

Adaptive Sound Technologies, Inc. Terms of Service for Sleep Only

Welcome, and thank you for your interest in Adaptive Sound Technologies, Inc. (“**ASTI**,” “**we**,” or “**us**”) and our mobile downloadable application referred to as “**Sleep Only**”, (the “**Service**”). These Terms of Service are a legally binding contract between you and ASTI regarding your use of the Service.

PLEASE READ THE FOLLOWING TERMS CAREFULLY:

BY CLICKING “I ACCEPT,” OR BY DOWNLOADING, INSTALLING, OR OTHERWISE ACCESSING OR USING THE SERVICE, YOU AGREE THAT YOU HAVE READ AND UNDERSTOOD, AND, AS A CONDITION TO YOUR USE OF THE SERVICE, YOU AGREE TO BE BOUND BY, THE FOLLOWING TERMS AND CONDITIONS, INCLUDING ASTI’S [PRIVACY POLICY](#) (TOGETHER, THESE “**TERMS**”). IF YOU ARE NOT ELIGIBLE, OR DO NOT AGREE TO THESE TERMS, THEN YOU DO NOT HAVE OUR PERMISSION TO USE THE SERVICE. YOUR USE OF THE SERVICE, AND ASTI’S PROVISION OF THE SERVICE TO YOU, CONSTITUTES AN AGREEMENT BY ASTI AND BY YOU TO BE BOUND BY THESE TERMS.

ARBITRATION NOTICE. Except for certain kinds of disputes described in Section 17 (*Dispute Resolution and Arbitration*), you agree that disputes arising under these Terms will be resolved by binding, individual arbitration, and BY ACCEPTING THESE TERMS, YOU AND ASTI ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN ANY CLASS ACTION OR REPRESENTATIVE PROCEEDING.

- 1. ASTI Service Overview.** The Services provides adaptive non-looped sounds, noise masking, and relaxation tools designed to help users fall asleep faster and improve sleep quality. Sleep Only also includes certain premium features.
- 2. Eligibility.** By agreeing to these Terms, you represent and warrant to us that: (a) you are at least 18 years old or if you are below the age of majority where you reside, your legal guardians have read and agreed to these Terms; (b) you have not previously been suspended or removed from the Service; and (c) your registration and your use of the Service is in compliance with any and all applicable laws and regulations. If you are an entity, organization, or company, the individual accepting these Terms on your behalf represents and warrants that they have authority to bind you to these Terms and you agree to be bound by these Terms.
- 3. Accounts and Registration.** To access most features of the Service, you must register with your Google or Apple account.
- 4.** When you link your third party account, you may be required to provide us with some information about yourself, such as your name and email address. You agree that the information you provide to us is accurate, complete, and not misleading, and that you will keep it accurate and up to date at all times You are solely responsible for maintaining the confidentiality of your account and password, and you accept responsibility for all activities that occur under your account. If you believe that your account is no longer secure, then you should immediately notify us at support@asoundtech.com
- 5. General Payment Terms.** Certain features of the Service require you to pay fees. Before you pay any fees, you will have an opportunity to review and accept the fees that you will be charged. Unless otherwise specifically provided for in these Terms, all fees are in U.S. Dollars and are non-refundable, except as required by law.

