

TERMS AND CONDITIONS

WELCOME TO WHOOSHKAA.

THIS AGREEMENT GOVERNS YOUR USE OF THE WHOOSHKAA PTY LTD'S (ABN 89 605 961 171) ("WHOOSHKAA", "we", "us", or "our") WEBSITES, MOBILE APPLICATIONS, SOFTWARE DOWNLOADS, TECHNOLOGICAL INFRASTRUCTURE, WHEN YOU ACCESS OUR PODCASTS (WHETHER THROUGH OUR SERVICES OR THIRD PARTY SERVICES) AND OTHER PRODUCTS AND SERVICES WE PROVIDE (COLLECTIVELY, THE "SERVICES").

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE; BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT; AND/OR BY USING SUCH SERVICES, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS RELATED BODIES CORPORATE TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

This agreement was last updated on 26 June 2019 and binds You and Us from the date of Your acceptance of this Agreement.

Table of Contents

1. Definitions
2. Account and Account Security
3. Plans
4. Term and Termination
5. Use of the Platform
6. Ownership and Rights
7. Licenses Granted by You
8. Representations and Warranties; Disclaimer
9. Indemnification
10. Governance Documents
11. Third Party Services' Terms and Conditions

12. Confidentiality

13. Customer Resources and Support

14. General

1. Definitions

“Advertising” means any listing, advertisement or other content that promotes goods and/or services to listeners of Customer’s Podcasts.

“Campaign Manager” means functionality related to the selling, planning, management, forecasting and fulfillment of ad inventory; the entry and retrieval of advertiser and agency contact information; and the entry of and reporting on financial details and billing transactions related to the sale of advertisements.

“Confidential Information” has the meaning given in Clause 12.

“Customer,” “You” or “Your” means, in the case of an individual accepting this Agreement on his or her own behalf, such individual, or in the case of an individual accepting this Agreement on behalf of a company or other legal entity, the company or other legal entity for which You are accepting this Agreement, and its Related Bodies Corporate.

“Disclosing Party” has the meaning given in Clause 12.

“Feedback” means any suggestions for enhancements or comments provided to Whooshkaa by You.

“Governance Documents” has the meaning given in Clause 10.

“Malicious Code” means code, files, scripts, agents or programs intended to do harm, including, for example, logic, viruses, worms, time bombs and Trojan horses.

“Marks” has the meaning given by Clause 6.3.

“Order Form” means an ordering document specifying the Services to be provided hereunder that is entered into between You and Us including any addenda and supplements thereto. All Order Forms will be governed by and subject to the terms and conditions of this Agreement.

“Platform” means Whooshkaa’s proprietary, Internet-delivered SaaS platform of servers, software and related technology (called “Whooshkaa” and includes any successor versions or future names thereof), that is hosted, served or managed by Whooshkaa or Whooshkaa’s third-party service provider, and furnished to You under this Agreement. The Platform provides the ability to: 1) utilize our content management system (“CMS”) to create Podcasts for distribution via an RSS feed to podcasting applications; 2) dynamically insert promotional messages into podcast episode content; 3) access reporting related to performance of podcasts and related promotional messages; 4) generate automated transcription of podcast and audio content.

“Podcast” or “podcast” means a digital audio file received or accessed on demand, which may be distributed by digital download, streaming or RSS feed or other similar technology, which allows end users to receive audio file(s).

“Policies” or **“Governance Documents”** means, collectively, the then-current versions on the Whooshkaa Website of the following policies: Community Guidelines, Cookie Policy and Privacy Policy.

“Receiving Party” has the meaning given in Clause 12.

“Regulatory Requirements” has the meaning given in Clause 4.3.

“Related Body Corporate” has the meaning given by Section 50 of the Corporations Act (Cth) 2001.

“Services” has the meaning given in the introduction of this Agreement and includes Campaign Manager.

“Whooshkaa APIs” has the meaning given in Clause 5.1.

“Whooshkaa Data” has the meaning given in Clause 6.3.

“Whooshkaa IP” has the meaning given in Clause 6.3, together with any and all upgrades, improvements, alterations or modifications based on or to any of the foregoing.

“Whooshkaa Website” means www.whooshkaa.com, or any successor version thereof.

“Your Content” means any and all Podcasts, related data, metadata, files, audio files, attachments, text, images, advertising and other content that You upload or submit to the Platform.

