative and at their own risk, and are responsible for complying with all local laws, rules and regulations. By using the Platform, visitors from outside of the United States of America acknowledge this Agreement and all matters related to the PlantWave Sounds or Content are subject to the laws and regulations of the United States of America, subject to the governing law herein, and waive any claims that may arise under their own national laws.

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

31. Questions. If you have any questions, comments or complaints regarding this Agreement or the PlantWave Sounds, feel free to contact us.

32. Notice for California Users. Under California Civil Code Section 1789.3, California users of the Platform 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., Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210.

33. Severability. If any provision of this Agreement is illegal or unenforceable under applicable law, the remainder of the provision will be amended to achieve as closely as possible the effect of the original term and all other provisions of this Agreement will continue in full force and effect.

34. Entire Agreement. This Agreement, the Privacy Policy, any supplemental terms, and all exhibits and attachments hereto and thereto, constitute the entire agreement between you and Company with respect to the PlantWave Sounds, govern your use of the PlantWave Sounds and its Content, and supersede all prior or contemporaneous understandings and agreements between you and Company, whether written or oral, with respect to the PlantWave Sounds.

35. Waiver. No failure or delay, on the part of either party, to exercise or enforce any right, power or provision hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or power hereunder preclude further exercise of that or any other right hereunder. In the event of a conflict between this Agreement and any applicable purchase or other terms, the terms of this Agreement shall govern.

36. Conflicting Terms. If you have been provided with a non-English translation of this Agreement, the English language version will govern your relationship with Company, and will control in the event of a conflict. Any translation is provided solely for your convenience. In the event of any conflict between the terms of this Agreement and any amendment, addendum, or other modification to the Agreement promulgated or published by Company, then the terms of the other document will control with respect to the applicable matters.

37. You warrant, represent and agree that, by accessing and/or using the PlantWave Sounds, the Content and/or any User Content, you (a) do so with knowledge of any and all rights that you may have with respect to the provisions of this Agreement, (b) have carefully read and considered this Agreement and fully understand its contents and the significance of its contents, (c) are consenting to this Agreement of your own informed and free will, based upon such party's own judgment and without any coercion or fear of retaliation, and (d) you have been afforded the opportunity to obtain independent legal advice with respect to this Agreement.

LAST UPDATED: August 4, 2023