

**Submission Policy****AGREEMENT**

This is the agreement ("Agreement") between you as either an individual artist or as the legal authorized representative of a group artist ("Artist") and ProWebSurfer Inc., ("ProWebSurfer") concerning the uploading of Artist's audio, visual, audiovisual and other materials (the "Artist Materials" defined below) to the ProWebSurfer.com website or any successor(s) websites and/or websites to which the contents in whole or in part of ProWebSurfer.com are assigned (the "ProWebSurfer Site(s)") and concerning ProWebSurfer's use of Artist Materials on the ProWebSurfer Site(s). If Artist is agreeing on behalf of a group artist or a group of artists then each reference to "Artist" in this Agreement refers to each member of the group or the group as a whole, as the case may be. Artist and ProWebSurfer acknowledge the exchange of mutual benefits and promises and other consideration and agree as follows with respect to new submissions of Artist Materials and any former submissions of Artist Materials:

1. Term. The term ("Term") of this Agreement starts on the date that the Artist Materials are initially uploaded to any ProWebSurfer Site(s) and continues until either Artist or ProWebSurfer terminates this Agreement in writing, with or without cause or by the removal of Artist Materials for the purpose of termination all subject to the survival of certain undertakings in this agreement set out in paragraph 15 (f), below:
  - a) To the extent this Agreement is terminated by Artist, the rights granted in this Agreement will terminate only after Artist has removed all of his or her Artist's Materials from the ProWebSurfer Site(s) excluding those Artist Materials that cannot be removed by Artist (e.g. comments posted to ProWebSurfer), and ProWebSurfer has received notice of the removal. If this Agreement is terminated by ProWebSurfer, this Agreement will terminate when ProWebSurfer removes Artist's Materials from the ProWebSurfer website excluding comments posted to ProWebSurfer by Artist. If the Agreement is terminated in these ways, the parties agree to cooperate in providing an orderly termination of the relationship.
  - b) Artist can selectively terminate this agreement with respect to any individual work posted by Artist to ProWebSurfer by removing the posted work from ProWebSurfer and this selective termination with respect to an individual work will become effective when ProWebSurfer receives notice of the removal. ProWebSurfer provides a removal function with respect to individual works posted by Artist and the proper use of this function shall serve as notice of removal. If the Agreement is terminated with respect to an individual work in this way, the parties agree to cooperate in providing an orderly withdrawal of the work to the extent it has been licensed to third parties under this agreement or to the extent that Artist has placed the work in the Print program

- or similar commercial efforts within ProWebSurfer Sites.
2. Ownership. Artist at all times retains all right, title and interest in and to the Artist Materials provided by Artist hereunder (including, without limitation, the copyrights in and to the Artist Materials), subject to the non-exclusive rights in the licenses granted to ProWebSurfer under this Agreement. Artist is free to grant similar rights to others during and after the Term of this Agreement.
  3. License To Use Artist Materials. As and when Artist Materials are uploaded to the ProWebSurfer Site(s), Artist grants to ProWebSurfer a worldwide, royalty-free, non-exclusive license to do the following things during the Term:
    - a) to prepare and encode Artist Materials or any part of them for digital or analog transmission, manipulation and exhibition in any format and by any means now known or not yet known or invented;
    - b) to display, copy, reproduce, exhibit, publicly perform, broadcast, rebroadcast, transmit, retransmit, distribute through any electronic means (including analog and digital) or other means, and electronically or otherwise publish any or all of the Artist Materials, including any part of them, and to include them in compilations for publication, by any and all means and media now known or not yet known or invented ;
    - c) to modify, adapt, change or otherwise alter the Artist Materials (e.g., change the size) and use the Artist Materials as described in Section 3(b); and
    - d) the right to sublicense to any other person or company any of the licensed rights in the Artist Materials, or any part of them, subject to the terms and conditions of this Agreement.
    - e) Artist acknowledges that Artist will not have any right, title, or interest in any other materials with which Artist Materials may be combined or into which all or any portion of Artist Materials may be incorporated.
    - f) During the Term, ProWebSurfer's licenses under this Agreement include the right to use any part of the Artist Materials in the promotion, advertising or marketing of the ProWebSurfer Sites.
    - g) As used in this Agreement, the term "Artist Materials" means any content uploaded to the ProWebSurfer Site(s) which may include without limitation Artist's name(s) (including professional names), trademarks, trade names, likenesses, photographs, biographical materials, artwork, liner notes, and other graphical or textual materials and any and all "skins," computer-generated images or other artwork or images that Artist submits to ProWebSurfer.
  4. Name and Likeness. Artist also grants to ProWebSurfer:
    - a) a worldwide, royalty-free, non-exclusive license to use Artist's name(s), group name, photograph and/or likeness(es) and biographical materials in connection with the distribution, exploitation, promotion, marketing and advertising of the Artist Materials, and the ProWebSurfer Site(s) as described hereunder, during the Term;
    - b) Artist also agrees not to assert against ProWebSurfer any privacy, publicity, moral or similar rights held by Artist and on behalf any other person(s) whose

