

**EngineEars**  
**Terms of Service**

**Date of Last Revision: November 10, 2025**

**Acceptance of These Terms of Service**

EngineEars, Inc. (“**EngineEars**,” “**we**,” “**us**,” or “**our**”) provides our services (described below) and related content to you through our website(s) located at <https://engineears.com> (the “**Site**”) which offers a platform to book world class third party recording studios, audio engineers, and other service providers in the field of music, as well as management and digital distribution services (collectively with the Site, including any updated or new features, functionality and technology, the “**Platform**”). All access and use of the Platform is subject to the terms and conditions contained in these Terms of Service (as amended from time to time, these “**Terms of Service**”). By accessing, browsing, or otherwise using the Site, or any other aspect of the Platform, you acknowledge that you have read, understood, and agree to be bound by these Terms of Service. If you are entering into these Terms of Service on behalf of a company, business or other legal entity, you represent that you have the authority to bind such entity and its affiliates to these Terms of Service, in which case the terms “**you**” or “**your**” shall refer to such entity and its affiliates. If you do not accept the terms and conditions of these Terms of Service, you will not access, browse, or otherwise use the Platform.

We reserve the right, at our sole discretion, to change or modify portions of these Terms of Service at any time. If we do this, we will post the changes on this page and will indicate at the top of this page the date these Terms of Service were last revised. You may read a current, effective copy of these Terms of Service by visiting the “Terms of Service” link on the Site. We will also notify you of any material changes, either through the user interface of the Platform, a pop-up notice, email, or through other reasonable means. Your continued use of the Platform after the date any such changes become effective constitutes your acceptance of the new Terms of Service. You should periodically visit this page to review the current Terms of Service so you are aware of any revisions. If you do not agree to abide by these or any future Terms of Service, you will not access, browse, or use (or continue to access, browse, or use) the Platform.

***PLEASE READ THESE TERMS OF SERVICE CAREFULLY, AS THEY CONTAIN AN AGREEMENT TO ARBITRATE AND OTHER IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, REMEDIES, AND OBLIGATIONS. THE AGREEMENT TO ARBITRATE REQUIRES (WITH LIMITED EXCEPTION) THAT YOU SUBMIT CLAIMS YOU HAVE AGAINST US TO BINDING AND FINAL ARBITRATION, AND FURTHER (1) YOU WILL ONLY BE PERMITTED TO PURSUE CLAIMS AGAINST ENGINEEARS ON AN INDIVIDUAL BASIS, NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION OR PROCEEDING, (2) YOU WILL ONLY BE PERMITTED TO SEEK RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ON AN INDIVIDUAL BASIS, AND (3) YOU MAY NOT BE ABLE TO HAVE ANY CLAIMS YOU HAVE AGAINST US RESOLVED BY A JURY OR IN A COURT OF LAW.***

**Your Privacy:** At EngineEars, we respect the privacy of our users. For more information, please see our Privacy Policy, located at <https://engineears.com/static/frontend/docs/EngineEarsPrivacyPolicy.pdf> (the “**Privacy Policy**”). By using the Platform, you consent to our collection, use and disclosure of personal data and other data as outlined therein.

**Additional Terms:** In addition, when using certain features through the Platform, you will be subject to any

additional terms applicable to such features that may be posted on or within the Platform from time to time, or as otherwise set forth in a user agreement between you and EngineEars or its affiliates (each a “**User Agreement**”). All such terms are hereby incorporated by reference into these Terms of Service.

### **General Information About the Platform**

**EngineEars Role:** EngineEars operates a marketplace platform and does not directly provide any Audio Services (as defined in the User Agreement) to Clients. You acknowledge that EngineEars has no general obligation to monitor the use of the Platform, but has the right to review, disable access to, remove, or edit Content to: (i) operate, secure and improve the Platform (including for fraud prevention, risk assessment, investigation and customer support purposes); (ii) ensure compliance with these Terms of Service; (iii) comply with applicable law or the order or requirement of a court, law enforcement or other administrative agency or governmental body; (iv) address User Content that we determine is harmful or objectionable; (v) take actions set out in these Terms of Service; and (vi) maintain and enforce any quality or eligibility criteria, including by removing Listings that don’t meet quality and eligibility criteria. Where we remove or disable Content, we will notify a user and provide the reasons for such a measure, unless such notification would (a) prevent or impede the detection or prevention of fraud or other illegal activities, (b) harm the legitimate interests of other users or third parties, or (c) contravene applicable laws. You may appeal such a decision by contacting us at [info@engineears.com](mailto:info@engineears.com). Users agree to cooperate with and assist EngineEars in good faith, and to provide EngineEars with such information and take such actions as may be reasonably requested by EngineEars with respect to any investigation undertaken by EngineEars regarding the use or abuse of the Platform.

**Your Registration Obligations:** You may be required to register with EngineEars or provide information about yourself (*e.g.*, name and email address) in order to access and use certain features of the Platform. If you choose to register for the Platform, you agree to provide and maintain true, accurate, current, and complete information about yourself as prompted by the Platform’s registration form. Registration data and certain other information about you are governed by our Privacy Policy. If you are under 18 years of age, you are not authorized to use the Platform, with or without registering.