“Your Data” has the meaning given in Clause 6.2 below and excludes all Whooshkaa Data.

2. Account and Account Security

When You register to use the Platform, Whooshkaa will provide tools to authenticate use of Your account, which may include, but are not limited to, username, password, third party authentication services provided by Google. You must ensure that the email address that You provide is, and remains, valid throughout the term of this Agreement. Your email address and any other information You choose to provide about yourself will be treated in accordance with our Privacy Policy.

You are solely responsible for maintaining the confidentiality and security of Your username and password, and You will remain responsible for all use of Your username and password, and all activity emanating from Your account, whether or not such activity was authorized by You.

3. Plans

Reference the appropriate plans page on www.whooshkaa.com for current features and pricing. Features and pricing are subject to change after expiration of the then-current Subscription Term as set forth on the appropriate plans page on www.whooshkaa.com. Requests from You for a higher level plan should be done via www.whooshkaa.com under the plan option and a member of the Whooshkaa team will respond to You directly. All fees may be subject to taxes.

4. Term and Termination

4.1 Term. Reference the appropriate plans page on www.whooshkaa.com for information on the term of this Agreement.

4.2 Termination by Either Party. Either party may terminate this Agreement immediately if the other party breaches any material provision and fails to cure its breach within thirty (30) days after receiving the other party's written notice by email identifying the breach.

4.3 Termination by Whooshkaa. Whooshkaa may discontinue Your access to the Platform and terminate this Agreement immediately if: (a) You fail to make a payment for 10 days following notice of its due date; (b) You have (or Whooshkaa reasonably suspects that You have) breached or misappropriated or infringed Whooshkaa's intellectual property or proprietary rights in the Platform as determined by Whooshkaa in its sole discretion; (c) You have violated Whooshkaa's Community Guidelines; (d) Whooshkaa reasonably believes that Your acts or omissions hereunder could otherwise cause material detriment to its brand and/or pose significant legal risk to Whooshkaa; and/or (e) at will by written notice to You. If Whooshkaa terminates this Agreement in accordance with sub-clause (e), Whooshkaa will reimburse You (on a pro-rated basis) any fees paid by You in advance for Services that have not been provided as at the date of termination.

4.4 Regulatory Requirements. If a regulatory body, or a court of competent jurisdiction, issues a rule, regulation, law or order that has the effect of materially increasing the cost for Whooshkaa to provide access to the Platform or cancelling, changing, or superseding any material term or provision of this Agreement (collectively "Regulatory Requirements"), this Whooshkaa will provide You with written notice of the Regulatory Requirements and that this Agreement shall be deemed modified in such a way as Whooshkaa determines in its sole discretion is necessary in order to comply with such Regulatory Requirement(s). Should You object to any of those modifications which are necessary to comply with a Regulatory Requirement within thirty (30) days after the Regulatory Requirement is effective, then, upon written notice to Whooshkaa, You may terminate this Agreement.

4.5 Effects of Termination, Surviving Provisions. Upon expiration or termination of this Agreement for any reason: (a) all rights and obligations of the parties will cease, except that the following provisions of this agreement (together with any outstanding payment obligations owed to Whooshkaa) will survive any termination or expiration of this this Agreement: Prohibited Use; Ownership and Rights; Indemnification; Effects of Termination, Surviving Provisions; Representations and Warranties; Disclaimer; Confidentiality; Liability Limitation; Damages Exclusion; and General Provisions. (b) Notwithstanding any provision of a surviving provision, You will have no further right to use the Platform except that if You terminate the Agreement for Whooshkaa's uncured breach pursuant to Clause 4.2, You will be entitled to a pro rata refund of any prepaid, unused Subscription Fees, as applicable. In

addition, termination of the Agreement will not affect the rights of any listeners who downloaded Your Content prior to termination.

4.6 Your Content or Data and Deletion. Upon cancellation, termination or expiration of this Agreement, Whooshkaa has no obligation to retain Your Content or Your Data from the platform at any time after such cancellation, termination or expiration. Following cancellation, termination or expiration Your Content and Your Data will be deleted and removed from the Platform 30 days after the effective date of cancellation, termination or expiration of this Agreement. It is Your responsibility to redirect Your Content or Your Data to different feeds. We will make Your Data available to You for export or download for no more than 30 days. After such 30-day period, we will have no obligation to maintain or provide any of Your Content or Your Data. Notwithstanding the foregoing, You acknowledge and agree that Whooshkaa will be entitled to use aggregate, non-identifying data both during and beyond the term of this Agreement for analytics, as well as to develop, improve and deliver the Platform and any related products and services. User accounts will be deleted after a year.

