

## AUDIO TEST KITCHEN, INC.

### WEBSITE TERMS OF USE

EFFECTIVE DATE: August 5, 2019

These Website Terms of Use ("**Terms**") are a legal contract between you ("**You**" and "**Your**") and AUDIO TEST KITCHEN, INC., a Delaware corporation ("**Us**" or "**Our**" or "**We**" and, together with You, "**Everyone**"), and govern Your use of all the text, data, information, software, graphics, photographs and more (all of which We refer to as "**Materials**") that We and Our affiliates may make available to You, as well as any services ("**Services**") We may provide through any of Our websites (all of which are referred to in these Terms as this "**Website**").

READ THESE TERMS CAREFULLY BEFORE BROWSING THIS WEBSITE. USING THIS WEBSITE INDICATES THAT YOU HAVE BOTH READ AND ACCEPT THESE TERMS. YOU CANNOT USE THIS WEBSITE IF YOU DO NOT ACCEPT THESE TERMS.

NOTE: THESE TERMS CONTAIN A DISPUTE RESOLUTION AND ARBITRATION PROVISION, INCLUDING CLASS ACTION WAIVER THAT AFFECTS YOUR RIGHTS UNDER THESE TERMS AND WITH RESPECT TO DISPUTES YOU MAY HAVE WITH THE COMPANY. YOU MAY OPT OUT OF THE BINDING INDIVIDUAL ARBITRATION AND CLASS ACTION WAIVER AS PROVIDED BELOW.

#### **Changes**

We may alter the Materials and Services We offer You and/or choose to modify, suspend or discontinue this Website at any time and without notifying You. We may also change, update, add or remove provisions (collectively, "**modifications**") of these Terms from time to time. Because Everyone benefits from clarity, We promise to inform You of any modifications to these Terms by posting them on this Website and, if You have registered with Us, by describing the modifications to these Terms in an email that We will send to the address that You provided during registration. To be sure We properly reach Your email inbox, We just ask that You let Us know if Your preferred email address changes at any time after Your registration.

If You object to any such modifications, Your sole recourse shall be to cease using this Website. Continued use of this Website following notice of any such modifications indicates You acknowledge and agree to be bound by the modifications. Also, please know that these Terms may be superseded by expressly-designated legal notices or terms located on particular pages of this Website. These expressly-designated legal notices or terms are incorporated into these Terms and supersede the provision(s) of these Terms that are designated as being superseded.

#### **General Use**

We invite You to use this Website for individual, consumer purposes ("**Permitted Purposes**") – enjoy!

In these Terms we are granting You a limited, personal, non-exclusive and non-transferable license to use and to display the Materials; Your right to use the Materials is conditioned on Your compliance with these Terms. You have no other rights in this Website or any Materials and You may not modify, edit, copy, reproduce, download, create derivative works of, reverse engineer, alter, enhance or in any way exploit any of this Website or Materials in any manner. If You make copies of any of this Website or Materials while engaging in Permitted Purposes then We ask that You be sure to keep on the copies all of Our copyright and other proprietary notices as they appear on this Website.

Unfortunately, if You breach any of these Terms the above license will terminate automatically and You must immediately destroy any downloaded or printed Materials (and any copies thereof).

#### **Using this Website and the Website's Services**

We appreciate You visiting this Website and allow certain users to do just that – stop by and leisurely check it out without even registering with Us!

However, in order to access certain password-restricted activities (such as saving or sharing comparison sessions and other User Submissions (defined below)) and to use certain Services and Materials offered on and through this Website, You must successfully register an account with Us.

### **Password Restricted Areas of this Website**

If You want an account with Us, You must submit the following information through the account registration page on this Website:

- A working email address;
- First and last name; and
- Preferred username and password.

From time to time You may also be able to provide additional, optional information so that We can provide You a more customized experience when using this Website –but, We will leave that decision with You. Once You submit the required registration information, We alone will determine whether or not to approve Your proposed account. For so long as You use the account, You agree to provide true, accurate, current, and complete information which can be accomplished by logging into Your account and making relevant changes directly or contacting Us using the below contact information and We can make the changes for You. And, if You forget Your password – no worries as We will happily send a password update to Your provided email address.

You are responsible for complying with these Terms when You access this Website, whether directly or through any account that You may setup through or on this Website. Because it is Your account, it is Your job to obtain and maintain all equipment and services needed for access to and use of This Website as well as paying related charges. It is also Your responsibility to maintain the confidentiality of Your password(s), including any password of a third-party site that We may allow You to use to access this Website. Should You believe Your password or security for This Website has been breached in any way, You must immediately notify Us.

