

## AudioGO Terms and Conditions

**1. ADSWIZZ AUDIOGO TERMS AND CONDITIONS.** These AudioGO Terms and Conditions (“**Terms**”) are entered into between the person, organization, or entity accepting these Terms (“**Company**”) and AdsWizz Inc. (“**AdsWizz**”). These Terms and any additional terms and conditions applicable to the Company from the AudioGO user interface, shall be considered the “**Agreement**.”

### **2. DEFINITIONS.**

2.1 “**Advertisement**” means an audio, video, banner, rich media, or other advertisement in a format that is supported by AudioGO.

2.2 “**AdsWizz Materials**” shall have the meaning as specified in Section 5.

2.3 “**Affiliate**” as to an entity, means another entity that, directly or indirectly, controls, is controlled by or is under common control with such entity, where “control” means ownership of more than 50% of the outstanding shares or securities representing the right to vote for the election of directors or other managing authority of such entity.

2.4 “**AudioGO**” means the buying tool hosted and made available to advertisers, ad agencies, agency trading desks, and ad networks to enable them through a user interface to buy and manage Advertisements in the Inventory.

2.5 “**Confidential Information**” shall have the meaning as specified in Section 9.

2.6 “**Intellectual Property Rights**” means all forms of proprietary rights, titles, interests, and ownership relating to patents, copyrights, trademarks, trade dresses, trade secrets, know-how, mask works, *droit moral* (moral rights), and all similar rights of every type that may exist now or in the future in any jurisdiction, including, without limitation, all applications and registrations therefore and rights to apply for any of the foregoing.

2.7 “**Inventory**” means Advertisement inventory contained within a Property.

2.8 “**Policies**” means, collectively, all applicable written (which includes both printed and electronic) rules, requirements, technical standards, and policies of AdsWizz, Publishers, and other third parties that are set forth in the AudioGO user interface or that are otherwise provided by AdsWizz to Company, as may be modified from time to time.

2.9 “**Property**” means a web site, mobile application, or other service that is owned, operated, or represented by a Publisher.

2.10 “**Publisher**” means a Pandora Media Inc., iHeartMedia + Entertainment Inc., or other premium audio network or station that wants to accept Advertisements on its web site, mobile application, or other service.

### **3. USE OF THE PLATFORM.**

3.1 **Access.** Subject to compliance with all Terms of this Agreement, AdsWizz grants to Company during the Term a limited, non-exclusive, and non-transferable license (without the right to grant sublicense) to access and use AudioGO and Company shall have the right during the Term to access and use AudioGO for purposes of transmitting creative for Advertisements, and receiving reporting related to Advertisements delivered in the Inventory, solely in the manner enabled by AdsWizz and in accordance with all applicable Policies. For avoidance of any doubt, Company may only connect to a Publisher in AudioGO designated by AdsWizz. AdsWizz reserves the right to modify and update the features and functionality of AudioGO from time to time. Company is solely responsible for ensuring that all information included in AudioGO is accurate and complete. Company shall be responsible for the acts of any person accessing AudioGO through its account. Company acknowledges and agrees to be responsible and liable for all the accounts that Company sets up and/or are associated with Company. Company agrees to use AudioGO in compliance with all applicable laws, rules, and regulations.

3.2 **Restrictions.** Company acknowledges that use of AudioGO is provided for Company’s benefit only, and agrees not to permit any third party to access or use AudioGO in connection with any web site, mobile property or other service of a Publisher. Company agrees not to attempt to, not to allow any third party to, and not to: (i) copy,

distribute, rent, lease, lend, sublicense, transfer or make AudioGO available to any third party or use AudioGO on a service bureau basis; (ii) decompile, reverse engineer, or disassemble AudioGO; (iii) create derivative works based on AudioGO; (iv) modify, remove, or obscure any copyright, trademark, patent or other notices or legends that appear in AudioGO or during the use and operation thereof; or (v) interfere or attempt to interfere with the proper working of AudioGO.