5. Use of Platform

Subject to Your compliance with the terms and conditions of this Agreement, Whooshkaa grants You a limited, personal, non-exclusive, revocable and non-transferable right and license to use the features and functionality of the Platform during the term of the Agreement, solely for Your internal business purposes.

5.1 APIs. Whooshkaa may, as applicable, make certain application programming interfaces (APIs), API access tokens, HTML scripts, data import tools, or other software available to You as part of the Platform (collectively, “**Whooshkaa APIs**”). In such event, Whooshkaa grants You a non-exclusive, non-transferable license, during the term of the Agreement, to use the Whooshkaa APIs solely to access and use the Platform in accordance with this Agreement.

5.2 Prohibited Use. You will not: (a) “frame,” distribute, resell, or permit access to the Platform by any third party; (b) take any actions to artificially alter the download numbers of the Podcasts as measured by the Platform, including but not limited to, by creating a proxy of the Platform allowing for downloads of the Podcasts through areas outside the Platform in order to reduce download numbers within the Platform; (c) use the Platform other than in compliance with applicable federal, state, and local laws; (d) interfere with the Platform or disrupt any other user’s access to the Platform; (e) reverse engineer, attempt to gain unauthorized access to the Platform, or attempt to discover the underlying source code or structure of the Platform; (f) submit to the Platform any content or data that contains mass mailings or any form of “spam”; (g) submit to the Platform any routine, device or other undisclosed feature, including a so-called time bomb, virus, software lock, drop dead device, malicious logic, worm, Trojan horse or trap or back door or software routine, that is designed to delete, disable, deactivate, interfere with or otherwise harm any software, program, data, device, system or service, or which is intended to provide unauthorized access or to produce unauthorized modifications; or (h) use any robot, spider, data scraping or extraction tool or similar mechanism with respect to the Platform. (i) Share account credentials or give others access to Your account. In addition to, and without limiting the generality of the foregoing, You may not access the Services for purposes of monitoring its performance, functionality or availability, or for any other competitive purposes.

6. Ownership and Rights

6.1 Your Content. As between the parties, all of Your Content is owned and/or controlled by You.

Whooshkaa doesn't claim any ownership rights to nor any responsibility over Your Content. You acknowledge and agree that Your Content remains solely Your responsibility.

In addition to, and without limiting the conditions set forth in Clause 5 (Use of the Platform), You must not upload, store, distribute, send, transmit, display, perform, make available, continue to make available or otherwise communicate to the public any Content to which You do not hold the necessary rights. Any unauthorized use of copyright protected material within Your Content (including by way of reproduction, distribution, modification, adaptation, public display, public performance, making available or otherwise communicating to the public via the Platform), independent of whether it is or becomes unauthorized at a later point, may constitute an infringement of third party rights and is strictly prohibited. Any such infringement may result in civil litigation or criminal prosecution by or on behalf of the relevant rightsholder.

6.2 Your Data.

Your Data consists of the following data collected in connection with Your use of the Platform:

a) Data Collected From or About Listeners - All information from web requests for content, IP addresses, user agent, headers sent from the client application and information regarding how the content is consumed. In addition, web request data from the Whooshkaa embedded player, including, but not limited to cookies and third-party pixels; other information listeners opt to provide (e.g. survey results); and information associated to You or Your organization in Whooshkaa, including but not limited to user lists, podcast and episode information, campaign order, agency information and aggregate metrics such as episode and campaign listenership metrics.

(b) Data Collected From Organization Users - Information provided by You on behalf of Your organization to Whooshkaa during the course of use such as registration information.

(c) Data Collected From Third Parties - Listener data, collected by Whooshkaa partners. This includes data related to Advertising sold by You (i.e. campaign data), and other information provided to Whooshkaa through third party integrations (e.g. web pixels for campaign performance tracking).

While You own Your Data, You acknowledge that Whooshkaa may both during the term and thereafter, use Your Data for purposes of maintaining, analyzing, developing, or modifying its services and offerings. In addition, nothing herein will prevent Whooshkaa from publishing and making available statistics and information, including without limitation, for the purpose of reporting in aggregate, industry benchmarks, trends, statistics and comparisons.