- 5.1 Price. ASTI reserves the right to determine pricing for the Service. ASTI will make reasonable efforts to keep pricing information published on the Service up to date. We encourage you to check our in-app pricing page periodically for current pricing information. ASTI may change the fees for any feature of the Service, including additional fees or charges, if ASTI gives you advance notice of changes before they apply. ASTI, at its sole discretion, may make promotional offers with different features and different pricing to any of ASTI's customers. These promotional offers, unless made to you, will not apply to your offer or these Terms.
- 5.2 Authorization. You authorize ASTI and all third party payment processors (collectively "**PSP**") to charge all sums for the orders that you make and any level of Service you select as described in these Terms or published by ASTI, including all applicable taxes, to the payment method specified in your account. If you pay any fees with a credit card, then PSP may seek pre-authorization of your credit card account prior to your purchase to verify that the credit card is valid and has the necessary funds or credit available to cover your purchase.
- 5.3 Subscription Service. The Service includes certain subscription-based plans with automatically recurring payments for periodic charges ("**Subscription Service**"). The "**Subscription Billing Date**" is the date when you purchase your first subscription to the Service. The Subscription Service will begin on the Subscription Billing Date and continue for the subscription period that you select on your account (such period, the "**Initial Subscription Period**"), and will automatically renew for successive periods of the same duration as the Initial Subscription Period (the Initial Subscription Period and each such renewal period, each a "**Subscription Period**") unless you cancel the Subscription Service or we terminate it. If you activate a Subscription Service, then you authorize ASTI or its third-party payment processors to periodically charge, on a going-forward basis and until cancellation of the Subscription Service, all accrued sums on or before the payment due date. For information on the "**Subscription Fee**", please see our pricing page. Your account will be charged automatically on the Subscription Billing Date and thereafter on the renewal date of your Subscription Service for all applicable fees and taxes for the next Subscription Period. You may cancel your Subscription Service at any time. You must cancel your Subscription Service before it renews in order to avoid billing of the next periodic Subscription Fee to your account. Refunds cannot be claimed for any partial Subscription Period. ASTI or its third-party payment processor will bill the periodic Subscription Fee to the payment method associated with your account or that you otherwise provide to us. You may cancel the Subscription Service by choosing to cancel the Subscription Service in your in-app purchase provider (such as the Apple App Store or the Google Play Store) or through the Services itself, as applicable. YOUR CANCELLATION MUST BE RECEIVED BEFORE THE RENEWAL DATE IN ORDER TO AVOID CHARGE FOR THE NEXT SUBSCRIPTION PERIOD.
- 5.4 Delinquent Accounts. ASTI may suspend or terminate access to the Service, including fee-based portions of the Service, for any account for which any amount is due but unpaid. In addition to the amount due for the Service, a delinquent account may be charged with fees or charges that are incidental to any chargeback or collection of any unpaid amount, including collection fees. If your payment method is no longer valid at the time a renewal Subscription Fee is due, then ASTI reserves the right to delete your account and any information associated with your account without any liability to you.

6. Licenses

- 6.1 **Limited License.** Subject to your complete and ongoing compliance with these Terms, ASTI grants you, solely for your personal, non-commercial use, a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to: (a) install and use one object code copy of any mobile or other downloadable application associated with the Service (whether installed by you or pre-installed on your mobile device by the device manufacturer or a wireless telephone provider) on a mobile device that you own or control; and (b) access and use the Service.
- 6.2 **License Restrictions.** Except and solely to the extent such a restriction is impermissible under applicable law, you may not: (a) reproduce, distribute, publicly display, publicly perform, or create derivative works of the Service; (b) make modifications to the Service; or (c) interfere with or circumvent any feature of the Service, including any security or access control mechanism. If you are prohibited under applicable law from using the Service, then you may not use it.
- 6.3 **Feedback.** We respect and appreciate the thoughts and comments from our users. If you choose to provide input and suggestions regarding existing functionalities, problems with or proposed modifications or improvements to the Service ("**Feedback**"), then you hereby grant ASTI an unrestricted, perpetual, irrevocable, non-exclusive, fully-paid, royalty-free right and license to exploit the Feedback in any manner and for any purpose, including to improve the Service and create other products and services. We will have no obligation to provide you with attribution for any Feedback you provide to us.

7. **Ownership; Proprietary Rights.** The Service is owned and operated by ASTI. The visual interfaces, text, audio, video, graphics, design, compilation, information, data, computer code (including source code or object code), products, software, services, and all other elements of the Service provided by ASTI ("**Materials**") are protected by intellectual property and other laws. All Materials included in the Service are the property of ASTI or its third-party licensors. Except as expressly authorized by ASTI, you may not make use of the Materials. There are no implied licenses in these Terms and ASTI reserves all rights to the Materials not granted expressly in these Terms.