### **Privacy Policy**

We respect the information that You provide to Us, and want to be sure You fully understand exactly how We use that information. So, please review Our Privacy Policy (“***Privacy Policy***”), which can be found at: <https://app.audiotestkitchen.com/assets/terms/privacypolicy.pdf>, which explains everything.

### **Links to Third-Party Sites**

We think links are convenient, and We sometimes provide links on his Website to third-party websites. If You use these links, You will leave this Website. We are not obligated to review any third-party websites that You link to from this Website, We do not control any of the third-party websites, and We are not responsible for any of the third-party websites (or the products, services, or content available through any of them). Thus, We do not endorse or make any representations about such third-party websites, any information, software, products, services, or materials found there or any results that may be obtained from using them. If You decide to access any of the third-party websites linked to from this Website, You do this entirely at Your own risk and You must follow the privacy policies and terms and conditions for those third-party websites. Certain areas of this Website may allow You to interact and/or conduct transactions with one or more third-party websites, and, if applicable, allow you to configure your privacy settings in that third-party website account to permit Your activities on this Website to be shared with Your contacts in your third-party site account.

### **Unauthorized Activities**

To be clear, We authorize Your use of this Website only for Permitted Purposes. Any other use of this Website beyond the Permitted Purposes is prohibited and, therefore, constitutes unauthorized use of this Website. This is because as between You and Us, all rights in this Website remain Our property.

Unauthorized use of this Website may result in violation of various United States and international copyright laws. Because We prefer keeping this relationship drama-free, We want to give You examples of things to avoid. So, unless You have written permission from Us stating otherwise, You are not authorized to use this Website in any of the following ways (these are examples only and the list below is not a complete list of everything that You are not permitted to do):

- For any public or commercial purpose that includes use of this Website on another site or through a networked computer environment;
- In a manner that modifies, publicly displays, publicly performs, reproduces or distributes any of this Website;
- In a manner that violates any local, state, national, foreign, or international statute, regulation, rule, order, treaty, or other law;
- To stalk, harass, or harm another individual;
- To impersonate any person or entity or otherwise misrepresent Your affiliation with a person or entity;
- To interfere with or disrupt this Website or servers or networks connected to this Website;
- To use any data mining, robots, or similar data gathering or extraction methods in connection with this Website; or
- Attempt to gain unauthorized access to any portion of this Website or any other accounts, computer systems, or networks connected to this Website, whether through hacking, password mining, or any other means.

You agree to hire attorneys to defend Us if You violate these Terms and that violation results in a problem for Us. You also agree to pay any damages that We may end up having to pay as a result of Your violation. You alone are responsible for any violation of these Terms by You. We reserve the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by You and, in such case, You agree to cooperate with Our defense of such claim.

### **Proprietary Rights**

"Audio Test Kitchen" and "Taste Test" are trademarks that belongs to Us. Other trademarks, names and logos on this Website are the property of their respective owners.

Unless otherwise specified in these Terms, all Materials, including the arrangement of them on this Website are Our sole property, Copyright © 2019. All rights not expressly granted herein are reserved. Except as otherwise required or limited by applicable law, any reproduction, distribution, modification, retransmission, or publication of any copyrighted material is strictly prohibited without the express written consent of the copyright owner or license.

### **Intellectual Property Infringement**

We respect the intellectual property rights of others and encourage You to do the same. Accordingly, We have a policy of removing User Submissions that violate intellectual property rights of others, suspending access to this Website (or any portion thereof) to any user who uses this Website in violation of someone's intellectual property rights, and/or terminating in appropriate circumstances the account of any user who uses the this Website in violation of someone's intellectual property rights.

Pursuant to Title 17 of the United States Code, Section 512, We have implemented procedures for receiving written notification of claimed copyright infringement and for processing such claims in accordance with such law. If You believe Your copyright or other intellectual property right is being infringed by a user of this Website, please provide written notice to Our Agent for notice of claims of infringement:

Audio Test Kitchen, Inc.  
4365 Elenda Street  
Culver City, CA 90230  
legal@audiotestkitchen.com

To be sure the matter is handled immediately, Your written notice must:

- Contain Your physical or electronic signature;
- Identify the copyrighted work or other intellectual property alleged to have been infringed;
- Identify the allegedly infringing material in a sufficiently precise manner to allow Us to locate that material;
- Contain adequate information by which We can contact You (including postal address, telephone number, and e-mail address);
- Contain a statement that You have a good faith belief that use of the copyrighted material or other intellectual property is not authorized by the owner, the owner's agent or the law;
- Contain a statement that the information in the written notice is accurate; and
- Contain statement, under penalty of perjury, that You are authorized to act on behalf of the copyright or other intellectual property right owner.

