

H-lounge.com

Terms of Use

The following describes the terms under which H-Lounge, doing business as Harmony Line, Inc. ("H-Lounge"), offers you access to the content and services at <http://www.h-lounge.com/> and other services it may make available from time to time (collectively the "Services"). THIS IS A LEGAL AGREEMENT. PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THE SERVICES. BY USING THE SERVICES, AND FOR OTHER GOOD AND VALUABLE CONSIDERATIONS, THE RECEIPT AND SUFFICIENCY OF WHICH YOU ACKNOWLEDGE, YOU AGREE TO BE BOUND BY THESE TERMS OF USE.

YOU MAY USE THESE SERVICES IF YOU ARE AT LEAST 13 YEARS OF AGE. HOWEVER, IF YOU ARE UNDER THE AGE OF EIGHTEEN (18) OR NOT ABLE TO ENTER INTO LEGAL AGREEMENTS UNDER APPLICABLE LAW, YOU MUST HAVE A PARENT OR LEGAL GUARDIAN CAREFULLY READ AND AGREE TO THE TERMS OF THIS AGREEMENT ON YOUR BEHALF.

1. INFORMATION AND PRIVACY

Information Control. H-Lounge does not control or pre-screen the information provided by other users which is made available through the Services. You may find other users' information to be offensive, harmful, inaccurate, or deceptive. You must use caution and common sense when using the Services.

Your Information. As used in this Agreement, the term "Your Information" means any information you provide to H-Lounge or other users in using the Services, including in any registration process, in any public message area or through any email or messaging feature, but excluding Your Content as defined below. You are solely responsible for Your Information.

Your Information may not:

- (a) be false, inaccurate, misleading or fraudulent;
- (b) infringe any anyone's copyright, trademark, trade secret, patent or other proprietary rights or rights of publicity or privacy;
- (c) violate any law, statute, ordinance or regulation;
- (d) be obscene, defamatory, libelous, threatening, abusive or harassing, or encourage any of the foregoing;
- (e) promote any commercial product the sale of which you stand to benefit from;
- (f) contain any viruses, Trojan horses, worms, time bombs, cancelbots, Easter eggs or other computer programming routines that may damage, detrimentally interfere with, intercept or use any system, data or personal information in an unauthorized way; or
- (g) create liability for H-Lounge or cause it to lose (in whole or in part) the services of its ISPs or other suppliers.

You grant H-Lounge a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, sub-licensable right to exercise the copyright, publicity, and database rights (but no other rights) you have in Your Information, in any media now existing or later invented.

Privacy. Your Information, including personally-identifiable information, is subject to and will only be used according to H-Lounge's [Privacy Policy](#) as may be established from time to time, the provisions of which are expressly incorporated into and made a part of this Agreement

2. GRANT OF RIGHTS

(a) You grant H-Lounge, and its affiliates, successors, assigns, licensees, and sub-licensees, the nonexclusive, worldwide, royalty-free, fully transferable right and license to reproduce, use, publish, publicly perform, publicly display, transmit, broadcast, serve, deliver, market, distribute, sell, and/or otherwise exploit or license any and all content in all forms and media now known or hereafter developed, that you upload to H-Lounge's Services, or otherwise provide to H-Lounge (collectively "Your Content").

(b) The rights and licenses granted by you to H-Lounge in accordance with (a), above, terminate when you remove Your Content from H-Lounge Services.

(c) You continue to retain all ownership rights in Your Content, and you continue to have the right to use Your Content in any way you choose.

(d) You expressly and irrevocably waive any rights to receive any public performance fees of any kind, if applicable, for use of Your Content as set forth in this Agreement.

(e) You must pay any and all royalties or similar payments that are or may become due to any third party, such as all payments under licenses for third-party material in Your Content. By way of example, if you are an artist manager or label posting content on the behalf of an artist that you represent, you are solely responsible for any and all payments due to such artist that may arise from sales of Your Content on H-Lounge.com, according to any and all separate agreements existing between you and the artist. By further way of example, if you are an artist and are bound by separate agreements with any third parties, including but not limited to any management entity, label, distribution channel, or copyright holder, you are solely responsible for any and all payments or obligations to those third parties that may result from sales of Your Content on H-Lounge.com.