**Modifications to Platform:** EngineEars reserves the right to modify or discontinue, temporarily or permanently, the Platform (or any part thereof) with or without notice. You agree that EngineEars will not be liable to you or to any third party for any modification, suspension or discontinuance of the Platform.

**General Practices Regarding Use and Storage:** You acknowledge that EngineEars may establish general practices and limits concerning use of the Platform, including the maximum period of time that data or other content will be retained by the Platform and the maximum storage space that will be allotted on EngineEars’ or its third-party service providers’ servers on your behalf. You agree that EngineEars has no responsibility or liability for the deletion or failure to store any data or other content maintained or uploaded by the Platform. You acknowledge that EngineEars reserves the right to terminate accounts that are inactive for an extended period of time. You further acknowledge that EngineEars reserves the right to change these general practices and limits at any time, in its sole discretion, with or without notice.

### **Conditions of Access and Use**

**User Conduct:** You are solely responsible for all code, video, images, information, data, text, names, biographies, descriptions, software, music, sound, photographs, graphics, messages, and other materials (“**Content**”) that you make available to EngineEars, including by uploading, posting, publishing, or displaying (hereinafter, “**upload(ing)**”) via the Platform or by emailing or otherwise making available to other users of the Platform (collectively, “**User Content**”). EngineEars reserves the right to investigate and take appropriate legal action against anyone who, in EngineEars’ sole discretion, violates this provision, including removing the offending content from the Platform, suspending or terminating the account of such violators, and reporting the violator to law enforcement authorities. You agree to not use the Platform to:

- a) email or otherwise upload any content that (i) infringes any intellectual property or other proprietary rights of any party; (ii) you do not have a right to upload under any law or under contractual or fiduciary relationships; (iii) contains software viruses or any other computer code, files or programs designed to interrupt, destroy, or limit the functionality of any computer software or hardware or telecommunications equipment; (iv) poses or creates a privacy or security risk to any person; (v) constitutes unsolicited or unauthorized advertising, promotional materials, commercial activities and/or sales, “junk mail,” “spam,” “chain letters,” “pyramid schemes,” “contests,” “sweepstakes,” or any other form of solicitation; (vi) is unlawful, harmful, threatening, abusive, harassing, tortious, excessively violent, defamatory, vulgar, obscene, pornographic, libelous, invasive of another’s privacy, hateful, discriminatory, or otherwise objectionable; or (vii) in the sole judgment of EngineEars, is objectionable or which restricts or inhibits any other person from using or enjoying the Platform, or which may expose EngineEars or its users to any harm or liability of any type;
- b) interfere with or disrupt the Platform or servers or networks connected to the Platform, or disobey any requirements, procedures, policies, or regulations of networks connected to the Platform;
- c) violate any applicable local, state, national, or international law, or any regulations having the force of law;
- d) impersonate any person or entity, or falsely state or otherwise misrepresent your affiliation with a person or entity;
- e) solicit personal information from anyone under the age of 18;
- f) harvest or collect email addresses or other contact information of other users from the Platform by electronic or other means for the purposes of sending unsolicited emails or other unsolicited communications;
- g) advertise or offer to sell or buy any goods or services for any business purpose that is not specifically authorized;
- h) further or promote any criminal activity or enterprise or provide instructional information about illegal activities;
- i) obtain or attempt to access or otherwise obtain any content or information through any means not intentionally made available or provided for through the Platform;
- j) Use our Platform in any manner that could disable, overburden, damage, or impair the site or interfere with any other party’s use of the Platform, including their ability to engage in real time activities through the Platform;
- k) Use any robot, spider or other automatic device, process or means to access the Platform for any purpose, including monitoring or copying any of the material on the Platform;
- l) Use any manual process to monitor or copy any of the material on the Platform, or for any other unauthorized purpose without our prior written consent;
- m) circumvent, remove, alter, deactivate, degrade, or thwart any of the content protections in

- or geographic restrictions on any content (including Platform Content (as defined below)) available on or through the Platform, including through the use of virtual private networks; or
- n) engage in or use any data mining, robots, scraping, or similar data gathering or extraction methods.

If you are blocked by EngineEars from accessing the Platform (including by blocking your IP address), you agree not to implement any measures to circumvent such blocking (e.g., by masking your IP address or using a proxy IP address or virtual private network).

**Competitors:** No employee, independent contractor, agent, or affiliate of any competing audio services marketplace is permitted to view, access, or use any portion of the Platform without express written permission from EngineEars. By viewing, using, or accessing the Platform, you represent and warrant that you are not a competitor of EngineEars or any of its affiliates, or acting on behalf of a competitor of EngineEars in using or accessing the Platform.