8. Third-Party Terms

- 8.1 **Third-Party Services and Linked Websites.** ASTI may provide tools through the Service that enable you to export information to third-party services, including through features that allow you to link your account on the Service with an account on the third-party service, such as Apple or Google. By using one of these tools, you hereby authorize ASTI to transfer that information to the applicable third-party service. Third-party services are not under ASTI's control, and, to the fullest extent permitted by law, ASTI is not responsible for any third-party service's use of your exported information. The Service may also contain links to third-party websites. Linked websites are not under ASTI's control, and ASTI is not responsible for their content. Please be sure to review the terms of use and privacy policy of any third-party services before you share any information with such third-party services. Once sharing occurs, ASTI will have no control over the information that has been shared.
- 8.2 **Third-Party Software.** The Service may include or incorporate third-party software components that are generally available free of charge under licenses granting recipients broad rights to copy, modify, and distribute those components ("**Third-Party Components**"). Although the Service is provided to you subject to these Terms, nothing in these Terms prevents, restricts, or is intended

to prevent or restrict you from obtaining Third-Party Components under the applicable third-party licenses or to limit your use of Third-Party Components under those third-party licenses.

9. Communications

9.1 Push Notifications. When you install our app on your mobile device, you agree to receive push notifications, which are messages an app sends you on your mobile device when you are not in the app. You can turn off notifications by visiting your mobile device's "settings" page.

9.2 Email. We may send you emails concerning our products and services, as well as those of third parties. You may opt out of promotional emails by following the unsubscribe instructions in the promotional email itself.

10. Prohibited Conduct. BY USING THE SERVICE, YOU AGREE NOT TO:

10.1 use the Service for any illegal purpose or in violation of any local, state, national, or international law;

10.2 harass, threaten, demean, embarrass, bully, or otherwise harm any other user of the Service;

10.3 distribute or make copies of Services;

10.4 violate, encourage others to violate, or provide instructions on how to violate, any right of a third party, including by infringing or misappropriating any third-party intellectual property right;

10.5 access, search, or otherwise use any portion of the Service through the use of any engine, software, tool, agent, device, or mechanism (including spiders, robots, crawlers, and data mining tools) other than the software or search agents provided by ASTI;

10.6 interfere with security-related features of the Service, including by: (a) disabling or circumventing features that prevent or limit use, printing, or copying of any content; or (b) reverse engineering or otherwise attempting to discover the source code of any portion of the Service except to the extent that the activity is expressly permitted by applicable law;

10.7 interfere with the operation of the Service or any user's enjoyment of the Service, including by: (a) uploading or otherwise disseminating any virus, adware, spyware, worm, or other malicious code; (b) making any unsolicited offer or advertisement to another user of the Service; (c) collecting personal information about another user or third party without consent; or (d) interfering with or disrupting any network, equipment, or server connected to or used to provide the Service;

10.8 perform any fraudulent activity including impersonating any person or entity, claiming a false affiliation or identity, accessing any other Service account without permission;

10.9 sell or otherwise transfer the access granted under these Terms or any Materials (as defined in Section 7 (*Ownership; Proprietary Rights*)) or any right or ability to view, access, or use any Materials; or