Unless the notice pertains to copyright or other intellectual property infringement, the Agent will be unable to address the listed concern.

### ***Submitting a DMCA Counter-Notification***

We will notify You that We have removed or disabled access to copyright-protected material that You provided, if such removal is pursuant to a validly received DMCA take-down notice. In response, You may provide Our Agent with a written counter-notification that includes the following information:

- Your physical or electronic signature;
- Identification of the material that has been removed or to which access has been disabled, and the location at which the material appeared before it was removed or access to it was disabled;
- A statement from You under the penalty of perjury, that You have a good faith belief that the material was removed or disabled as a result of a mistake or misidentification of the material to be removed or disabled; and
- Your name, physical address and telephone number, and a statement that You consent to the jurisdiction of a court for the judicial district in which Your physical address is located, or if Your physical address is outside of the United States, for any judicial district in which We may be located, and that You will accept service of process from the person who provided notification of allegedly infringing material or an agent of such person.

### ***Termination of Repeat Infringers***

We reserve the right, in Our sole discretion, to terminate the account or access of any user of this Website or Service who is the subject of repeated DMCA or other infringement notifications.

### **Disclaimer of Warranties**

THIS WEBSITE IS PROVIDED "AS IS" AND "WITH ALL FAULTS" AND THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THIS WEBSITE IS WITH YOU.

WE EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND (EXPRESS, IMPLIED OR STATUTORY) WITH RESPECT TO THIS WEBSITE, WHICH INCLUDES BUT IS NOT LIMITED TO, ANY IMPLIED OR STATUTORY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, TITLE, AND NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

THIS MEANS THAT WE DO NOT PROMISE YOU THAT THE WEBSITE IS FREE OF PROBLEMS. Without limiting the generality of the foregoing, We make no warranty that this Website will meet Your requirements or that this Website will be uninterrupted, timely, secure, or error free or that defects in this Website will be corrected. We make no warranty as to the results that may be obtained from the use of this Website or as to the accuracy or reliability of any information obtained through this Website. No advice or information, whether oral or written, obtained by You through this Website or from Us or Our subsidiaries/other affiliated companies shall create any warranty. We disclaim all equitable indemnities.

### **Limitation of Liability**

WE SHALL NOT BE LIABLE TO YOU FOR ANY DAMAGES RESULTING FROM YOUR DISPLAYING, COPYING, OR DOWNLOADING ANY MATERIALS TO OR FROM THIS WEBSITE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL WE BE LIABLE TO YOU FOR ANY INDIRECT, EXTRAORDINARY, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) HOWEVER ARISING, EVEN IF WE KNOW THERE IS A POSSIBILITY OF SUCH DAMAGE.

### **Local Laws; Export Control**

We control and operate this Website from Our headquarters in the United States of America and the entirety of this Website may not be appropriate or available for use in other locations. If You use this Website outside the United States of America, You are solely responsible for following applicable local laws.

### **Feedback**

Any submissions by You to Us (e.g., comments, questions, suggestions, materials – collectively, “*Feedback*”) through any communication whatsoever (e.g., call, fax, email) will be treated as both non-confidential and non-proprietary. Except as prohibited by applicable law, you hereby assign all right, title, and interest in, and We are free to use, without any attribution or compensation to You, any ideas, know-how, concepts, techniques, or other intellectual property and proprietary rights contained in the Feedback, whether or not patentable, for any purpose whatsoever, including but not limited to, developing, manufacturing, having manufactured, licensing, marketing, and selling, directly or indirectly, products and services using such Feedback. Where the foregoing assignment is prohibited by law, you hereby grant Us an exclusive, transferable, worldwide, royalty-free, fully paid up license (including the right to sublicense) to use and exploit all Feedback as We may determine in our sole discretion. Notwithstanding the foregoing, you understand and agree that We are not obligated to use, display, reproduce, or distribute any such ideas, know-how, concepts, or techniques contained in the Feedback, and You have no right to compel such use, display, reproduction, or distribution.

### **Dispute Resolution and Arbitration; Class Action Waiver**

***Please Read This Provision Carefully. It Affects Your Legal Rights.***

This Provision facilitates the prompt and efficient resolution of any dispute (e.g., claim or controversy, whether based in contract, statute, regulation, ordinance, tort – including, but not limited to, fraud, misrepresentation, fraudulent inducement, or negligence – or any other legal or equitable theory, and includes the validity, enforceability or scope of this Provision (with the exception of the enforceability of the Class Action Waiver clause below) that may arise between You and Us. Effectively, then, “dispute” is given the broadest meaning enforceable by law and includes any claims against other parties relating to services or products provided or billed to You (such as Our licensors, suppliers, dealers or third-party vendors) whenever You also assert claims against Us in the same proceeding.