### **Prohibited Use**

You may use the Platform only for lawful purposes and in accordance with these Terms of Service. You agree not to use the Platform:

- a) In any way that violates any applicable federal, state, local, or international law or regulation (including, without limitation, any laws regarding the export of data or software to and from the US or other countries).
- b) For the purpose of exploiting, harming, or attempting to exploit or harm minors in any way by exposing them to inappropriate content, asking for personally identifiable information, or otherwise.
- c) To send, knowingly receive, upload, download, use, or re-use any material that does not comply with the Content Standards set out in these Terms of Service.
- d) To transmit, or procure the sending of, any advertising or promotional material, including any "junk mail," "chain letter," "spam," or any other similar solicitation.
- e) To impersonate or attempt to impersonate the Company, a Company employee, another user, or any other person or entity (including, without limitation, by using email addresses associated with any of the foregoing).
- f) To engage in any other conduct that restricts or inhibits anyone's use or enjoyment of the Platform, or which, as determined by us, may harm the Company or users of the Platform, or expose them to liability.

Additionally, you agree not to:

- a) Use the Platform in any manner that could disable, overburden, damage, or impair the Platform or interfere with any other party's use of the Platform, including their ability to engage in real time activities through the Platform.
- b) Use any robot, spider, or other automatic device, process, or means to access the Platform for any purpose, including monitoring or copying any of the material on the Platform.
- c) Use any manual process to monitor or copy any of the material on the Platform, or for any other purpose not expressly authorized in these Terms of Service, without our prior written consent.
- d) Use any device, software, or routine that interferes with the proper working of the Platform.

- e) Introduce any viruses, Trojan horses, worms, logic bombs, or other material that is malicious or technologically harmful.
- f) Attempt to gain unauthorized access to, interfere with, damage, or disrupt any parts of the Platform, the server on which the Platform is stored, or any server, computer, or database connected to the Platform.
- g) Attack the Platform via a denial-of-service attack or a distributed denial-of-service attack.
- h) Otherwise attempt to interfere with the proper working of the Platform.

### **Deactivate or Disable Your Account**

You agree that EngineEars, in its sole discretion, may suspend or terminate your account (or any part thereof) or use of the Platform and remove and discard any content within the Platform, for any reason, including for lack of use or if EngineEars believes that you have violated or acted inconsistently with the letter or spirit of these Terms of Service. Any suspected fraudulent, abusive, or illegal activity that may be grounds for termination of your use of the Platform, may be referred to appropriate law enforcement authorities. EngineEars may also in its sole discretion and at any time discontinue providing the Platform, or any part thereof, with or without notice. You agree that any termination of your access to the Platform under any provision of these Terms of Service may be effected without prior notice, and acknowledge and agree that EngineEars may immediately deactivate or delete your account and all related information and files in your account and/or bar any further access to such files or the Platform. Further, you agree that EngineEars will not be liable to you or any third party for any termination of your access to the Platform. Notwithstanding the foregoing, users will still be responsible for any outstanding payment obligations.

### **Fees and Payment**

**Fees:** In order to book a Listing as a Client, you will be required to provide information regarding your credit card or other payment instrument. You represent and warrant to EngineEars that such information is true and that you are authorized to use the payment instrument and that you will pay the corresponding fees associated with the Listing. You will promptly update your account information with EngineEars or the Payment Processor (as defined below), as applicable, of any changes (for example, a change in your billing address or credit card expiration date) that may occur. You agree to pay EngineEars the amount that is specified when making the booking. If you dispute any charges you must let EngineEars know within sixty (60) days after the date that EngineEars charges you, or within such longer period of time as may be required under applicable law. You will be responsible for all taxes associated with the Platform, other than taxes based on EngineEars' net income.

**Payment Processing:** To facilitate payment for the Platform via credit card or debit card, we use Stripe, Inc. and its affiliates ("**Stripe**"). We may also permit you to pay for Services via bank account through other third-party payment service providers (collectively, with Stripe, the "**Payment Processors**"). These payment processing services are subject to the Stripe terms and conditions and other policies available at <https://stripe.com/legal> and Stripe's Global Privacy Policy available at: <https://stripe.com/privacy> (collectively, the "**Stripe Agreements**") or the applicable Payment Processor's terms and conditions, privacy policy, and all other relevant agreements (collectively, the "**Payment Processor Agreements**"). By agreeing to these Terms of Service, users that use the payment functions of the Platform also agree to be bound by the applicable Payment Processor Agreement for the payment function the user is using, as the

same may be modified by the applicable Payment Processor from time to time. You hereby authorize the applicable Payment Processor to store and continue billing your specified payment method even after such payment method has expired, to avoid interruptions in payment for your use of the Platform. Please contact the applicable Payment Processor for more information. EngineEars assumes no liability or responsibility for any for any acts or omissions of the Payment Processor. EngineEars is not a money transmitter. When a Provider enrolls in the Service, the Provider authorizes EngineEars to act as Provider's agent for the limited purpose of receiving payments made using Payment Processors other than Stripe and directs EngineEars to collect and process such payments on the Provider's behalf. Receipt of funds by EngineEars from a Client constitutes payment to the applicable Provider and extinguishes the Client's obligation to pay the Provider. If EngineEars receives funds in advance from a Client, Provider shall be obligated to provide services to that Client regardless of whether EngineEars transmits the funds to Provider, notwithstanding any provisions herein to the contrary. A Provider shall have no recourse against any Client in the event EngineEars fails to remit funds to a Provider. For avoidance of doubt, in the event EngineEars transmits funds to a Provider prior to receiving payment from a Client for the rendering of such Audio Services, and such Client fails to remit funds to EngineEars, such Provider shall be under no obligation to repay such funds to EngineEars, and EngineEars shall have no recourse rights, with respect to the applicable payment, against such Provider.