- 10.10 attempt to do any of the acts described in this Section 10 (*Prohibited Conduct*) or assist or permit any person in engaging in any of the acts described in this Section 10 (*Prohibited Conduct*).
- 11. Modification of Terms.** We may, from time to time, change these Terms. Please check these Terms periodically for changes. Revisions will be effective immediately except that, for existing users, material revisions will be effective 30 days after posting or notice to you of the revisions unless otherwise stated. We may require that you accept modified Terms in order to continue to use the Service. If you do not agree to the modified Terms, then you should discontinue your use of the Service by deleting your account from the Profile section of the Sleep Only application. Except as expressly permitted in this Section 11 (*Modification of Terms*), these Terms may be amended only by a written agreement signed by authorized representatives of the parties to these Terms.
- 12. Term, Termination, and Modification of the Service**
- 12.1 Term. These Terms are effective beginning when you accept the Terms or first download, install, access, or use the Service, and ending when terminated as described in Section 12.2 (*Termination*).
- 12.2 Termination. If you violate any provision of these Terms, then your authorization to access the Service and these Terms automatically terminate. In addition, ASTI may, at its sole discretion, terminate these Terms or your account on the Service, or suspend or terminate your access to the Service, at any time for any reason or no reason, with or without notice, and without any liability to you arising from such termination. You may terminate your account and these Terms at any time by deleting your account from the Profile section of the Sleep Only app.
- 12.3 Effect of Termination. Upon termination of these Terms or at the end of your last paid through Subscription Period, whichever is earlier: (a) your license rights will terminate and you must immediately cease all use of the Service; (b) you will no longer be authorized to access your account or the Service; (c) you will not receive any pro rata refunds for a Subscription Period that you have already paid for; (d) you must pay ASTI any unpaid amount that was due prior to termination; and (e) all payment obligations accrued prior to termination and Sections 6.3 (*Feedback*), 7 (*Ownership; Proprietary Rights*), 12.3 (*Effect of Termination*), 14 (*Indemnity*), 14 (*Disclaimers; No Warranties by ASTI*), 15 (*Medical Disclaimers*), 16 (*Limitation of Liability*), 17 (*Dispute Resolution and Arbitration*), and 18 (*Miscellaneous*) will survive. If your account has been terminated for a breach of these Terms, then you are prohibited from creating a new account on the Service using a different name, email address or other forms of account verification.
- 12.4 Modification of the Service. ASTI reserves the right to modify or discontinue all or any portion of the Service at any time (including by limiting or discontinuing certain features of the Service), temporarily or permanently, without notice to you. ASTI will have no liability for any change to the Service, including any paid-for functionalities of the Service, or any suspension or termination of your access to or use of the Service.
- 13. Indemnity.** To the fullest extent permitted by law, you are responsible for your use of the Service, and you will defend and indemnify ASTI, its affiliates, and their respective shareholders, directors, managers, members, officers, employees, consultants, and agents (together, the “**ASTI Entities**”) from and against every claim brought by a third party, and any related liability, damage, loss, and expense, including attorneys’ fees and costs, arising out of or connected with: (1) your

unauthorized use of, or misuse of, the Service; (2) your violation of any portion of these Terms, any representation, warranty, or agreement referenced in these Terms, or any applicable law or regulation; (3) your violation of any third-party right, including any intellectual property right or publicity, confidentiality, other property, or privacy right; or (4) any dispute or issue between you and any third party. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you (without limiting your indemnification obligations with respect to that matter), and in that case, you agree to cooperate with our defense of those claims.

14. Disclaimers; No Warranties by ASTI

14.1 THE SERVICE AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICE ARE PROVIDED “AS IS” AND ON AN “AS AVAILABLE” BASIS. ASTI DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE SERVICE AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICE, INCLUDING: (a) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, OR NON-INFRINGEMENT; AND (b) ANY WARRANTY ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE. ASTI DOES NOT WARRANT THAT THE SERVICE OR ANY PORTION OF THE SERVICE, OR ANY MATERIALS OR CONTENT OFFERED THROUGH THE SERVICE, WILL BE ACCURATE, TIMELY, TRUTHFUL, COMPLETE, RELIABLE, UNINTERRUPTED, SECURE, OR FREE OF ERRORS, VIRUSES, OR OTHER HARMFUL COMPONENTS, AND ASTI DOES NOT WARRANT THAT ANY OF THOSE ISSUES WILL BE CORRECTED.

14.2 NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM THE SERVICE OR ASTI ENTITIES OR ANY MATERIALS OR CONTENT AVAILABLE THROUGH THE SERVICE WILL CREATE ANY WARRANTY REGARDING ANY OF THE ASTI ENTITIES OR THE SERVICE THAT IS NOT EXPRESSLY STATED IN THESE TERMS. WE ARE NOT RESPONSIBLE FOR ANY DAMAGE THAT MAY RESULT FROM THE SERVICE AND YOUR DEALING WITH ANY OTHER SERVICE USER. YOU UNDERSTAND AND AGREE THAT YOU USE ANY PORTION OF THE SERVICE AT YOUR OWN DISCRETION AND RISK, AND THAT WE ARE NOT RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY (INCLUDING YOUR COMPUTER SYSTEM OR MOBILE DEVICE USED IN CONNECTION WITH THE SERVICE) OR ANY LOSS OF DATA.