6.3 Whooshkaa IP. Whooshkaa retains all right, title and interest (including, but not limited to, all intellectual property and proprietary rights therein) in and to: (a) the Platform and the

technology and software used to provide it; the Whooshkaa APIs; and any and all technology used to produce, store and/or distribute, as applicable, the Podcasts and the Advertising, as well as any and all related trademarks, logos, service marks (e.g., Whooshkaa) (collectively, “Marks”); (b) all electronic and print documentation and other content (excluding Your Content) made available or collected through the Platform; and (c) all data or information contained in or derived from the Platform except Your Data (collectively, “Whooshkaa Data”). Sub-clauses (a), (b) and (c) are collectively referred to as the “Whooshkaa IP”. Except as expressly set forth in this Agreement, Whooshkaa shall have the right to use or disclose the Whooshkaa IP including the Whooshkaa Data at its sole discretion. In addition, except for Your limited rights to access and use the Platform as expressly set forth in this Agreement, nothing in this Agreement licenses or conveys any right to the Whooshkaa IP to anyone, including You, and Whooshkaa reserves all rights and title in and to the Whooshkaa IP.

6.4 Feedback. Whooshkaa will have a perpetual right but not the obligation to use and incorporate into the Platform any Feedback that You provide to us concerning the Platform, without any obligation of compensation.

7. Licenses Granted by You

By uploading or posting Your Content to the Platform, and entering into this Agreement, You hereby grant Whooshkaa the worldwide, non-exclusive, royalty-free right (including the right to sublicense) to: use, copy, transmit, modify, publicly perform, display publicly, promote, market, distribute, and otherwise make Your Content available to end users and third parties including via download and streaming. In addition, Whooshkaa may also use Your Content to enhance the Platform, Whooshkaa’s methodologies and in connection with the improvement and development of Whooshkaa products and services both during the term and after.

Without limiting the generality of the foregoing, and by way of example, Whooshkaa may also distribute, use and provide Your Content: to Whooshkaa’s service providers who act on Whooshkaa’s behalf in providing the Platform (e.g. third party web hosting providers). In addition, You acknowledge that the foregoing licenses in this Clause will extend to other users of the Platform, and to operators and users of any other websites, apps and/or platforms to which Your Content has been shared or embedded by Whooshkaa including, but not limited to, third party platforms and/or services where Podcasts and related content are made available (e.g., Spotify, Audible, Stitcher, iTunes, Radio.com, etc.) (collectively, “Linked Services”). The licenses granted in this Clause are granted separately with respect to each item of Your Content that You upload to the Platform. Licenses with respect to audio Content, and any images or text within Your account, will (subject to Clause 4 (Term and Termination)) terminate automatically when You remove such Content from Your account. Licenses with respect to Feedback or other contributions that You make on the Platform will be perpetual and irrevocable and will continue notwithstanding any termination of Your account.

Removal of audio Content from Your account will result in the deletion of the relevant files from Whooshkaa’s systems and servers. However, You acknowledge that once Your Content is distributed to a Linked Service, Whooshkaa is not obligated to ensure the deletion of Your Content from any servers or systems operated by the operators of any Linked Service, or to require that any user of the Platform or any Linked Service deletes any item of Your Content.

In addition, listeners who have downloaded podcasts or any other Content prior to termination will be able to keep such copies.

8. Representations and Warranties, Disclaimer, Limitation of Liability

8.1 General. Each party represents and warrants that it has the necessary authority to enter into this Agreement, discharge its obligations and grant the rights as set forth herein.

8.2 Limited Warranty for Platform. Whooshkaa represents and warrants that the Platform will operate substantially as described in the documentation made available with the Platform.