**Refunds and Cancellations:** Payments made by you hereunder are final and non-refundable, unless otherwise determined by EngineEars. In the event an Client cancels a Listing after the Provider has accepted but prior to the completion of the requested Audio Services, Providers may request partial payments for the Audio Services rendered based on EngineEars' Refund Policy.

### **Intellectual Property Rights**

**Platform Content:** You acknowledge and agree that the Platform may contain content, features and functionality (including, without limitation, all information, software, text, displays, images, video and audio, and the design, selection and arrangement thereof), as well as the copyright, patent, trademark, trade secret, or other proprietary rights ("**Platform Content**"), which are owned by EngineEars, EngineEars Parties and/or other providers of such material. Except as expressly authorized by EngineEars, you agree not to modify, copy, frame, scrape, rent, lease, loan, sell, distribute, display, download, reprogram, or create derivative works based on the Platform or the Platform Content, in whole or in part, except as follows:

- a) Your computer may temporarily store copies of such materials in RAM incidental to your accessing and viewing those materials.
- b) You may store files that are automatically cached by your Web browser for display enhancement purposes.
- c) You may print or download one copy of a reasonable number of pages of the Website for your own personal, non-commercial use and not for further reproduction, publication, or distribution.
- d) If we provide desktop, mobile, or other applications for download, you may download a single copy to your computer or mobile device solely for your own personal, non-commercial use, provided you agree to be bound by our end user license agreement for such applications.

You must not:

- a) Modify copies of any materials from this Platform.
- b) Delete or alter any copyright, trademark, or other proprietary rights notices from copies of

materials from this Platform.

- c) Use any copyrights, names, trademarks, trade names, logos, product and service names, designs, and slogans contained on the Platform without the prior written permission of EngineEars.
- d) Access or use for any commercial purposes any part of the Platform or any services or materials available through the Platform.

If you print, copy, modify, download, or otherwise use or provide any other person with access to any part of the Platform in breach of the Terms of Use, your right to use the Platform will automatically be revoked and, at our option, you must, return or destroy any copies of the materials you have made. No right, title, or interest in or to the Platform or any content on the Platform is transferred to you by way of your use of the Platform, or otherwise, and all rights not expressly granted are reserved by EngineEars. Any use of the Platform or the Platform Content not expressly permitted by these Terms of Use is a breach of these Terms of Use and may violate copyright, trademark, and other laws.

**Trademarks:** The EngineEars name and logos are trademarks and service marks of EngineEars (collectively the “**EngineEars Trademarks**”). Other company, product, and service names and logos used and displayed via the Platform may be trademarks or service marks of their respective owners who may or may not endorse or be affiliated with or connected to EngineEars. Nothing in these Terms of Service or the Platform should be construed as granting, by implication, estoppel, or otherwise, any license or right to use any of EngineEars Trademarks displayed on the Platform, without our prior written permission in each instance. All goodwill generated from the use of EngineEars Trademarks will inure to our exclusive benefit.

**Third-Party Material:** Under no circumstances will EngineEars be liable in any way for any content or materials of any third parties (including users), including for any errors or omissions in any content, or for any loss or damage of any kind incurred as a result of the use of any such content. You acknowledge that EngineEars does not pre-screen content, but that EngineEars and its designees will have the right (but not the obligation) in their sole discretion to refuse or remove any content that is available via the Platform. Without limiting the foregoing, EngineEars and its designees will have the right to remove any content that violates these Terms of Service or is deemed by EngineEars, in its sole discretion, to be otherwise objectionable. You agree that you must evaluate, and bear all risks associated with, the use of any content, including any reliance on the accuracy, completeness, or usefulness of such content.

**Copyright Complaints:** EngineEars respects the intellectual property of others, and we ask our users to do the same. If you believe that your work has been copied in a way that constitutes copyright infringement, or that your intellectual property rights have been otherwise violated, you should notify EngineEars of your infringement claim in accordance with the procedure set forth below.

EngineEars will process and investigate notices of alleged infringement and will take appropriate actions under the Digital Millennium Copyright Act (“**DMCA**”) and other applicable intellectual property laws with respect to any alleged or actual infringement. A notification of claimed copyright infringement should be emailed to EngineEars’ Copyright Agent at [admin@engineears.com](mailto:admin@engineears.com) (Subject line: “DMCA Takedown Request”).

To be effective, the notification must be in writing and contain the following information:

- a physical or electronic signature of a person authorized to act on behalf of the owner of the copyright or other intellectual property interest that is allegedly infringed;

- identification of the copyrighted work or other intellectual property that you claim has been infringed, or, if multiple copyrighted works or other intellectual property are covered by a single notification, a representative list of such works or other intellectual property;
- identification of the content that is claimed to be infringing or to be the subject of infringing activity, and where the content that you claim is infringing is located on the Platform, with enough detail that we may find it on the Platform;
- 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 or intellectual property owner, its agent, or the law; and
- a statement by you that the information in your notice is accurate and, under penalty of perjury, that you are the copyright or intellectual property owner or are authorized to act on the behalf of the owner of the copyright or intellectual property that is allegedly infringed.