3.3 Participation in AudioGO. Company will provide AdsWizz with the Advertisement it wishes to use with AudioGO. Company shall be responsible for all their Advertisements and for setting the campaign details in the AudioGo platform. Company grants AdsWizz a worldwide, perpetual, fully transferable, sublicensable, non-revocable, and royalty-free license to display, publish, transmit and distribute the Company's creatives on the Properties. AdsWizz reserves the right, in its sole discretion to reject and or remove any Advertisement for any reason.

3.4 Content. Customer acknowledges and agrees that it may not use AudioGO in connection with any Advertisements containing or promoting slanderous, libelous or defamatory materials, false or deceptive materials, violence, the use of firearms, discrimination of a protected group (whether based on race, skin color, sex, religion, nationality, disability, sexual orientation, age, or similar category), illegal activities, hate speech, pornography, profanity, obscenity, sexually explicit material, alcohol, online gambling, contests, games of chance, sweepstakes, pharmaceuticals, financial services, political campaigns, "eco"/"green" claims, or health/dietary supplemental products. In addition, Company providing Advertisements under this Agreement must comply with the AdsWizz Ad Guidelines available at <https://www.adswizz.com/adwizz-ad-guidelines/>, which may be modified from time to time.

3.5 Suspension/Termination. AdsWizz may suspend Company's access to, or use of, AudioGO if: (i) in the sole discretion of AdsWizz, such action is necessary to prevent errors or harm to any system or network; (ii) Company attempts to access or use AudioGO in an unauthorized manner, including, without limitation, any attempt to gain access to the accounts of other AdsWizz customers or use in connection with Properties that infringe third party Intellectual Property Rights, (iii) a Publisher requests that AdsWizz suspend Company's access, (iv) a Publisher discontinues its use for any reason; or (v) Company's failure to pay the Company Payments (as defined below) within ninety (90) days' from date of invoice.

3.6 Reporting. Company shall have access to advertiser and campaign reports in AudioGO to the same extent as AdsWizz generally makes such reporting available in AudioGO to its other buyers.

3.7 Data.

(a) Company agrees that AdsWizz may use and disclose any data collected in connection with the operation of AudioGO and Company's use thereof for any lawful purpose, including, but not limited to, the following: (i) AdsWizz may use such data for purposes of providing Company with use of AudioGO and to fulfill its obligations in connection with Advertisements placed by Company; (ii) AdsWizz may disclose such data to its third party service providers that assist it in making AudioGO available as is reasonably necessary for such assistance; (iii) AdsWizz may disclose such data as may be required by law or legal process; (iv) to improve AudioGO and the AdsWizz Materials; and (v) AdsWizz may disclose such data where it is aggregated with data unrelated to Company and is not identified as relating to Company; provided that in all instances such data does not include PII. "PII" means personally identifiable information including name, address, phone number, and email address, but for avoidance of any doubt does not include IP address, device ID, or geo-location.

(b) Company acknowledges and agrees that Company may only use any and all data collected under this Agreement solely to carry out its obligations under this Agreement.

3.8 Cookies and Beacon Data. Company represents and warrants that if it makes use of cookies and beacons in connection with Advertisements transmitted through AudioGO, it shall (i) post on its website a clear and conspicuous privacy policy that complies with all applicable laws, rules and regulations; (ii) disclose its use of such cookies and beacons; and (iii) provide links on its website to <http://www.aboutads.info> and <http://www.networkadvertising.org> (or such additional or other URLs as may be specified by AdsWizz from time to time) and a statement that users can click on such link to opt-out of the use of such information. Company shall comply with such other requirements that AdsWizz may issue in writing from time to time that relate to compliance with laws, rules, regulations, guidelines and industry standards relating to digital advertising.

## 4. PAYMENT TERMS.

4.1 Payments to AdsWizz. In order to run campaigns through AudioGO, Company must provide payment information in a form of payment that is currently available in the AudioGO platform. Company represents and warrants that any payment information provided to AdsWizz is true, accurate, and complete, and shall keep such information up to date at all times.