- name(s), photographs and/or likeness(es) and/or performances are embodied in the Artist Materials. Artist also agrees that any persons other than Artist appearing recognizably or otherwise in Artist Materials will not assert of any privacy, publicity, moral or similar rights) under the laws of the United States and any other country in connection with the exploitation of the materials as described in this Agreement; and,
- c) To the extent that the Artist Materials contain the name(s), group name, photograph and/or likeness(es) and biographical materials of any other person, Artist hereby grants to ProWebSurfer a worldwide, royalty-free, non-exclusive license to use them in connection with the distribution, exploitation, promotion, marketing and advertising of the Artist Materials, as described in this Agreement, during the Term.
5. **Limitation Of Rights** The rights and licenses granted to ProWebSurfer under sections 3 and 4 of this Agreement require ProWebSurfer to obtain Artist consent before ProWebSurfer makes any commercial agreement with anyone else to separately buy, license, re-sell or re-publish or commercially use any Artist Materials not in association with ProWebSurfer but as an individual work of art or as a group of works from a single Artist in isolation from any other works. No additional consent is required for any other licensed uses under this Agreement of Artist Materials either as part of the ProWebSurfer Site(s) or in connection with the distribution of content groups from the ProWebSurfer Site(s) and/or for uses of the Artist Materials made at the discretion of a visitor to the ProWebSurfer Site(s) or other users under agreements with ProWebSurfer. ProWebSurfer will contact Artist in writing about any individual commercial uses of Artist Materials instigated by ProWebSurfer.
6. **Payment.** Unless otherwise agreed between Artist and ProWebSurfer in a writing from ProWebSurfer, the license granted to ProWebSurfer under this Agreement is royalty-free.
7. **Representations and Warranties.** Artist represents and warrants that:
- a) Artist has the full right and power to enter into and perform this Agreement and to grant ProWebSurfer all rights to use the Artist Materials as contemplated in this Agreement, including, without limitation, the license grants in Sections 3, 4 and 5,
  - b) Artist has obtained all necessary third-party consents, rights, licenses and permissions, if any, required for Artist to enter into and perform this Agreement and to grant ProWebSurfer the rights to use the Artist Materials set out in this Agreement (including, without limitation, consents and permissions from owners of any elements that are used in the Artist Materials),
  - c) the Artist Materials (and ProWebSurfer's use of them under this Agreement) do not and will not infringe on any rights of any third party, including any trademark, copyright, patent, trade secret, right of privacy or publicity or moral rights of any third party,
  - d) all information that Artist has provided or will provide to ProWebSurfer is true