8.3 Your Additional Representations and Warranties. For each piece of Content You submit, You additionally represent and warrant that: (a) You have obtained and possess all licenses, rights, consents and permissions necessary to submit Your Content to the Platform and to grant Whooshkaa the rights and licenses set forth in this Agreement for Whooshkaa's use of Your Content as contemplated in this Agreement, including, but not limited to, regarding all of the music used in Your Content; (b) all rights, licenses, consents, waivers, clearances, or approvals necessary required from any collecting society or any other party necessary in order for Whooshkaa to lawfully exercise and enjoy its rights granted under this Agreement (including, without limitation, all necessary music (e.g., with respect to all sound recordings, audio-visual master licenses and consents, etc.), synchronization, mechanical transfer and performing rights clearances) have been or will be obtained and paid for and shall be maintained during the term of this Agreement by You; (c) Neither Whooshkaa nor any Linked Service will need to obtain licenses from any third party or pay royalties to any third party whatsoever (including, but not limited to, any unions, artists, or performing rights societies) for use of Your Content as contemplated under this Agreement; (d) Your Content does not and will not infringe upon any third party's rights, including any intellectual property rights privacy rights, or any other proprietary rights; and (e) Your Content will comply at all times with this Agreement (including but not limited to, the requirements set forth in the Policies), and You will comply at all times with all applicable laws and regulations; (f) any materials uploaded to the Platform including without limitation Your Content, does not contain anything that is defamatory, libelous, or that violates any confidentiality obligations You have with a third party; and (g) You assume full editorial control and responsibility for all of Your Content under this Agreement.

8.4 Disclaimer. Whooshkaa reserves the right to modify the Platform from time to time during the term of this Agreement. You acknowledge and agree that the form and nature of the Platform that Whooshkaa provides may be changed from time to time without prior notice to You, including without limitation security patches, added functionality, and other enhancements. In some instances, enhancements, updates, upgrades, and new additions to the Platform may involve incremental fees, determined at Whooshkaa's sole discretion, and shall be subject to written authorization from You which may be provided by email, click-through agreement and/or continued use of the Platform. You acknowledge that You are responsible for backing up Your Data and Content and that Whooshkaa will not have any liability to You for any loss of any of Your Data or Content whatsoever.

In addition, You acknowledge that, as an internet-delivered software application, the Platform may experience periods of downtime, including but not limited to scheduled maintenance, and third-party service outages. Whooshkaa has no obligation to screen or

monitor any content and does not guarantee that any content available on the Platform complies with this Agreement. You therefore use the Platform at Your own risk.

Accordingly, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, WHOOSHKAA PROVIDES THE PLATFORM ON AN “AS IS” AND “AS AVAILABLE” BASIS; AND WHOOSHKAA MAKES NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PLATFORM, INCLUDING ITS DOCUMENTATION, THE PLATFORM SOFTWARE AND THE WHOOSHKAA API’S, OR ANY DATA OR CONTENT MADE AVAILABLE THROUGH THE PLATFORM (EVEN IF LINKED TO FROM THE PLATFORM). WHOOSHKAA SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, ACCURACY AND ANY OTHER WARRANTY THAT MIGHT ARISE UNDER ANY LAW. WHOOSHKAA DOES NOT WARRANT THAT THE PLATFORM WILL BE ERROR-FREE OR OPERATE WITHOUT INTERRUPTIONS OR DOWNTIME.

8.5 Liability Limitation; Damages Exclusion. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW:

- (a) WE MAKE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER TO YOU;
- (b) WE HEREBY EXCLUDE ALL REPRESENTATIONS, WARRANTIES, TERMS AND CONDITIONS WHETHER EXPRESS OR IMPLIED (AND INCLUDING WITHOUT LIMITATION, THOSE IMPLIED BY STATUTE, CUSTOM, LAW OR OTHERWISE);
- (c) OUR CUMULATIVE LIABILITY TO YOU FOR ALL CLAIMS MADE BY YOU UNDER OR IN RELATION TO THIS AGREEMENT, THE PRIVACY POLICY OR YOUR USE OF THE SERVICES WILL NOT EXCEED IN AGGREGATE THE AMOUNT ACTUALLY RECEIVED BY US IN RESPECT OF YOUR USE OF THE SERVICES IN THE PERIOD 12 MONTHS PRECEDING THE DATE THE FIRST CLAIM FIRST AROSE;
- (d) WE WILL NOT BE LIABLE TO YOU IN RESPECT OF ANY CLAIM FOR ANY LOSS OF PROFIT, DATA, GOODWILL OR BUSINESS, FOR INTERRUPTION TO BUSINESS, FOR ANY FAILURE TO REALISE ANTICIPATED SAVINGS OR FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL PUNITIVE OR INCIDENTAL DAMAGES.