**Counter-Notice:** If you believe that your User Content that was removed (or to which access was disabled) is not infringing, or that you have the authorization from the copyright owner, the copyright owner’s agent, or pursuant to the law, to upload and use the content in your User Content, you may send a written counter-notice containing the following information to the Copyright Agent:

- your physical or electronic signature;
- identification of the content that has been removed or to which access has been disabled and the location at which the content appeared before it was removed or disabled;
- a statement by you, made under penalty of perjury, that you have a good faith belief that the content was removed or disabled as a result of mistake or a misidentification of the content to be removed or disabled; and
- your name, address, telephone number, and email address, a statement that you consent to the jurisdiction of the federal court located within the City of New York and a statement that you will accept service of process from the person who provided notification of the alleged infringement.

If a counter-notice is received by the Copyright Agent, EngineEars will send a copy of the counter-notice to the original complaining party informing them that EngineEars may replace the removed content or cease disabling it within ten (10) business days. Unless the owner of the applicable copyrighted work or other intellectual property files an action seeking a court order against EngineEars or the user, the removed content may be replaced, or access to it restored, within ten (10) to fourteen (14) business days or more after receipt of the counter-notice, at our sole discretion.

**Repeat Infringer Policy:** In accordance with the DMCA and other applicable law, EngineEars has adopted a policy of terminating, in appropriate circumstances and at EngineEars’ sole discretion, the accounts of users who are deemed to be repeat infringers. EngineEars may also at its sole discretion limit access to the Platform and/or terminate the accounts of any users who infringe any intellectual property rights of others, whether or not there is any repeat infringement.

### **Indemnification**

To the extent permitted under applicable law, you agree to defend, indemnify, and hold harmless EngineEars, its affiliates, and its and their respective officers, employees, directors, service providers, licensors, and agents (collectively, the “**EngineEars Parties**”) from any and all losses, damages, expenses, including reasonable attorneys’ fees, rights, claims, actions of any kind, and injury (including death) arising out of or relating to your use of the Platform, disputes you have with other users, any User Content, your

violation of these Terms of Service, or your violation of any rights of another. EngineEars will provide notice to you of any such claim, suit, or proceeding. EngineEars reserves the right to assume the exclusive defense and control of any matter which is subject to indemnification under this section, and you agree to cooperate with any reasonable requests assisting EngineEars' defense of such matter. You may not settle or compromise any claim against the EngineEars Parties without EngineEars' written consent.

### **Disclaimer of Warranties**

TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOUR USE OF THE PLATFORM IS AT YOUR SOLE RISK. THE PLATFORM IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. THE ENGINEEARS PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

THE ENGINEEARS PARTIES MAKE NO WARRANTY THAT (A) THE PLATFORM WILL MEET YOUR REQUIREMENTS; (B) THE PLATFORM WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR- FREE; (C) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE PLATFORM WILL BE ACCURATE OR RELIABLE; OR (D) THE QUALITY OF ANY PRODUCTS, PLATFORMS, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE PLATFORM WILL MEET YOUR EXPECTATIONS.

### **Limitation of Liability**

TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOU EXPRESSLY UNDERSTAND AND AGREE THAT THE ENGINEEARS PARTIES WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY DAMAGES, OR DAMAGES FOR LOSS OF PROFITS INCLUDING DAMAGES FOR LOSS OF GOODWILL, USE, OR DATA OR OTHER INTANGIBLE LOSSES (EVEN IF THE ENGINEEARS PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE, RESULTING FROM: (A) THE USE OR THE INABILITY TO USE THE PLATFORM; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND PLATFORMS RESULTING FROM ANY GOODS, DATA, INFORMATION, OR PLATFORMS PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE PLATFORM; (C) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (D) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE PLATFORM; OR (E) ANY OTHER MATTER RELATING TO THE PLATFORM. IN NO EVENT WILL THE ENGINEEARS PARTIES' TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES, OR CAUSES OF ACTION EXCEED THE AMOUNT YOU HAVE PAID ENGINEEARS IN THE LAST SIX (6) MONTHS, OR, IF GREATER, ONE HUNDRED DOLLARS (\$100).

SOME JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OR EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS SET FORTH ABOVE MAY NOT APPLY TO YOU OR BE ENFORCEABLE WITH RESPECT TO YOU. IF YOU ARE DISSATISFIED WITH ANY PORTION OF THE PLATFORM OR WITH THESE Terms of Service, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USE OF THE PLATFORM.

### **Dispute Resolution By Binding Arbitration**

**PLEASE READ THIS SECTION CAREFULLY AS IT AFFECTS YOUR RIGHTS.**

**a. Pre-Arbitration Dispute Resolution**

EngineEars is always interested in resolving disputes amicably and efficiently, and most customer concerns can be resolved quickly and to the customer's satisfaction by emailing customer support support@engineears.com. If such efforts prove unsuccessful, a party who intends to seek arbitration must first send to the other, by certified mail, a written Notice of Dispute ("**Notice**"). The Notice to EngineEars should be sent to info@engineears.com ("**Notice Address**"). The Notice must (i) describe the nature and basis of the claim or dispute and (ii) set forth the specific relief sought. If EngineEars and you do not resolve the claim within sixty (60) calendar days after the Notice is received, you or EngineEars may commence an arbitration proceeding in accordance with the terms of this Section.