This Provision provides that all disputes between You and Us shall be resolved by binding arbitration because acceptance of These Terms constitutes a waiver of Your right to litigation claims and all opportunity to be heard by a judge or jury. We prefer this because We believe arbitration is less drama-filled than litigation. To be clear, there is no judge or jury in arbitration, and court review of an arbitration award is limited. The arbitrator must follow these Terms and can award the same damages and relief as a court (including attorney’s fees). You may, however, opt-out of this Provision which means You would have a right or opportunity to bring claims in a court, before a judge or jury, and/or to participate in or be represented in a case filed in court by others (including, but not limited to, class actions). EVERYONE AGREES THAT, EXCEPT AS PROVIDED BELOW, ANY AND ALL DISPUTES, AS DEFINED ABOVE, WHETHER PRESENTLY IN EXISTENCE OR BASED ON ACTS OR OMISSIONS IN THE PAST OR IN THE FUTURE, WILL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION RATHER THAN IN COURT IN ACCORDANCE WITH THIS PROVISION.

### ***Pre-Arbitration Claim Resolution***

For all Disputes, whether pursued in court or arbitration, You must first give Us an opportunity to resolve the Dispute which is first done by emailing to Us at [legal@audiotestkitchen.com](mailto:legal@audiotestkitchen.com) the following information: (1) Your name, (2) Your address, (3) A written description of Your Claim, and (4) A description of the specific relief You seek. If We do not resolve the Dispute within 45 days after receiving Your notification, then You may pursue Your Dispute in arbitration. You may pursue Your dispute in a court only under the circumstances described below.

### ***Exclusions from Arbitration/Right to Opt Out***

Notwithstanding the above, You or We may choose to pursue a Dispute in court and not by arbitration if: (a) The dispute qualifies for initiation in small claims court; or (b) YOU OPT-OUT OF THESE ARBITRATION PROCEDURES WITHIN 30 DAYS FROM THE DATE THAT YOU FIRST CONSENT TO THESE TERMS (the “Opt-Out Deadline”). You may opt-out of this Provision by emailing Us at the following information: (1) Your name; (2) Your address; (3) A clear statement that You do not wish to resolve disputes with Us through arbitration. Either way, We will not take any decision You make personally. In fact, We promise that Your decision to opt-out of this Arbitration Provision will have no adverse effect on Your relationship with Us. But, We do have to enforce the Opt-Out Deadline so keep in mind that **any opt-out request received after the Opt-Out Deadline will not be valid and You must pursue Your dispute in arbitration or small claims court.**

### ***Arbitration Procedures***

If this Provision applies and the dispute is not resolved as provided above (Pre-Arbitration Claim Resolution) either You or We may initiate arbitration proceedings. The American Arbitration Association (“AAA”), [www.adr.org](http://www.adr.org), or JAMS, [www.jamsadr.com](http://www.jamsadr.com), will arbitrate all disputes, and the arbitration will be conducted before a single arbitrator. The arbitration shall be commenced as an individual arbitration only, and shall in no event be commenced as a class arbitration or a consolidated or representative action or arbitration. All issues shall be for the arbitrator to decide, including the scope of this Provision.

For arbitration before AAA, for Disputes of less than \$75,000, the AAA’s Supplementary Procedures for Consumer-Related Disputes will apply; for Disputes involving \$75,000 or more, the AAA’s Commercial Arbitration Rules will apply. In either instance, the AAA’s Optional Rules For Emergency Measures Of Protection shall apply. The AAA rules are available at [www.adr.org](http://www.adr.org) or by calling 1-800-778-7879. For arbitration before JAMS, the JAMS Comprehensive Arbitration Rules & Procedures and the JAMS Recommended Arbitration Discovery Protocols For Domestic, Commercial Cases will apply. The JAMS rules are available at [www.jamsadr.com](http://www.jamsadr.com) or by calling 1-800-352-5267. This Provision governs in the event it conflicts with the applicable arbitration rules. Under no circumstances will class action or representative procedures or rules apply to the arbitration.

Because this Website and these Terms concern interstate commerce, the Federal Arbitration Act (“FAA”) governs the arbitrability of all disputes. However, the arbitrator will apply applicable substantive law consistent with the FAA and the applicable statute of limitations or condition precedent to suit.