4.2 Payments by Credit Card. If Company pays with a credit or other payment card, it will be required to provide AdsWizz's third-party payment processor with a valid payment card number and associated payment information verifying Company is authorization to use such payment. By submitting that information to the third-party payment processor, Company authorizes AdsWizz and or the payment processor to charge the card or other payment method for the charges incurred with AudioGO. The third party payment processor may run one or more payment card authorization checks on Company's card before it is charged. Company authorizes the third-party payment processor to store Company's payment card information and, if needed, to continue billing the card until the order for AudioGO services has been fulfilled. If AdsWizz does not receive payment from Company's credit card or other payment card issuer or their agents, Company remains obligated and agrees to pay all amounts due upon request from AdsWizz or its agents.

4.3 Payment Terms. Any amounts due to AdsWizz under this Agreement not received by the date due and not disputed in good faith will be subject to a late fee of 1.5% per month, or the maximum charge permitted by law, whichever is less. In addition, in the event of any failure by Company to make payment, Company acknowledges and agrees that it will be responsible for all reasonable expenses (including collection agents or reasonable attorneys' fees) incurred by AdsWizz in collecting such amounts. Company must submit any claims or dispute with respect to any charge to Company's account in writing to AdsWizz within fifteen (15) days of the receipt of the applicable invoice, otherwise such claim or dispute will be waived and such charge will be final and not subject to challenge.

4.4 Taxes. Company is responsible for paying any and all withholding, sales, value added or other taxes, duties or charges in connection with the use of AudioGO, other than taxes based on AdsWizz's income.

**5. OWNERSHIP.** As between the parties, AdsWizz owns all right, title and interest (including all Intellectual Property Rights) in and to AudioGO, and any software, technology, materials and information owned by AdsWizz prior to the Effective Date or created, authored, developed, conceived or reduced to practice after the Effective Date ("**AdsWizz Materials**"). Nothing herein shall be construed to transfer any rights, title or ownership of any of the AdsWizz Materials to Company. Company is not required to provide any feedback or suggestions to AdsWizz. To the extent Company does provide any such ideas, feedback or suggestions, Company hereby grants to AdsWizz a perpetual, irrevocable, royalty-free, worldwide right and license to make, have made, use, sell, offer for sale, import, reproduce, modify, distribute, make derivative works and otherwise exploit such idea, feedback or suggestions, with the right to grant sublicenses.

## 6. TERMINATION.

6.1 Termination.

(a) Unless specified otherwise by the parties, Company may cancel a campaign as follows: (i) Upon fourteen (14) days' prior written notice to the other party, provided that Company will be liable for any fees incurred up until the effective date of termination for any Advertisements served. For clarity, and by way of example, if Company cancels a campaign nine (9) days prior to the serving of the first impression, the Advertisement may still be served and Company will be responsible for the first five (5) days of delivered impressions; and (ii) Company accepts that in the event of a cancellation of a campaign by Company, it shall still be liable for any commitments in the campaign accepted on a non-cancelable basis. All terms and conditions of these AudioGO Terms and Conditions will survive until all existing orders in AudioGO have ended.

(b) AdsWizz reserves the right to immediately cancel a campaign for any reason or no reason at all. Upon cancellation, all charges for any Advertisements served but not paid shall become immediately due and payable.

6.2 Effect of Termination. All rights and obligations of the parties hereunder shall terminate upon expiration or termination of this Agreement, provided that Sections 1, 3.2, 3.7, 4 (with respect to accrued but unpaid amounts), and 5 through 11 shall survive expiration or termination of this Agreement. Without limiting the foregoing, Company shall deactivate AudioGO upon any expiration or termination of this Agreement.

## 7. REPRESENTATIONS, WARRANTIES AND COVENANTS; INDEMNITY.

7.1 Mutual. Each party represents, warrants and covenants to the other party that: (i) it has the full power and authority to enter into this Agreement; (ii) this Agreement and performance of its obligations under this Agreement does not violate any other agreement to which it is a party; and (iii) this Agreement constitutes a legal, valid and binding obligation when executed and delivered.