**b. Agreement to Arbitrate**

IF THE PARTIES DO NOT REACH AN AGREED UPON SOLUTION WITHIN A PERIOD OF SIXTY (60) DAYS FROM THE TIME INFORMAL DISPUTE RESOLUTION IS PURSUED PURSUANT TO THE PARAGRAPH ABOVE, THEN EITHER PARTY MAY INITIATE BINDING ARBITRATION ON AN INDIVIDUAL (NON-CLASS) BASIS RATHER THAN A COURT, IN ACCORDANCE WITH THE TERMS OF THIS ARBITRATION AGREEMENT, EXCEPT THAT YOU MAY ASSERT INDIVIDUAL CLAIMS IN SMALL CLAIMS COURT, IF YOUR CLAIMS QUALIFY, OR AS OTHERWISE PERMITTED UNDER THESE TERMS OF SERVICE.

THE PARTIES UNDERSTAND THAT, ABSENT THIS PROVISION, THEY WOULD HAVE THE RIGHT TO SUE IN COURT AND HAVE THE DISPUTE RESOLVED BY A JUDGE OR JURY. THEY FURTHER UNDERSTAND THAT, IN SOME INSTANCES, THE COSTS OF ARBITRATION COULD EXCEED THE COSTS OF LITIGATION AND THE RIGHT TO DISCOVERY MAY BE MORE LIMITED IN ARBITRATION THAN IN COURT. THIS ARBITRATION PROVISION ALSO CONTAINS A CLASS ACTION WAIVER.

**c. Claims Subject to Arbitration**

All past, present, and future claims arising out of or relating to the Terms of Service (including its formation, performance, and breach), the parties' relationship with each other, your account, and/or your use of the Site shall be finally settled by binding arbitration administered by the American Arbitration Association ("**AAA**") pursuant to its Consumer Arbitration Rules and applicable procedures. If for any reason the AAA cannot administer the arbitration and the parties cannot agree on a replacement, a court with jurisdiction shall select the arbitration organization or arbitrator. "Claim" has the broadest possible meaning. It includes initial claims, counterclaims, cross-claims, third-party claims, and federal, state, local, and administrative claims, and claims which arose before the effective date of this arbitration provision. It also includes disputes based upon contract, tort, consumer rights, fraud, and other intentional torts, constitution, statute, regulation, ordinance, common law and equity, and claims for money damages and injunctive or declaratory relief. This arbitration provision may also be enforced by any party named as a co-defendant with the EngineEars in a claim asserted by you

**d. Delegation Clause**

Notwithstanding the foregoing, claims or disputes about the validity, enforceability, coverage or scope of this arbitration provision or any part thereof, including, without limitation, this sentence, the Class Action Waiver Section and the Severability clause in these Terms of Service, or whether a party has waived the right to arbitrate through litigation conduct or otherwise are for a court and not an arbitrator to decide.

However, any dispute or argument that concerns the validity or enforceability of these Terms of Service as a whole is for the arbitrator, not a court, to decide.

**e. Prohibition of Class and Representative Actions and Non-Individualized Relief**

***EACH PARTY AGREES THAT EACH PARTY MAY BRING CLAIMS AGAINST THE OTHER ONLY ON AN INDIVIDUAL BASIS AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION OR PROCEEDING, AND THE PARTIES EXPRESSLY WAIVE THEIR RIGHT TO FILE OR PARTICIPATE IN A CLASS ACTION, PRIVATE ATTORNEY GENERAL ACTION, OR OTHER REPRESENTATIVE ACTION OR SEEK RELIEF ON A CLASS BASIS IN COURT OR IN ARBITRATION. ALSO, THE ARBITRATOR MAY AWARD RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF NECESSITATED BY THAT PARTY'S INDIVIDUAL CLAIM(S), EXCEPT THAT YOU MAY PURSUE A CLAIM FOR AND THE ARBITRATOR MAY AWARD PUBLIC INJUNCTIVE RELIEF UNDER APPLICABLE LAW TO THE EXTENT REQUIRED FOR THE ENFORCEABILITY OF THIS PROVISION.***

**f. Arbitration Procedures**

Arbitration will be conducted by a neutral arbitrator in accordance with the AAA rules and procedures, including the AAA's Consumer Arbitration Rules (collectively, the "AAA Rules"), as modified by this Arbitration Agreement. For information on the AAA, please visit its website, <https://www.adr.org>. Information about the AAA Rules and fees for consumer disputes can be found at the AAA's consumer arbitration page, <https://www.adr.org/consumer>. If there is any inconsistency between any term of the AAA Rules and any term of this Arbitration Agreement, the applicable terms of this Arbitration Agreement will control unless the arbitrator determines that the application of the inconsistent Arbitration Agreement terms would not result in a fundamentally fair arbitration. The arbitrator must also follow the provisions of these Terms of Service as a court would. All issues are for the arbitrator to decide, including issues relating to the scope, enforceability, and arbitrability of this Arbitration Agreement. Although arbitration proceedings are usually simpler and more streamlined than trials and other judicial proceedings, the arbitrator can award the same damages and relief on an individual basis that a court can award to an individual under these Terms of Service and applicable law. Decisions by the arbitrator are enforceable in court and may be overturned by a court only for very limited reasons.