14.3 THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS IN THIS SECTION 14 (*DISCLAIMERS; NO WARRANTIES BY ASTI*) APPLY TO THE FULLEST EXTENT PERMITTED BY LAW. ASTI does not disclaim any warranty or other right that ASTI is prohibited from disclaiming under applicable law.

15. Medical Disclaimers. The Services are provided for informational purpose only and are not intended, designed, or implied to diagnose, prevent, or treat any condition or disease, or to be a substitute for professional medical care. ASTI is not a licensed medical care provider and does not engage in and has no expertise in diagnosing, examining, or treating medical conditions of any kind, or in prescribing treatments or determining the effect of any specific treatment on a medical condition. ASTI is not responsible for the accuracy, reliability, effectiveness, or correct use of any of the Services. You should always consult a medical professional if you have any questions regarding a medical condition and you should never disregard professional medical advice or delay seeking it because of something you have read or received using the Services. You are solely responsible for your use of the Services and its suitability for you.

16. Limitation of Liability

- 16.1 TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE ASTI ENTITIES BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, OR ANY OTHER INTANGIBLE LOSS) ARISING OUT OF OR RELATING TO YOUR ACCESS TO OR USE OF, OR YOUR INABILITY TO ACCESS OR USE, THE SERVICE OR ANY MATERIALS OR CONTENT ON THE SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT ANY ASTI ENTITY HAS BEEN INFORMED OF THE POSSIBILITY OF DAMAGE.
- 16.2 EXCEPT AS PROVIDED IN SECTIONS 17.5 (*COMMENCING ARBITRATION*) AND 17.7 (*ARBITRATION RELIEF*) AND TO THE FULLEST EXTENT PERMITTED BY LAW, THE AGGREGATE LIABILITY OF THE ASTI ENTITIES TO YOU FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THE USE OF OR ANY INABILITY TO USE ANY PORTION OF THE SERVICE OR OTHERWISE UNDER THESE TERMS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, IS LIMITED TO THE GREATER OF: (a) THE AMOUNT YOU HAVE PAID TO ASTI FOR ACCESS TO AND USE OF THE SERVICE IN THE 12 MONTHS PRIOR TO THE EVENT OR CIRCUMSTANCE GIVING RISE TO THE CLAIM AND (b) US\$100.
- 16.3 EACH PROVISION OF THESE TERMS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED TO AND DOES ALLOCATE THE RISKS BETWEEN THE PARTIES UNDER THESE TERMS. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THESE TERMS. THE LIMITATIONS IN THIS SECTION 16 (*LIMITATION OF LIABILITY*) WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

17. Dispute Resolution and Arbitration

- 17.1 Generally. Except as described in Section 17.2 (*Exceptions*) and 17.3 (*Opt-Out*), you and ASTI agree that every dispute arising in connection with these Terms, the Service, or communications from us will be resolved through binding arbitration. Arbitration uses a neutral arbitrator instead of a judge or jury, is less formal than a court proceeding, may allow for more limited discovery than in court, and is subject to very limited review by courts. This agreement to arbitrate disputes includes all claims whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, and regardless of whether a claim arises during or after the termination of these Terms. Any dispute relating to the interpretation, applicability, or enforceability of this binding arbitration agreement will be resolved by the arbitrator.

YOU UNDERSTAND AND AGREE THAT, BY ENTERING INTO THESE TERMS, YOU AND ASTI ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

- 17.2 Exceptions. Although we are agreeing to arbitrate most disputes between us, nothing in these Terms will be deemed to waive, preclude, or otherwise limit the right of either party to: (a) bring an individual action in small claims court; (b) pursue an enforcement action through the applicable federal, state, or local agency if that action is available; (c) seek injunctive relief in a court of law in aid of arbitration; or (d) to file suit in a court of law to address an intellectual property infringement claim.