3. CONTENT

Content Ownership. The audio content available through H-Lounge's Services including but not limited to any audio content specifically made available as ringtones, MP3s, Skypetones or other file formats (collectively the "Content"), are owned by H-Lounge or its licensors. You agree that these licensors are intended third-party beneficiaries under this Agreement with the right to enforce the provisions that directly concern their Content. You may:

- use the Content for your personal, non-commercial use;
- download the Content to your own devices or send such Content to third parties for personal use only, subject to your payment of any applicable fees, and subject to your compliance with the terms of this Agreement;

Except as expressly set forth in this Agreement, you may not authorize, encourage or allow the Content obtained by you to be reproduced, modified, displayed, performed, transferred, distributed or otherwise used by anyone else. You agree to advise H-Lounge promptly if you become aware of any such unauthorized use. ALL RIGHTS NOT EXPRESSLY GRANTED TO YOU IN THIS AGREEMENT ARE RESERVED BY H-LOUNGE AND ITS LICENSORS.

Fees. Fees for the H-Lounge Services are listed on the [Fee Schedule](#). You agree to pay all applicable fees. YOU AGREE THAT IN ADDITION TO ANY FEES THAT MAY BE CHARGED BY H-LOUNGE FOR ITS SERVICES, YOU MAY INCUR ADDITIONAL CHARGES FROM MOBILE DEVICE SERVICE SUPPLIERS AND OTHER TELECOMMUNICATIONS PROVIDERS. Please check with your service suppliers to obtain information on applicable fees.

Control of Content. H-Lounge does not control or pre-screen the Content. You agree that you bear all risk relating to your downloading and use of the Content. You agree to hold H-Lounge, its affiliates, suppliers, licensors and sub-licensees, and each of its and their employees, officers, directors, successors, licensees, assigns, and advisors (collectively the "H-Lounge Parties") from and against any and all claims, damages, demands, or liabilities, including attorneys fees and costs, relating to the Content, including your downloading and usage thereof. You agree to defend, indemnify and hold harmless all H-Lounge Parties from and against any unauthorized use of the Content.

Loungecakes. Loungecakes may be rewarded to you from time to time at the sole discretion of H-Lounge. Loungecakes have no redeemable monetary value. From time to time, H-Lounge may allow you to redeem Loungecakes for certain rewards. H-Lounge may alter, suspend, or discontinue any part of the Loungecakes rewards program at any time. H-Lounge may withhold or limit the redemption of Loungecakes if you collude or conspire to be awarded excessive Loungecakes. H-Lounge may withhold or limit the redemption of Loungecakes if you create duplicate or false identities for the purposes of collecting Loungecakes.

4. PROHIBITED USES

Improper Conduct. You agree that you will not: (a) impersonate any other individual, including without limitation another user or a H-Lounge staff member; (b) engage in harassment of any form, including without limitation through improper language or excessive frequency or size of messages; (c) send messages of any kind to any individual who has stated or in any other way demonstrated that he or she does not wish to receive messages; (d) copy or post any personal messages sent to you via the Services; (e) use the Services for any unlawful purpose; or (f) otherwise use the Services in a deceptive, abusive or otherwise disruptive manner.

Copyright Infringement. You agree that you will not use the Services to infringe upon or misappropriate the intellectual property rights, including without limitation the copyrights, of any party. WITHOUT LIMITING THE PRECEDING SENTENCE, YOU AGREE THAT YOU WILL NOT USE THE SERVICES TO CREATE OR UPLOAD MUSICAL PERFORMANCES BASED ON OTHER PARTIES' COMPOSITIONS OR SOUND RECORDINGS UNLESS YOU HAVE OBTAINED ALL NECESSARY RIGHTS AND LICENSES FROM THE OWNERS OF SUCH COMPOSITIONS. YOU ACKNOWLEDGE THAT IT IS YOUR RESPONSIBILITY TO DETERMINE WHICH RIGHTS ARE NECESSARY. You agree to indemnify, defend and hold harmless H-Lounge, its affiliates, suppliers, and each of its and their employees, officers, directors, successors, licensees, assigns, and advisors (collectively the "H-Lounge Parties") from and against any and all claims, damages, demands, or liabilities, including but not limited to attorneys fees and costs arising out of any claim that Your Information, and any other content of any kind that you create using the Services or upload in any way infringes upon or misappropriates, violates, or infringes any party's personal or proprietary rights of any kind.