8.6 Statutory Conditions. CERTAIN LEGISLATION MAY IMPLY WARRANTIES OR CONDITIONS OR IMPOSE OBLIGATIONS WHICH CANNOT BE EXCLUDED, RESTRICTED OR MODIFIED EXCEPT TO A LIMITED EXTENT. THIS AGREEMENT AND THE PRIVACY POLICY MUST BE READ SUBJECT TO THOSE STATUTORY PROVISIONS. IF THOSE STATUTORY PROVISIONS APPLY, TO THE EXTENT TO WHICH WE ARE ENTITLED TO DO SO, WE LIMIT OUR LIABILITY IN RESPECT OF ANY CLAIM TO, AT OUR OPTION:

- (i) IN RELATION TO SERVICES:
 - (A) THE SUPPLY OF THE SERVICES AGAIN;
 - (B) THE PAYMENT OF THE COST OF HAVING THE SERVICES SUPPLIED AGAIN; AND
- (ii) IN RELATION TO GOODS:
 - (A) THE REPLACEMENT OF THE GOODS OR THE SUPPLY OR EQUIVALENT GOODS;

- (B) THE REPAIR OF THE GOODS;
- (C) THE PAYMENT OF THE COST OF REPLACING THE GOODS OR ACQUIRING EQUIVALENT GOODS; OR
- (D) THE PAYMENT OF HAVING THE GOODS REPAIRED.

8.7 Exclusion of Injunctive Relief. YOU IRREVOCABLY WAIVE YOUR RIGHT TO SEEK INJUNCTIVE OR OTHER EQUITABLE RELIEF TO RESTRAIN THE OPERATION OF ANY ELEMENT OF THE SERVICES AND YOU AGREE TO LIMIT ANY CLAIMS YOU MAY HAVE AGAINST US TO CLAIMS FOR MONETARY DAMAGES.

9. Indemnification

YOU INDEMNIFY AND MUST KEEP INDEMNIFIED, US, OUR RELATED COMPANIES, THEIR DIRECTORS, OFFICERS AND EMPLOYEES (TOGETHER “THOSE INDEMNIFIED”) AGAINST ANY CLAIMS, LOSSES, LIABILITY, COSTS (INCLUDING LEGAL FEES AND EXPENSES) INCURRED BY THOSE INDEMNIFIED ARISING OUT OF OR RELATED TO ANY BREACH BY YOU OF ANY PROVISION OF THIS AGREEMENT OR ANY IMPROPER USE BY YOU OF THE SERVICES.

10. Governance Documents

Whooshkaa provides the Platform in accordance with its then-current Cookie Policy, Community Guidelines, Privacy Policy and any applicable documents relating to the operation of the Platform (collectively, “**Governance Documents**”), as each may be updated from time to time and posted on the Site. You acknowledge that You and Your Users’ use of the Platform is also governed by the Governance Documents.

11. Third Party Services’ Terms and Conditions

At any time during the Term, in the event that any of Your Podcasts are published to a Linked Service(s), or such other third party platform or service, Customer acknowledges that such third party service(s) may require that You agree to separate third party license terms, terms of use agreements and/or privacy policies as a condition of any such distribution/use of the third party service(s). Whooshkaa will not be responsible in any manner whatsoever for any such third party services.

12. Confidentiality

As used herein, the “**Confidential Information**” of a party (the “**Disclosing Party**”) means all financial, technical, or business information of the Disclosing Party that the Disclosing Party designates as confidential at the time of disclosure to the other party (“**Receiving Party**”) or that the Receiving Party reasonably should understand to be confidential based on the nature of the information or the circumstances surrounding its disclosure. By way of example, the terms and conditions of this Agreement are the Confidential Information of each party; the Whooshkaa APIs, pricing for the Platform, and information about Whooshkaa’s tool and feature upgrade pipeline are all Whooshkaa’s Confidential Information. Notwithstanding the foregoing, nothing will be construed to limit Whooshkaa’s ability to publicly disclose information about its data and to mention its partners and shows generally (e.g. on its website or in general marketing materials), without identifying their specific

affiliation with Customer. Except as expressly permitted in this Agreement, the Receiving Party will not disclose, duplicate, or otherwise make available any Confidential Information of the Disclosing Party to any person or entity without the Disclosing Party's prior written consent. The Receiving Party will only use the Disclosing Party's Confidential Information to perform its obligations under this Agreement (including, in the case of Whooshkaa, to provide the Platform). Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information to the extent required by law, provided that the Receiving Party: (a) gives the Disclosing Party prior notice of such disclosure so as to afford the Disclosing Party a reasonable opportunity to appear, object, and obtain a protective order or other appropriate relief regarding such disclosure (if such notice is not prohibited by applicable law); (b) uses diligent efforts to limit disclosure and to obtain confidential treatment or a protective order; and (c) allows the Disclosing Party to participate in the proceeding. Confidential Information does not include any information that: (x) is or becomes generally known to the public without the Receiving Party's breach of any obligation owed to the Disclosing Party; (y) was independently developed by the Receiving Party without the Receiving Party's breach of any obligation owed to the Disclosing Party; or (z) is received from a third party who obtained such Confidential Information without any third party's breach of any obligation owed to the Disclosing Party. The Receiving Party will return or destroy all Confidential Information upon the Disclosing Party's request after the termination or expiration of this Agreement and (if requested by the Disclosing Party) certify such return or destruction in writing.