Unless EngineEars and you agree otherwise, any arbitration hearings will take place in a reasonably convenient location for both parties with due consideration of their ability to travel and other pertinent circumstances. If the parties are unable to agree on a location, the determination will be made by AAA. If your claim is for \$10,000 or less, EngineEars agrees that you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If your claim exceeds \$10,000, the right to a hearing will be determined by the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator will issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based.

**g. Costs of Arbitration**

Payment of all filing, administration, and arbitrator fees (collectively, the "Arbitration Fees") will be governed by the AAA Rules, unless otherwise provided in this Arbitration Agreement. To the extent any Arbitration Fees are not specifically allocated to either EngineEars or you under the AAA Rules,

EngineEars and you shall split them equally; provided that if you are able to demonstrate to the arbitrator that you are economically unable to pay your portion of such Arbitration Fees or if the arbitrator otherwise determines for any reason that you should not be required to pay your portion of any Arbitration Fees, EngineEars will pay your portion of such fees. In addition, if you demonstrate to the arbitrator that the costs of arbitration will be prohibitive as compared to the costs of litigation, EngineEars will pay as much of the Arbitration Fees as the arbitrator deems necessary to prevent the arbitration from being cost-prohibitive. Any payment of attorneys' fees will be governed by the AAA Rules.

#### **h. Confidentiality**

All aspects of the arbitration proceeding, and any ruling, decision, or award by the arbitrator, will be strictly confidential for the benefit of all parties.

#### **i. Severability**

If any portion of this arbitration provision is deemed invalid or unenforceable, it shall not invalidate these Terms of Service or the remaining portions of this arbitration provision, except that:

- i. The parties acknowledge that the Prohibition of Class and Representative Actions and Non-Individualized Relief above is material and essential to the arbitration of any disputes between them and is non-severable from this arbitration provision. If the Prohibition of Class and Representative Actions and Non-Individualized Relief above is limited, voided or found unenforceable and that determination becomes final after all appeals have been exhausted, then this arbitration provision (except for this sentence) shall be null and void with respect to such proceeding and the parties agree that such dispute shall be brought in court of competent jurisdiction in connection therewith and in accordance with the Venue for Litigation section in these Terms of Service. The parties acknowledge and agree that under no circumstances will a class action be arbitrated; and
- ii. If a claim is brought seeking public injunctive relief and a court determines that the restrictions in the Prohibition of Class and Representative Actions and Non-Individualized Relief above or elsewhere in this arbitration provision prohibiting the arbitrator from awarding relief on behalf of third parties are unenforceable with respect to such claim (and that determination becomes final after all appeals have been exhausted), the claim for public injunctive relief will be determined in court and any individual claims seeking monetary relief will be arbitrated. In such a case, the parties will request that the court stay the claim for public injunctive relief until the arbitration award pertaining to individual relief has been entered in court. In no event will a claim for public injunctive relief be arbitrated.

#### **j. Third-Party Right to Opt-Out**

YOU HAVE THE RIGHT TO OPT-OUT AND NOT BE BOUND BY THIS ARBITRATION AGREEMENT BY MAILING WRITTEN NOTICE OF YOUR DECISION TO OPT-OUT TO THE FOLLOWING ADDRESS: [support@engineears.com](mailto:support@engineears.com). THE WRITTEN NOTICE MUST INCLUDE YOUR NAME, MAILING ADDRESS, AND THE EMAIL ADDRESS YOU USED TO CREATE THE ACCOUNT VIA THE SERVICES AND IT MUST BE SENT WITHIN THIRTY (30) DAYS OF THE CREATION OF AN ACCOUNT VIA THE SERVICES, OTHERWISE YOU SHALL BE BOUND TO ARBITRATE DISPUTES IN ACCORDANCE WITH THE TERMS OF THOSE PARAGRAPHS. IF YOU OPT-OUT OF THIS ARBITRATION AGREEMENT, ENGINEEARS ALSO WILL NOT BE BOUND BY THIS ARBITRATION AGREEMENT. OPTING OUT OF ARBITRATION WILL NOT AFFECT ANY OTHER TERM OF THESE TERMS OF SERVICE OR ANY OTHER AGREEMENT BETWEEN YOU AND ENGINEEARS AND ENGINEEARS PARTIES.

**k. Exception for Small Claims Court**

Notwithstanding the parties' decision to resolve all disputes through arbitration, either party may also seek relief in a small claims court for disputes or claims within the scope of that court's jurisdiction. However, if the dispute is transferred, removed, or appealed to a different court, the dispute will be subject to arbitration.