7.2 Company. Company represents and warrants to Adswizz that: (a) it has obtained from the advertisers or has all the rights necessary to transmit the Advertisements via AudioGO; (b) the Advertisements are not, and shall not be associated with any technology or activity that violates any applicable law, rule or regulation; (c) the Advertisements do not infringe upon, violate, or misappropriate the Intellectual Property Rights of any third party; (d) the Advertisements will comply with all the obligations under Section 3.4; and (e) the Advertisements will be free from any “virus”, “Trojan Horse”, “worm”, “disabling”, “lock out” or any other malicious code as such terms are understood in the computer industry.

7.3 Company Indemnity. Company shall indemnify, defend and hold Adswizz, its Affiliates, or any of their directors, officers or employees harmless from any and all liabilities, damages and/or costs (including, but not limited to, reasonable attorneys’ fees) in connection with any claim or allegation made by a third party due to: (i) any breach by Company of any representation or warranty made by Company in Section 7.2; and (ii) any and all information provided by Company in AudioGO, provided that Adswizz: (i) promptly notifies Company in writing of the claim, except that any failure to provide this notice promptly only relieves Company of its responsibility pursuant to this Section 7.3 to the extent its defense is materially prejudiced by the delay; (ii) grants Company sole control of the defense and/or settlement of the claim, provided that Company may not agree to any settlement that admits fault by Adswizz or purports to bind Adswizz without Adswizz’s prior written consent (not to be unreasonably withheld); and (iii) provides Company, at Company’s expense, with all assistance, information and authority reasonably required for the defense and/or settlement of the claim.

**8. DISCLAIMER.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE TECHNOLOGY, MATERIALS, SERVICES AND INTELLECTUAL PROPERTY RIGHTS PROVIDED BY ADSWIZZ HEREUNDER ARE PROVIDED AS IS AND NEITHER PARTY MAKES ANY WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT, AND EACH PARTY EXPRESSLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR PERFORMANCE. ADSWIZZ AND ITS SUPPLIERS, LICENSORS, AND PARTNERS DO NOT WARRANT THAT THE FUNCTIONALITY PROVIDED BY AUDIOGO WILL BE CORRECT, UNINTERRUPTED OR ERROR-FREE OR THAT DEFECTS WILL BE CORRECTED. ADSWIZZ DOES NOT WARRANT THE RESULTS OF USE OF AUDIOGO OR THE AMOUNT OF REVENUE COMPANY WILL BE ABLE TO DERIVE IN CONNECTION THEREWITH.

**9. CONFIDENTIALITY.** Each party shall keep confidential all information and materials provided by the other party including all non-public information and know-how of the other party disclosed by any party hereunder in writing, orally, or by drawing or other form (“**Confidential Information**”). All such information disclosed by either party to the other, whether orally, in writing, by inspection or otherwise, shall be deemed to be Confidential Information of the disclosing party unless otherwise expressly agreed in writing by the party disclosing such information, provided that such information is marked as “confidential” or bears a similar legend or is information that the receiving party knows, or reasonably should have known, is the Confidential Information of the disclosing party. Furthermore, this Agreement, the terms of this Agreement, the features and functionality of AudioGO and the connections thereto, as well as any information regarding planned modifications or updates thereto or future Adswizz products and services shall also constitute Confidential Information of Adswizz. Each party shall keep and instruct its employees and agents to keep Confidential Information confidential by using at least the same care and discretion as used with that party’s own confidential information, but in no case less than a prudent and reasonable standard of care. Neither party shall use Confidential Information other than for purposes of performing its obligations hereunder or as authorized by the disclosing party. Information or materials shall not constitute Confidential Information if it is (i) in the public domain through no fault of the receiving party, (ii) known to the receiving party prior to the time of disclosure by the disclosing party, (iii) lawfully and rightfully disclosed to the receiving party by a third party on a non-confidential basis, or (iv) developed by the receiving party without reference to Confidential Information. Disclosure of Confidential Information shall not be prohibited if such disclosure: (a) is in response to a valid order of

a court ordering such disclosure; provided, however, that the party subject to the court order shall first have given at least fifteen (15) days, advance written notice to the other party; or (b) is otherwise required by law. If any party, its employees, or its agents breach or threaten to breach the obligations of this Section 9, the affected party may seek injunctive relief from a court of competent jurisdiction without the posting of a bond, in addition to its other remedies, as the inadequacy of monetary damages and irreparable harm are acknowledged.

