

**VoodooVox, INC.**  
**APPLE USER TERMS OF USE**  
**(EFFECTIVE AS OF October 1, 2008)**

**PLEASE READ CAREFULLY**

VoodooVox, Inc. is headquartered at 1321 Mass MoCa Way, Second Floor, North Adams, MA 01247. Should you have any questions concerning this Agreement, need technical support or have complaints or claims with respect to the VoodooVox Services or the Licensed Application (as defined below), you may contact VoodooVox by emailing [iphone@radiovoodoo.com](mailto:iphone@radiovoodoo.com). For further information, please visit <http://www.voodoovox.com/iphonesupport/>

This VoodooVox, Inc. Terms of Use Agreement (this "Agreement") is a legal agreement between you and VoodooVox, Inc. ("VoodooVox", "we", "us" or "our") providing, among other things, the terms and conditions for your use of VoodooVox's RadioVoodoo iPhone software application and/or services delivered via the VoodooVox Web site [<http://www.voodoovox.com>] or the RadioVoodoo web site [<http://www.radiovoodoo.com>] (the "Sites"), the iPhone or iPod Touch, and otherwise (collectively, the "VoodooVox RadioVoodoo Services"), and your use of the version of the VoodooVox's RadioVoodoo iPhone software application made available to you in the Apple iTunes Store for use on the iPhone or iPod Touch ("Licensed Application"). This Agreement is concluded between you and VoodooVox only, and not with Apple, Inc. ("Apple"). In addition, VoodooVox, not Apple, is solely responsible for the VoodooVox Service, the Licensed Application and the content thereof. You and VoodooVox acknowledge and agree that Apple, and Apple's subsidiaries, are third party beneficiaries of this Agreement, and that, upon your acceptance of the terms and conditions of this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement against you as a third party beneficiary thereof.

VoodooVox may from time to time modify these terms of use and will post a copy of the amended Agreement at <http://www.voodoovox.com/legal/>. If you do not agree to, or cannot comply with, the Agreement as amended, you must stop using the VoodooVox Services and the Licensed Application (as defined below) or, if applicable, cancel your VoodooVox Services or Licensed Application subscription by deleting the application from your computer systems and Apple iPhone telephones. You will be deemed to have accepted the Agreement as amended if you continue to use any of the VoodooVox Services or the Licensed Application after any amendments are posted on the Site.

PARENTAL ADVISORY. IF YOU ARE A USER BETWEEN THE AGES OF 13 AND 17, PLEASE REVIEW THESE TERMS OF USE WITH YOUR PARENTS. THE VOODOOVOX SERVICES AND THE LICENSED APPLICATION ARE NOT DESIGNED TO ATTRACT CHILDREN UNDER THE AGE OF 13 AND WE DO NOT INTENTIONALLY COLLECT PERSONAL INFORMATION FROM CHILDREN ON OUR SITE OR SYSTEMS. BECAUSE THE VOODOOVOX SERVICES AND THE LICENSED APPLICATION MAY PROVIDE ACCESS TO MUSIC THAT CONTAINS EXPLICIT CONTENT INCLUDING STRONG LANGUAGE OR DEPICTIONS OF VIOLENCE, SEX OR SUBSTANCE ABUSE, PARENTAL DISCRETION IS ADVISED FOR ALL USERS AGES 13 TO 17.

THIS AGREEMENT CONTAINS WARRANTY AND LIABILITY DISCLAIMERS. BY USING OR SUBSCRIBING TO THE VOODOOVOX SERVICES OR THE LICENSED APPLICATION, YOU ACCEPT AND AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IN ORDER FOR YOU TO HAVE ACCESS TO THE VOODOOVOX SERVICES AND THE LICENSED APPLICATION, THIS AGREEMENT MUST BE ACCEPTED BY YOU WITHOUT ANY MODIFICATIONS, ADDITIONS, OR DELETIONS. IF YOU DO NOT AGREE TO THE TERMS OF USE CONTAINED IN THIS AGREEMENT, YOU ARE NOT AUTHORIZED TO USE THE VOODOOVOX SERVICES OR THE LICENSED APPLICATION. YOU MAY BE DENIED ACCESS TO THE VOODOOVOX SERVICES OR THE LICENSED APPLICATION, WITH OR WITHOUT PRIOR NOTICE TO YOU, FOR NONCOMPLIANCE WITH ANY PROVISION OF THIS AGREEMENT.