**l. Venue for Litigation**

Solely to the extent the arbitration provision set forth above does not apply, or for purposes of either party enforcing an award granted to it pursuant to arbitration, the parties agree that any litigation between them shall be filed exclusively in the state or federal courts of New York. The parties expressly hereby consent to exclusive jurisdiction in the aforesaid courts for any litigation, hereby also consent to personal jurisdiction in said courts for any litigation and waive, for all purposes, their right to challenge the lack of personal jurisdiction said courts over any litigation arising in connection with, out of, or as a result of (a) these Terms of Service or the Services, and (b) any acts or omissions of Company in connection with these Terms of Service or the Services.

Notwithstanding anything to the contrary, the parties may seek injunctive relief and any other equitable remedies from any court of competent jurisdiction to protect its respective intellectual property rights, whether in aid of, pending or independently of the resolution of any dispute pursuant to the arbitration procedures set forth above.

**m. One-Year Time Limit**

The parties agree to commence any arbitration proceeding (or court action if applicable) with respect to these Terms of Service within one (1) year after the claim arises. The parties agree that a proceeding commenced after this date is barred.

**n. Future Changes to Arbitration Agreement**

Notwithstanding any provision in these Terms of Service to the contrary, EngineEars agrees that if it makes any future change to this Arbitration Agreement (other than a change to the Notice Address) while you are a user of the Platform, you may reject any such change by sending EngineEars written notice within thirty

(30) calendar days of the change to the Notice Address provided above. By rejecting any future change, you are agreeing that you will arbitrate any dispute between us in accordance with the language of this Arbitration Agreement as of the date you first accepted these Terms of Service (or accepted any subsequent changes to these Terms of Service).

**Platform Disputes**

Subject to the terms of the User Agreement, you agree that you are solely responsible for your interactions with any other user (including Clients and/or Providers, as applicable), and EngineEars will have no liability or responsibility with respect thereto. EngineEars will have no liability or responsibility with respect thereto.

## **General**

These Terms of Service (together with the terms incorporated by reference herein) constitute the entire agreement between you and EngineEars governing your access and use of the Platform, and supersede any prior agreements between you and EngineEars with respect to the Platform. You also may be subject to additional terms and conditions that may apply when you use Third-Party Platforms, third-party content or third-party software. These Terms of Service will be governed by the laws of the State of New York without regard to its conflict of law provisions. With respect to any disputes or claims not subject to arbitration, as set forth above, you and EngineEars submit to the personal and exclusive jurisdiction of the state and federal courts located within Los Angeles County. The failure of EngineEars to exercise or enforce any right or provision of these Terms of Service will not constitute a waiver of such right or provision. If any provision of these Terms of Service is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of these Terms of Service remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Platform or these Terms of Service must be filed within one (1) year after such claim or cause of action arose or be forever barred. A printed version of these Terms of Service and of any notice given in electronic form will be admissible in judicial or administrative proceedings based upon or relating to these Terms of Service to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. You may not assign these Terms of Service without the prior written consent of EngineEars, but EngineEars may assign or transfer these Terms of Service, in whole or in part, without restriction. The section titles in these Terms of Service are for convenience only and have no legal or contractual effect. As used in these Terms of Service, the words "include" and "including," and variations thereof, will not be deemed to be terms of limitation, but rather will be deemed to be followed by the words "without limitation." Notices to you may be made via either email or regular mail. The Platform may also provide notices to you of changes to these Terms of Service or other matters by displaying notices or links to notices generally on the Platform. EngineEars will not be in default hereunder by reason of any failure or delay in the performance of its obligations where such failure or delay is due to civil disturbances, riot, epidemic, hostilities, war, terrorist attack, embargo, natural disaster, acts of God, flood, fire, sabotage, fluctuations or unavailability of electrical power, network access or equipment, or any other circumstances or causes beyond EngineEars' reasonable control.

## **Notice for California Users**

Under California Civil Code Section 1789.3, users of the Platform from California are entitled to the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Platforms of the California Department of Consumer Affairs may be contacted (a) via email at [dca@dca.ca.gov](mailto:dca@dca.ca.gov); (b) in writing at: Department of Consumer Affairs, Consumer Information Division, 1625 North Market Blvd., Suite N 112, Sacramento, CA 95834; or (c) by telephone at (800) 952-5210 or (800) 326-2297 (TDD). Sacramento-area consumers may call (916) 445-1254 or (916) 928-1227 (TDD). You may contact us at EngineEars, Inc  
5990 Sepulveda Blvd #320  
Van Nuys, CA 91411

## **Special Notice for International Use: Export Controls**

EngineEars is headquartered in the United States. Whether inside or outside of the United States, you are solely responsible for ensuring compliance with the laws of your specific jurisdiction. Software available in connection with the Platform (the “**Software**”) and the transmission of applicable data, if any, is subject to United States export controls. No Software may be downloaded from the Platform or otherwise exported or re-exported in violation of U.S. export laws. Downloading, accessing or using the Software or Platforms is at your sole risk.

**Questions? Concerns? Suggestions?**

Please contact us at [info@engineears.com](mailto:info@engineears.com) to report any violations of these Terms of Service or to pose any questions regarding these Terms of Service or the Platform.

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