**10. LIMITATION OF LIABILITY.** EXCEPT WITH RESPECT TO SECTION 7.3 OR EITHER PARTY'S BREACH OF SECTION 9, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY HEREUNDER FOR ANY PUNITIVE, INCIDENTAL, INDIRECT, SPECIAL, RELIANCE OR CONSEQUENTIAL DAMAGES, INCLUDING LOST BUSINESS, REVENUE, OR PROFITS, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND WHETHER OR NOT THE PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. EXCEPT WITH RESPECT TO SECTION 7.3, EITHER PARTY'S BREACH OF SECTION 9 OR COMPANY'S BREACH OF SECTION 3, IN NO EVENT WILL ADSWIZZ'S LIABILITY AND DAMAGES UNDER THIS AGREEMENT EXCEED THE SUM OF THE CAMPAIGNS GIVING RISE TO THE LIABILITY UNDER THIS AGREEMENT. THE PARTIES AGREE THAT THE LIMITATIONS AND DISCLAIMERS OF LIABILITY SET FORTH IN THIS SECTION 10 WILL APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

## 11. MISCELLANEOUS.

11.1 Relationship of the Parties. The parties are independent contractors with respect to each other. This Agreement does not constitute and shall not be construed as constituting a partnership or joint venture among the parties hereto, or an employee-employer relationship. No party shall have any right to obligate or bind any other party in any manner whatsoever, and nothing herein contained shall give, or is intended to give, any rights of any kind to any third parties.

11.2 Assignment. Neither party may assign any of its rights or obligations under this Agreement without the prior written consent of the other party, except that AdsWizz may assign its rights and obligations under this Agreement without the consent of the Company in connection with any merger (by operation of law or otherwise), consolidation, reorganization, change in control or sale of all or substantially all of its assets related to this Agreement or similar transaction. This Agreement inures to the benefit of and shall be binding on the parties' permitted assignees, transferees and successors.

11.3 Force Majeure. Except for payment obligations, neither party will be responsible for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, internet or telecommunications failures, shortages of or inability to obtain labor, energy, or supplies, war, terrorism, riot, acts of God or governmental action, acts by hackers or other malicious third parties and problems with the Internet generally, and such performance shall be excused to the extent that it is prevented or delayed by reason of any of the foregoing.

11.4 Notices. All notices under the Terms of this Agreement shall be given in writing and sent by internationally recognized overnight carrier with delivery confirmation or shall be delivered by hand to the other party's primary contact. For clarity, notices to AdsWizz shall be sent to the attention of "Chief Executive Officer", with a copy to "Legal Department" at 487-A S. El Camino Real, San Mateo, California 94402. All notices shall be presumed to have been received when they are hand delivered, or on the business day following the day of delivery by overnight carrier.

11.5 Construction. This Agreement shall be fairly interpreted and construed in accordance with its Terms and without strict interpretation or construction in favor of or against either party. Section headings are for reference purposes only, and should not be used in the interpretation hereof.

11.6 Severability; Waiver. If any provision, or portion thereof, of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, such determination will not impair or affect the validity, legality, or enforceability of the remaining provisions of this Agreement, and each provision, or portion thereof, is hereby declared to be separate, severable, and distinct. A waiver of any provision of this Agreement will only be valid if provided in writing and will only be applicable to the specific incident and occurrence so waived. The failure by either party to insist upon the strict performance of this Agreement, or to exercise any term hereof, will not act as a waiver of any right, promise or term, which will continue in full force and effect.

11.7 Governing Law; Jurisdiction. This Agreement shall be interpreted, construed, and enforced in all respects in accordance with laws of the State of California, without regard to the actual state or country of incorporation or residence of the parties. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.

11.8 Entire Agreement. This Agreement constitutes the complete, final and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes any and all prior or contemporaneous oral or written representations, understandings, agreements or communications between them concerning the subject matter hereof. Neither party is relying upon any warranties, representations, assurances or inducements not expressly set forth herein.