- and complete,
- e) the Artist Materials do not and will not violate any law, statute, ordinance or regulation,
  - f) the Artist Materials do not and will not be defamatory, libelous, threatening, pornographic, obscene, harmful to minors, violations of child pornography or child sexual exploitation laws,
  - g) the Artist Materials do not and will not contain any viruses or other programming routines that may detrimentally interfere with computer systems or data, whether those of ProWebSurfer or any third party, and
  - h) if Artist or any member of Artist's group is a minor, Artist hereby warrants that Artist has the legal right to execute this Agreement on behalf of the minor artist and guarantee such person's performance of the terms of this Agreement. These warranties shall survive any termination of this Agreement.
8. Third Party Payments. Artist is responsible for all licensing, reporting and payment obligations of any kind to third parties in connection with the Artist Materials.
9. Indemnity. Artist agrees to defend, indemnify, reimburse and hold ProWebSurfer and its parent, subsidiary and affiliated entities, and its and their members, managers, officers, directors, representatives, employees, agents, successors, designees, licensees, sub licensees and assigns harmless from and against any and all liability, loss, damages, judgments, costs and expenses (including reasonable attorney's fees, costs and expenses and court costs) arising out of or related to:
- a) Artist's use of the ProWebSurfer Site(s);
  - b) any breach or alleged breach of Artist's representations and warranties and/or any breach, alleged breach or violation of the notices, terms and conditions of this Agreement; and
  - c) Artist's violation or alleged or threatened violation of any rights of a third party, including, without limitation, any trademark, copyright, patent, trade secret, right of privacy or publicity or moral rights of any third party, arising from the submission and/or use of Artist Materials as provided in this Agreement
10. ProWebSurfer's Performance. Artist acknowledges and agrees that the operation of the ProWebSurfer Site(s) may from time to time encounter technical or other problems and may not necessarily continue uninterrupted or without technical or other errors and ProWebSurfer will not be responsible to Artist or others for any interruptions, errors or problems or even for an outright discontinuance of the ProWebSurfer service. There are no assurances whatsoever that any of the Artist Materials or any part or element of Artist materials will actually be used on the ProWebSurfer Site or if used will continue to be available for any particular time. ProWebSurfer has the right, in ProWebSurfer's sole and absolute discretion, to remove from the ProWebSurfer Site(s) at any time the Artist Materials or any part of them and/or to revoke any sublicense granted by ProWebSurfer to any affiliate or unaffiliated third