13. Customer Resources and Support

Whooshkaa will provide online resources and support in accordance with the service tier indicated on the appropriate plans page on www.whooshkaa.com.

14. General

14.1 Governing Law. This Agreement is governed by the internal laws of New South Wales Australia without regard to its conflict of law rules.

14.2 Disputes. Each party hereby consents to exclusive jurisdiction and venue in the state and federal courts located in New South Wales Australia for any dispute arising out of this Agreement.

14.3 Relationship of the Parties. The parties shall be independent contractors under this Agreement, and nothing herein will constitute either party as the employer, employee, agent or representative of the other party, nor the parties as joint ventures or partners for any purpose.

14.4 Order of Precedence. With respect to the following documents, in the event of any conflict, the order of precedence shall be as follows: this Agreement; Order Form(s) and the Governance Documents.

14.5 Successors; Assignment. Neither party may assign or otherwise transfer any of its rights or obligations under this Agreement without the prior, written consent of the other party; provided; however that a party may, upon written notice to the other party and without the consent of the other party, assign or otherwise transfer this Assignment: (i) to any of its corporate affiliates, or (ii) in connection with a change of control transaction (whether by merger, consolidation, sale of equity interests, sale of all or substantially all assets, or

otherwise), provided that in the case of a change of control of a party, the acquiring company is not a competitor of the other party. Any assignment or other transfer in violation of this Clause will be null and void. Subject to the foregoing, this Assignment will be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.

14.6 Force Majeure. Neither party is liable for delay or default under this Agreement if caused by conditions beyond its reasonable control, whether or not foreseeable (e.g., technology malfunctions, outages of Internet Service; outages in third party hosted services (e.g., Amazon Web Services, Google Cloud Services, or the like), or any other Force Majeure events). “Force Majeure” events will mean: armed conflicts, famine, floods, Acts of God, labor strikes or shortages, governmental decree or regulation, court order, severe weather, fire, earthquake, acts of terrorism, failure of suppliers, unavailability of communications transport facilities, and breakdowns in communications transport facilities, or any other reason where failure to perform is beyond the reasonable control, and not caused by the negligence of the non-performing party.

14.7 Modifications. This Agreement may be modified from time to time by Whooshkaa. Whooshkaa will make available any revised version of this Agreement on the Platform. Any revisions to this Agreement will be effective as of the date posted on the Platform. Whooshkaa will provide notice of any material changes to this Agreement or the Platform (e.g. message on the Platform, email, etc.). If You do not agree to any such revised terms, Your only recourse is to terminate this Agreement by written notice to Whooshkaa and Your participation with the Platform within thirty (30) days of any such changes.

14.8 Publicity. Except as otherwise permitted in this Agreement, neither party will use the other party’s name or trademark in any advertising, written sales promotion, press releases and/or other public communication relating to this Agreement without the other party’s prior written consent (email to suffice). Notwithstanding the foregoing, Whooshkaa shall have the right to identify You as a customer of its Platform including using Customer’s name and trademarks in general marketing and promotion of its Platform and related services.

14.9 Notices. All notices under this Agreement must be in writing and sent via internationally recognized delivery service to Whooshkaa Pty Ltd, L10 418A Elizabeth Street, Surry Hills, NSW 2010, Australia. Notices will be deemed given five (5) business days after being sent.

You consent to receive all communications including agreements, notices, disclosures or other information from Whooshkaa electronically by email or by Whooshkaa posting them on the Platform.

14.10 Entire Agreement. This Agreement, as well as the Governance Documents, represents the entire agreement between Whooshkaa and You with respect to Your use of the Platform and the related matters set forth in it. As between Whooshkaa and You, this Agreement expressly supersedes all prior agreements and understandings regarding the Platform and any subject matter contained in the Agreement.