Interference and Unauthorized Access. You agree that you will not: (a) attempt to circumvent user authentication or the security of any H-Lounge account; (b) use any robot, spider, other automatic device, or manual process to monitor or copy H-Lounge's web pages or the content contained in them; (c) use any device, software or routine to interfere or attempt to interfere with the proper working of the Services; or (d) take any action that imposes an unreasonable or disproportionately large load on H-Lounge's infrastructure, including without limitation "denial of service attacks."

If you in any way violate any system or interfere with network security you may incur criminal or civil liability. H-Lounge will cooperate fully with investigations of violations of systems or network security at other sites, including cooperating with law enforcement authorities in the investigation of suspected criminal violations.

5. PROPRIETARY MATERIALS

The Services contain copyrighted material, trademarks, service marks and other proprietary information, which may include without limitation text, software, photographs, video, graphics, images, music and sound (collectively "Proprietary Material"). You may download or upload musical content only if you agree to the terms of this Agreement. Otherwise, you agree not to copy, reproduce, modify, publish, transmit, participate in the transfer or sale of, create derivative works of, or in any way exploit, in whole or in part, any Proprietary Material, except that you may copy Proprietary Material for your personal, non-commercial use.

This Agreement does not convey to you any ownership interest whatsoever in the H-Lounge software technology or any other property of H-Lounge or any third party, but only the limited right to the Services in strict accordance with the terms of this Agreement. You acknowledge and agree that H-Lounge retains all right, title, and interest in the H-Lounge software and technology, trademarks and service marks, and all other property of H-Lounge, and all modifications, enhancements, and derivatives thereof, and agree not to assert any ownership interest whatsoever in such property of H-Lounge at any time.

6. COPYRIGHT INFRINGEMENT CLAIMS PROCEDURE

H-Lounge may, in our sole discretion, remove the content of users who infringe others' intellectual property rights. If you believe that your work has been copied in a way that constitutes copyright infringement, please forward the following information to the H-Lounge Copyright Agent as provided below:

- An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest;
- A description of the copyrighted work that you claim has been infringed;
- A description of where the material that you claim is infringing is located;
- Your address, telephone number, and email address;
- A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and
- A statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

By e-mail:

copyrightagent@harmonylinemusic.com

By postal mail or courier:

Copyright Agent
Harmony Line, Inc.
238 Main Street, Suite 305
Cambridge, MA 02142

7. THIRD PARTY CONTENT AND LINKS

The H-Lounge Web site contains links to third party Web sites. Such links are provided as a convenience, and not as an endorsement by H-Lounge of the contents or operators of such third party sites. H-Lounge has no control over such third party sites, and has no responsibility or liability whatsoever with respect to the content, advertising, products or material, or information accessed through such links, including without limitation the privacy policies and practices of such third party Web sites. Your participation in offers, promotions, or programs offered by advertisers, business partners, or other third parties through the Revenue Share Program is between you and such advertiser, business partner, or third party, and H-Lounge has no responsibility or liability whatsoever in connection with any such participation, and/or for any guarantees, warranties, representations, advertisements, opinions, advice, statements, services, offers, information, or content available or provided in connection therewith. Your access or use of such third party Web sites, products, and services is at your own risk.

8. YOUR WARRANTIES AND REPRESENTATIONS

You represent and warrant to H-Lounge that (a) you have the right and ability to enter into and perform under this Agreement; (b) you have and shall access and use the Services, and use and distribute music, only in strict accordance with this Agreement, the Revenue Share Agreement and policies if applicable, and all applicable laws, statutes, and regulations; and (c) you have and shall provide H-Lounge with full, complete, accurate, and honest information.

9. DISCLAIMER OF WARRANTIES

YOUR USE OF THE SERVICES IS AT YOUR SOLE RISK. THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND H-LOUNGE EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, AND INCLUDING WITHOUT LIMITATIONS WARRANTIES OF TITLE, NON-INFRINGEMENT, SECURITY OF ACCOUNTS AND TRANSACTIONS, INFORMATIONAL CONTENT, SYSTEM INTERGRATION OR ACCURACY, CODING AND FORMATING ERRORS, SOFTWARE FLAWS, NETWORK DISRUPTIONS AND ALLOCATIONS OF REVENUE.