- party. Notwithstanding the foregoing, ProWebSurfer does not control the content of the Artist Materials and does not have any obligation to monitor the content of the Artist materials for any purpose or reason. Artist acknowledges that Artist is solely responsible for all content submitted to the ProWebSurfer Site(s) by Artist. The ProWebSurfer Site may be discontinued at any time, with or without reason and all Artist materials uploaded to ProWebSurfer may be removed and unavailable for recovery by any means. Artist and only Artist is responsible for maintaining at Artist's expense and in facilities owned or controlled only by Artist any and all original materials or so-called back-up copies of all or any part of the Artist Materials.
11. No Warranty. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PROWEBSURFER DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO
    - a) UNINTERRUPTED OR CONTINUOUS AVAILABILITY OF THE PROWEBSURFER SITE, AND
    - b) IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT WITH RESPECT TO THE PROWEBSURFER SITE AND ANY SERVICES PROVIDED BY PROWEBSURFER HEREUNDER. IN ADDITION, ALTHOUGH PROWEBSURFER INTENDS TO TAKE REASONABLE STEPS TO PREVENT THE INTRODUCTION OF VIRUSES OR OTHER DESTRUCTIVE MATERIALS TO THE PROWEBSURFER SITE(S), AND WHETHER OR NOT PROWEBSURFER IMPLEMENTS THE AFOREMENTIONED REASONABLE PROTECTIONS, PROWEBSURFER DOES NOT WARRANT THAT THE PROWEBSURFER SITE(S), ANY PART THEREOF, OR ANY INFORMATION OR OTHER MATERIAL ACCESSIBLE THROUGH THE PROWEBSURFER SITE(S) IS FREE OF VIRUSES, WORMS, TROJAN HORSES OR OTHER HARMFUL COMPONENTS.
  12. No Liability for Third Party Use. PROWEBSURFER DISCLAIMS ALL RESPONSIBILITY AND LIABILITY FOR ANY THIRD-PARTY USE OF THE ARTIST MATERIALS MADE AVAILABLE ON THE PROWEBSURFER WEBSITE BY THE ARTIST PURSUANT TO THE TERMS OF THIS AGREEMENT. ARTIST SHALL BE SOLELY RESPONSIBLE FOR SEEKING RELIEF FOR ANY UNAUTHORIZED USE OF ARTIST MATERIALS BY A THIRD-PARTY, AND NOT FROM PROWEBSURFER. THIS MEANS, AMONG OTHER THINGS, THAT IF ANOTHER PERSON OBTAINS ARTIST MATERIALS FROM PROWEBSURFER (WHETHER OR NOT WITH PROWEBSURFER'S PERMISSION), AND USES THOSE MATERIALS IN A WAY NOT AUTHORIZED BY THE LICENSES GRANTED UNDER THIS AGREEMENT ARTIST WILL SEEK REDRESS OR RECOVERY FROM THE OTHER PERSON AND NOT FROM PROWEBSURFER, AND THAT ARTIST WILL NOT HOLD PROWEBSURFER RESPONSIBLE OR LIABLE FOR SUCH UNAUTHORIZED USE.
  13. Exclusion of Damages. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT (INCLUDING NEGLIGENCE) SHALL PROWEBSURFER, ITS OFFICERS, DIRECTORS, MEMBERS, PARENTS, AFFILIATES, SUBSIDIARIES, LICENSEES, ASSIGNS, SUCCESSORS, AGENTS, REPRESENTATIVES, EMPLOYEES OR LICENSORS BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION,

- DAMAGES ARISING OUT OF AN ACTION UNDER CONTRACT, NEGLIGENCE OR ANY OTHER THEORY AND DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS, INCIDENTAL DAMAGES, CONSEQUENTIAL DAMAGES, PUNITIVE DAMAGES, EXEMPLARY DAMAGES), WHETHER OR NOT PROWEBSURFER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE PROWEBSURFER SITE(S). IN NO EVENT SHALL PROWEBSURFER'S TOTAL LIABILITY TO ARTIST UNDER THIS AGREEMENT FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY EXCEED \$5. THE PARTIES ACKNOWLEDGE AND AGREE THAT PROWEBSURFER HAS ENTERED INTO THIS AGREEMENT IN RELIANCE ON THE LIMITATIONS OF LIABILITY SPECIFIED IN THIS AGREEMENT, WHICH ALLOCATE THE RISK BETWEEN ARTIST AND PROWEBSURFER, AND FORM THE BASIS OF THE BARGAIN BETWEEN THE PARTIES.
14. Copyright and Trademark Notices. ProWebSurfer, the ProWebSurfer logos and mascots, and the layout and design of the ProWebSurfer Site(s), among other marks that may appear on the ProWebSurfer Site(s) are trademarks of ProWebSurfer Inc., LLC (the "ProWebSurfer Marks"). Other trademarks and service marks on the ProWebSurfer Site(s) may be the property of the advertisers, content partners and/or providers, or other third parties. Artist may not use any of the ProWebSurfer Marks without ProWebSurfer's prior written permission, and Artist may not use any third-party marks without the third party's prior written permission.
15. Miscellaneous.
- a) Governing Law; Jurisdiction. THIS AGREEMENT SHALL BE GOVERNED IN ALL RESPECTS BY THE LAWS OF THE STATE OF CALIFORNIA WITHOUT REGARD TO ITS OR ANY OTHER JURISDICTION'S CONFLICT OF LAWS PRINCIPLES. THE SOLE VENUE AND JURISDICTION FOR DISPUTES ARISING FROM THIS AGREEMENT SHALL BE THE APPROPRIATE STATE OR FEDERAL COURT LOCATED IN PALO ALTO, CALIFORNIA, AND ARTIST AND PROWEBSURFER BOTH IRREVOCABLY AGREE TO SUBMIT TO THE JURISDICTION OF SUCH COURTS.
- b) Assignment. ProWebSurfer shall have the right to assign this Agreement in whole or in part to any person or business entity. Artist may not assign Artist's rights or delegate Artist's obligations under this Agreement without the prior written consent of ProWebSurfer.
- c) Notice. All notices, requests and other communications ("Communications") under this Agreement must be in writing and sent to ProWebSurfer Inc., 530 GILBERT AVENUE, MENLO PARK, CA 94025). Communications shall be deemed received:
1. for Communications sent by registered or certified mail, postage prepaid, return receipt requested or by Federal Express or other reputable overnight courier service, on the date of receipt or refusal as indicated on the return receipt;
  2. for Communications sent by personal delivery, on the date of personal delivery;