- 17.3 **Opt-Out.** If you do not wish to resolve disputes by binding arbitration, you may opt out of the provisions of this Section 17 (*Dispute Resolution and Arbitration*) within 30 days after the date that you agree to these Terms by sending a letter to Adaptive Sound Technologies, Inc. Attention: Legal Department – Arbitration Opt-Out, 1475 S Bascom Ave, #116 Campbell, CA 95008 that specifies: your full legal name, the email address associated with your account on the Service, and a statement that you wish to opt out of arbitration (“**Opt-Out Notice**”). Once ASTI receives your Opt-Out Notice, this Section 17 (*Dispute Resolution and Arbitration*) will be void and any action arising out of these Terms will be resolved as set forth in Section 18.2 (*Governing Law*). The remaining provisions of these Terms will not be affected by your Opt-Out Notice.
- 17.4 **Arbitrator.** This arbitration agreement, and any arbitration between us, is subject to the Federal Arbitration Act and will be administered by the JAMS under its rules applicable to consumer disputes (collectively, “**JAMS Rules**”) as modified by these Terms. The JAMS Rules and filing forms are available online at www.Jamsadr.com, by calling the JAMS at +1-800-352-5267, or by contacting ASTI.
- 17.5 **Commencing Arbitration.** Before initiating arbitration, a party must first send a written notice of the dispute to the other party by certified U.S. Mail or by Federal Express (signature required) or, only if that other party has not provided a current physical address, then by electronic mail (“**Notice of Arbitration**”). ASTI’s address for Notice is: Adaptive Sound Technologies, Inc., 1475 S Bascom Ave, #116 Campbell, CA 95008 The Notice of Arbitration must: (a) identify the name or account number of the party making the claim; (b) describe the nature and basis of the claim or dispute; and (c) set forth the specific relief sought (“**Demand**”). The parties will make good faith efforts to resolve the claim directly, but if the parties do not reach an agreement to do so within 30 days after the Notice of Arbitration is received, you or ASTI may commence an arbitration proceeding. The payment of all fees will be governed by the JAMS Rules.
- 17.6 **Arbitration Proceedings.** Any arbitration hearing will take place in the county and state of your billing address unless we agree otherwise or, if the claim is for US\$10,000 or less (and does not seek injunctive relief), you may choose whether the arbitration will be conducted: (a) solely on the basis of documents submitted to the arbitrator; (b) through a telephonic or video hearing; or (c) by an in-person hearing as established by the AAA Rules in the county (or parish) of your billing address. During the arbitration, the amount of any settlement offer made by you or ASTI must not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. Regardless of the manner in which the arbitration is conducted, the arbitrator must issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based.
- 17.7 **Arbitration Relief.** Except as provided in Section 17.8 (*No Class Actions*), the arbitrator can award any relief that would be available if the claims had been brought in a court of competent jurisdiction. If the arbitrator awards you an amount higher than the last written settlement amount offered by ASTI before an arbitrator was selected, ASTI will pay to you the higher of: (a) the amount awarded by the arbitrator and (b) US\$10,000. The arbitrator’s award shall be final and binding on all parties, except (1) for judicial review expressly permitted by law or (2) if the arbitrator’s award includes an award of injunctive relief against a party, in which case that party shall have the right to seek judicial review of the injunctive relief in a court of competent jurisdiction that shall not be bound by the arbitrator’s application or conclusions of law. Judgment on the award may be entered in any court having jurisdiction.

- 17.8 No Class Actions. YOU AND ASTI AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.
- 17.9 Modifications to this Arbitration Provision. If ASTI makes any substantive change to this arbitration provision, you may reject the change by sending us written notice within 30 days of the change to ASTI's address for Notice of Arbitration, in which case your account with ASTI will be immediately terminated and this arbitration provision, as in effect immediately prior to the changes you rejected will survive.
- 17.10 Enforceability. If Section 17.8 (*No Class Actions*) or the entirety of this Section 17 (*Dispute Resolution and Arbitration*) is found to be unenforceable, or if ASTI receives an Opt-Out Notice from you, then the entirety of this Section 17 (*Dispute Resolution and Arbitration*) will be null and void and, in that case, the exclusive jurisdiction and venue described in Section 18.2 (*Governing Law*) will govern any action arising out of or related to these Terms.