*Arbitration Award* – The arbitrator may award on an individual basis any relief that would be available pursuant to applicable law, and will not have the power to award relief to, against or for the benefit of any person who is not a party to the proceeding. The arbitrator will make any award in writing but need not provide a statement of reasons unless requested by a party or if required by applicable law. Such award will be final and binding on the parties, except for any right of appeal provided by the FAA or other applicable law, and may be entered in any court having jurisdiction over the parties for purposes of enforcement.

*Location of Arbitration* – You or We may initiate arbitration in either California or the federal judicial district that includes Your billing address.

*Payment of Arbitration Fees and Costs* – So long as You place a request in writing prior to commencement of the arbitration, We will pay all arbitration filing fees and AAA or JAMS hearing fees and any arbitrator’s hearing fees, costs and expenses upon Your written request to the arbitrator given at or before the first evidentiary hearing in the arbitration. But, You will still be responsible for all additional fees and costs that You incur in the arbitration which include but are not limited to attorneys’ fees or expert witnesses. In addition to any fees and costs recoverable under

applicable law, if You provide notice and negotiate in good faith with Us as provided in the section above titled “Pre-Arbitration Claim Resolution” and the arbitrator concludes that You are the prevailing party in the arbitration, You will be entitled to recover reasonable attorney’s fees and costs as determined by the arbitrator.

### ***Class Action Waiver***

Except as otherwise provided in this Provision, the arbitrator may not consolidate more than one person’s claims, and may not otherwise preside over any form of a class or representative proceeding or claims (such as a class action, consolidated action, representative action, or private attorney general action) unless both You and We specifically agree to do so in writing following initiation of the arbitration. **If You choose to pursue Your Dispute in court by opting out of the Arbitration Provision, as specified above, this Class Action Waiver will not apply to You.** Neither You, nor any other user of this Website can be a class representative, class member, or otherwise participate in a class, consolidated, or representative proceeding without having complied with the opt-out requirements above.

### ***Jury Waiver***

You understand and agree that by accepting this Provision in these Terms, You and We are each waiving the right to a jury trial or a trial before a judge in a public court. In the absence of this Provision, You and We might otherwise have had a right or opportunity to bring disputes in a court, before a judge or jury, and/or to participate or be represented in a case filed in court by others (including class actions). Except as otherwise provided below, those rights are waived. Other rights that You would have if You went to court (e.g., the rights to both appeal and certain types of discovery) may be more limited or may also be waived.

### ***Severability***

If any clause within this Provision (other than the Class Action Waiver clause above) is found to be illegal or unenforceable, that clause will be severed from this Provision whose remainder will be given full force and effect. If the Class Action Waiver clause is found to be illegal or unenforceable, this entire Provision will be unenforceable and the dispute will be decided by a court.

### ***Continuation***

This Provision shall survive the termination of Your account with Us or Our affiliates and Your discontinued use of this Website. Notwithstanding any provision in these Terms to the contrary, We agree that if We make any change to this Provision (other than a change to the Notice Address), You may reject any such change and require Us to adhere to the present language in this Provision if a dispute between Us arises.

### **Language**

The Parties hereto have expressly required that these Terms and all documents and notices relating thereto be drafted in the English language.

### **General**

We think direct communication resolves most issues – if We feel that You are not complying with these Terms, We will tell You. We will even provide You with recommended necessary corrective action(s) because We value this relationship.

However, certain violations of these Terms, as determined by Us, may require immediate termination of Your access to this Website without prior notice to You. The Federal Arbitration Act, California state law and applicable U.S. federal law, without regard to the choice or conflicts of law provisions, will govern these Terms. Foreign laws do not apply. Except for disputes subject to arbitration as described above, any disputes relating to these Terms or this Website will be heard in the courts located in Los Angeles County, California. If any of these Terms are deemed inconsistent with applicable law, then such term(s) shall be interpreted to reflect the intentions of the parties, and no other terms will be modified. By choosing not to enforce any of these Terms, We are not waiving Our rights. These

Terms are the entire agreement between You and Us and, therefore, supersede all prior or contemporaneous negotiations, discussions or agreements between Everyone about this Website. The proprietary rights, disclaimer of warranties, representations made by You, indemnities, limitations of liability and general provisions shall survive any termination of these Terms.

**Contact Us**

If You have any questions about these Terms or otherwise need to contact Us for any reason, You can reach Us at:

Audio Test Kitchen, Inc.  
4365 Elenda Street  
Culver City, CA 90230  
legal@audiotestkitchen.com  
Attn.: Legal

\* \* \*