- and
3. for Communications sent by facsimile, upon transmission subject to telephone confirmation of receipt.
  4. No other form of notice shall be accepted under this Agreement, other than the electronic notification for individual works under the circumstances specifically described in 1(b).
  - d) Entire Agreement. This Agreement sets forth the entire understanding and agreement of Artist and ProWebSurfer as to the subject matter hereof and supersedes all prior proposals, discussions or agreements (oral and written) with respect to such subject matter.
  - e) Modification. ProWebSurfer reserves the right to amend the terms of this Agreement from time to time in its sole discretion. ProWebSurfer will notify Artist of any material changes to this Agreement by sending an email to the address listed in Artist's account. If Artist continues to upload Artist Materials after being notified of the changes to the Agreement, Artist will be deemed to have accepted those changes and the new terms of the Agreement will govern all prior and future submissions of Artist Materials. If Artist does not accept the new terms of the Agreement, Artist's only and exclusive remedy will be to terminate this Agreement. Otherwise, this Agreement may be changed only by a writing signed by both parties that specifically refers to the parties' intent to amend this Agreement.
  - f) Survival. The provisions of Sections 1, 3(e), 4(b) 5, 6, 7, 8, 10, 11, 12, 13, 14 and 15 shall survive any termination of this Agreement. In addition, any sublicenses granted to third parties for the display of Artist Materials on electronic or other devices pursuant to Section 3 shall survive any termination of this Agreement for such reasonable time as may be necessary to withdraw Artist Materials from the particular license; any use of Artist Materials pursuant to Section 3 with respect to the making of so-called backup copies or caching of ProWebSurfer Sites or any equivalent activity or function for general site maintenance and protection shall survive any termination of this Agreement; and, Artist Materials consisting of comments posted to ProWebSurfer will remain as part of the ProWebSurfer database and available to all users of ProWebSurfer Sites following termination of this Agreement.

BEFORE YOU CLICK ON THE "I AGREE" BUTTON AT THE END OF THIS DOCUMENT, CAREFULLY READ THE TERMS AND CONDITIONS OF THIS AGREEMENT. BY CLICKING ON THE "I AGREE" BUTTON, YOU ARE CONSENTING TO BE BOUND BY AND ARE BECOMING A PARTY TO THIS AGREEMENT WITH RESPECT TO THE WORK YOU ARE CURRENTLY SUBMITTING AS WELL AS WITH RESPECT TO WORK YOU HAVE SUBMITTED IN THE PAST AND MAY SUBMIT IN THE FUTURE. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, CLICK THE "I DO NOT AGREE" BUTTON AND DO NOT UPLOAD ANY MATERIALS TO THE PROWEBSURFER SITE(S).