18. Miscellaneous

- 18.1 General Terms. These Terms, including the Privacy Policy and any other agreements expressly incorporated by reference into these Terms, are the entire and exclusive understanding and agreement between you and ASTI regarding your use of the Service. You may not assign or transfer these Terms or your rights under these Terms, in whole or in part, by operation of law or otherwise, without our prior written consent. We may assign these Terms and all rights granted under these Terms, at any time without notice or consent. The failure to require performance of any provision will not affect our right to require performance at any other time after that, nor will a waiver by us of any breach or default of these Terms, or any provision of these Terms, be a waiver of any subsequent breach or default or a waiver of the provision itself. Use of Section headers in these Terms is for convenience only and will not have any impact on the interpretation of any provision. Throughout these Terms the use of the word "including" means "including but not limited to." If any part of these Terms is held to be invalid or unenforceable, then the unenforceable part will be given effect to the greatest extent possible, and the remaining parts will remain in full force and effect.
- 18.2 Governing Law. These Terms are governed by the laws of the State of California without regard to conflict of law principles. You and ASTI submit to the personal and exclusive jurisdiction of the state courts and federal courts located within Santa Clara, California for resolution of any lawsuit or court proceeding permitted under these Terms. We operate the Service from our offices in California and we make no representation that Materials included in the Service are appropriate or available for use in other locations.
- 18.3 Privacy Policy. Please read the [ASTI Privacy Policy](#) (the "**Privacy Policy**") carefully for information relating to our collection, use, storage, and disclosure of your personal information. The ASTI Privacy Policy is incorporated by this reference into, and made a part of, these Terms.
- 18.4 Additional Terms. Your use of the Service is subject to all additional terms, policies, rules, or guidelines applicable to the Service or certain features of the Service that we may post on or link to from the Service (the "**Additional Terms**"). All Additional Terms are incorporated by this reference into, and made a part of, these Terms.

- 18.5 Consent to Electronic Communications. By using the Service, you consent to receiving certain electronic communications from us as further described in our Privacy Policy. Please read our Privacy Policy to learn more about our electronic communications practices. You agree that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that those communications be in writing.
- 18.6 Contact Information. The Service is offered by Adaptive Sound Technologies, Inc. , located at 1475 S Bascom Ave, #116 Campbell, CA 95008. You may contact us by sending correspondence to that address or by emailing us at support@asoundtech.com.
- 18.7 Notice to California Residents. If you are a California resident, then under California Civil Code Section 1789.3, you may contact the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs in writing at 1625 N. Market Blvd., Suite N 112, Sacramento, California 95834, or by telephone at +1-800-952-5210 in order to resolve a complaint regarding the Service or to receive further information regarding use of the Service.
- 18.8 No Support. We are under no obligation to provide support for the Service. In instances where we may offer support, the support will be subject to published policies.
19. **Notice Regarding Apple**. This Section 19 (*Notice Regarding Apple*) only applies to the extent you are using our mobile application on an iOS device. You acknowledge that these Terms are between you and ASTI only, not with Apple Inc. ("**Apple**"), and Apple is not responsible for the Service or the content of it. Apple has no obligation to furnish any maintenance and support services with respect to the Service. If the Service fails to conform to any applicable warranty, you may notify Apple, and Apple will refund any applicable purchase price for the mobile application to you. To the maximum extent permitted by applicable law, Apple has no other warranty obligation with respect to the Service. Apple is not responsible for addressing any claims by you or any third party relating to the Service or your possession and/or use of the Service, including: (1) product liability claims; (2) any claim that the Service fails to conform to any applicable legal or regulatory requirement; or (3) claims arising under consumer protection or similar legislation. Apple is not responsible for the investigation, defense, settlement, and discharge of any third-party claim that the Service and/or your possession and use of the Service infringe a third party's intellectual property rights. You agree to comply with any applicable third-party terms when using the Service. Apple and Apple's subsidiaries are third-party beneficiaries of these Terms, and upon your acceptance of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as a third-party beneficiary of these Terms. You hereby represent and warrant that: (a) you are not located in a country that is subject to a U.S. Government embargo or that has been designated by the U.S. Government as a "terrorist supporting" country; and (b) you are not listed on any U.S. Government list of prohibited or restricted parties.