H-LOUNGE DOES NOT WARRANT OR GUARANTEE THAT (1) THE SERVICES ARE COMPATIBLE WITH ANY SOFTWARE, INCLUDING WITHOUT LIMITATION INTERNET BROWSER SOFTWARE; (2) THE SERVICES WILL BE FREE OF INFECTION BY VIRUSES, WORMS, TROJAN HORSES OR ANYTHING ELSE MANIFESTING CONTAMINATING OR DESTRUCTIVE PROPERTIES; (3) ALL CONTENT WILL BE ACCURATE, COMPLETE OR UP TO DATE; (4) ANY INFORMATION OR OTHER CONTENT CONTAINED WITHIN THE SERVICES WILL NOT CONTAIN DEFAMATORY OR ADULT-ORIENTED MATERIAL, OR MATERIAL WHICH SOME INDIVIDUALS MAY DEEM OBJECTIONABLE; OR (5) THE FUNCTIONS OR SERVICES H-LOUNGE PERFORMS WILL BE UNINTERRUPTED, TIMELY, SECURE, UNINTERRUPTED, OR ERROR-FREE OR THAT DEFECTS IN THE SERVICES WILL BE CORRECTED. H-LOUNGE IS NOT RESPONSIBLE FOR ERRORS, OMISSIONS, INTERRUPTIONS, DELETIONS, DEFECTS, AND DELAYS IN OPERATION OR TRANSMISSION, OR FOR COMMUNICATION LINE FAILURE OR COMPUTER VIRUSES ASSOCIATED WITH THE OPERATION OF THE SERVICES OR THE PROVISION OF SERVICES OR MUSIC DISTRIBUTION. H-LOUNGE IS NOT RESPONSIBLE FOR ANY UNAUTHORIZED ADDITIONS, DELETIONS, OR ALTERATIONS MADE TO THE SERVICES BY THIRD PARTIES. YOU WAIVE ANY AND ALL WARRANTIES WHICH MIGHT HAVE

ARISEN, OR MIGHT LATER ARISE, FROM COURSE OF PERFORMANCE OR DEALING, OR USAGE OF THE TRADE AND RELEASE H-LOUNGE FROM ALL LIABILITY FOR LOSS OR DAMAGE RELATING TO THIS AGREEMENT, AND ANY CONTENT, PRODUCTS OR SERVICES ACCESSED OR LINKED THROUGH H-LOUNGE, OR DISTRIBUTED TO YOU HEREUNDER. NO OFFICER, EMPLOYEE OR AGENT OF H-LOUNGE, NOR ANY PARTICIPANT OR CONTENT PROVIDER, IS AUTHORIZED TO CREATE OR PROVIDE ANY WARRANTY BY H-LOUNGE.

YOU SPECIFICALLY ACKNOWLEDGE AND AGREE THAT H-LOUNGE IS NOT RESPONSIBLE FOR THE CONTENT DISTRIBUTED ON OR THROUGH THE SERVICES, AND IT ASSUMES NO RESPONSIBILITY FOR AND MAKES NO WARRANTY OR REPRESENTATION AS TO THE ACCURACY, CURRENCY, COMPLETENESS, RELIABILITY OR USEFULNESS OF INFORMATION DISTRIBUTED THROUGH THESE SERVICES.

Some states do not allow the disclaimer of implied warranties, so some or all of the above disclaimers may not apply to you.

10. LIMITATION OF LIABILITY

Regardless of the form of action (whether in contract, tort, breach of warranty or otherwise), and except as otherwise expressly provided herein, NEITHER H-LOUNGE NOR ITS BUSINESS PARTNERS, SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SPONSORS, SUBSIDIARIES, AFFILIATES, SUCCESSORS, AND/OR ASSIGNS WILL BE LIABLE TO YOU FOR ANY DAMAGES WHATSOEVER WITH RESPECT TO YOUR USE OF THE SERVICES, INCLUDING WITHOUT LIMITATION ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR SPECIAL DAMAGES EVEN IF ADVISED OF THE POSSIBILITY OF THE SAME. TO THE EXTENT THAT IN A PARTICULAR CIRCUMSTANCE ANY DISCLAIMER OR LIMITATION ON DAMAGES OR LIABILITY SET FORTH HEREIN IS PROHIBITED BY APPLICABLE LAW, THEN, INSTEAD OF THE PROVISIONS HEREOF IN SUCH PARTICULAR CIRCUMSTANCE, THE H-LOUNGE PARTIES WILL BE ENTITLED TO THE MAXIMUM DISCLAIMERS AND/OR LIMITATIONS ON DAMAGES AND LIABILITY AVAILABLE AT LAW OR IN EQUITY BY SUCH APPLICABLE LAW IN SUCH PARTICULAR CIRCUMSTANCE, AND IN NO EVENT WILL THE DAMAGES OR LIABILITY EXCEED US\$500. Some states do not allow the exclusion or limitation of incidental or consequential damages under certain circumstances and the above exclusion or limitation may not apply.

11. GENERAL TERMS AND CONDITIONS

Termination. Without limiting other remedies, H-Lounge may without liability and at its sole discretion, immediately issue a warning, temporarily suspend, indefinitely suspend or terminate your access to the Services if: (a) you breach this Agreement or any of the documents it incorporates by reference; (b) H-Lounge is unable to verify or authenticate any information you provide to it; or (c) H-Lounge believes that your actions may cause legal liability to any person or entity. In addition, H-Lounge has the right to remove any of Your Content from its services at any time, in its sole discretion. H-Lounge will have no liability or responsibility to you if it terminates or suspends your access to any of its services, or removes Your Content.

The ownership, warranty and disclaimer of warranty, indemnity, limitation of liability, and any other obligations and duties which by their nature extend beyond the expiration or termination of this Agreement shall survive any expiration or termination of this Agreement and remain fully enforceable thereafter in accordance with their terms.

Indemnity. You agree to indemnify and hold each H-Lounge Party harmless from any claim or demand, and any damages, costs, or expenses arising in connection with such claim or demand, including reasonable attorneys' fees and costs, made by any other party due to or arising out of your breach of this Agreement or the documents it incorporates by reference, or your violation of any law or the rights of another party.

Legal Compliance. You agree to comply with all applicable domestic and international laws, statutes, ordinances and regulations regarding your use of the Services.

Governing Law; Venue. This Agreement and its validity, construction and performance will be governed in all respects by the laws, and in the state and federal courts of the Commonwealth of Massachusetts, without regard to its choice of law provisions. You irrevocably agree to accept the exclusive personal jurisdiction and waive any objections to the venue, of such courts.

Changes and Cancellation. H-Lounge may at any time, without notice or liability, change or eliminate the Services or the content contained therein, or restrict use of any portion of the Services, including limiting the time of its availability, the amount of use permitted, or the persons who are permitted to use it. H-Lounge may at any time, in its sole discretion, cancel or suspend the Services for any reason, including without limitation the existence of viruses, bugs, or other causes beyond its control that corrupt the administration, security or proper function of the Services. H-Lounge reserves the right to refuse access to its Services for any reason.

Reservation of Rights. H-Lounge reserves the right to refuse access to the Services for any reason.

Amendment. H-Lounge may amend this Agreement at any time by posting the amended terms on the Services, which will become effective immediately when posted. By continuing to use the Services after H-Lounge posts any amendment, you agree to be bound by the amendment. This agreement may not be amended other than by an authorized officer of H-Lounge.

General. This Agreement contains the entire understanding of the parties relating its subject matter and supersedes any prior written or oral agreement or understandings between the parties with respect to its subject matter. The provisions of this Agreement are to be interpreted in a reasonable manner to effect the purpose of the parties, and this agreement is not to be interpreted or construed against H-Lounge because it participated in the drafting of this Agreement. The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision. H-Lounge may assign or transfer this Agreement, in whole or in part, to any party without notice. All terms and conditions of this Agreement which by their nature are meant to survive the termination of this Agreement will survive termination.

BY USING THE SERVICES, YOU AGREE TO BE BOUND BY THESE TERMS OF USE.