## 1. AUTHORIZED USERS

1.1 U.S. Residents; Age Requirement; Authority. In order to use any of the VoodooVox Services and the Licensed Application, you must be a resident of the United States of America and at least 13 years of age. You represent and warrant that (i) you have read and understood, and that you agree to be bound by, this Agreement; (ii) you are at least 13 years old, (iii) you are a resident of the United States of America (iv) 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 (v) and you are not listed on any US Government list of prohibited or restricted parties. If you do not agree to, or cannot comply with, any of these terms and conditions of this Agreement, please do not check the acceptance box and do not attempt to access any of the VoodooVox Services or the Licensed Application.

1.2 Registration. To use any aspect of the VoodooVox Services or the Licensed Application, you may be required to register and provide certain information, including a member or user name, a password and a valid email address (the "Account Information"). You agree to provide accurate Account Information and to update your Account Information as necessary to keep it accurate. VoodooVox will use your Account Information in accordance with its privacy policy [[www.voodoovox.com/privacy/](http://www.voodoovox.com/privacy/)]. By providing VoodooVox your email address, you consent to our using the email address to send you Service-related notices, including among other things notices required by law, in lieu of postal mail. You may not opt out of Service-related e-mails. We may also use your email address, or for subscribers to mobile Services (other than the Licensed Application), your mobile telephone number, to send you other messages, including information about VoodooVox and special offers. You may opt out of such email by changing your account settings or sending an email to [iphone\\_opt-out@voodoovox.com](mailto:iphone_opt-out@voodoovox.com). You may opt out of mobile text messages by sending an email to [iphone\\_opt-out@voodoovox.com](mailto:iphone_opt-out@voodoovox.com). You may also opt out of mobile text messages and/or non-Service-related emails by sending mail to the following postal address:

Customer Support  
VoodooVox, Inc.  
1321 Mass Moca Way  
Second Floor  
North Adams, MA 01247

Opting out may prevent you from receiving messages regarding VoodooVox or special offers.

1.3 Account Confidentiality. You agree that you will not allow others to use any aspect of your Account Information. You have responsibility for taking steps to maintain the confidentiality and security of your account. You agree to notify us immediately of any unauthorized use of your password and/or account. VoodooVox will not be responsible for any losses arising out of the unauthorized use of your member name, password and/or account and you agree to indemnify and hold harmless VoodooVox, its partners, parents, subsidiaries, agents, affiliates and/or licensors, as applicable, for any improper, unauthorized or illegal uses of the same.

1.4 Security. To prevent unauthorized access, to maintain data accuracy, and to ensure the appropriate use of Account Information, VoodooVox uses appropriate physical, technical and administrative procedures to safeguard the information we collect.

We use Secure Sockets Layer (SSL) encryption when collecting or transferring sensitive data such as credit card information. SSL encryption is designed to make the information unreadable by anyone but us.

## 2. LICENSE TO VOODOOVOX SERVICES AND THE LICENSED APPLICATION

2.1 License Grant. VoodooVox grants to you a limited, non-exclusive, non-transferable license to access and use the VoodooVox Services in the United States for personal non-commercial purposes only. VoodooVox also grants to you a non-transferable license to use the Licensed Application on any iPhone or iPod Touch that you own or control as permitted by the Usage Rules set forth in Apple's App Store Terms of Service. If you subscribe to any of the VoodooVox Services or the Licensed Application, this license is contingent upon your payment of any applicable subscription fees and your compliance with any other terms and conditions applicable to you as a subscriber. Any violation by you of the license provisions contained in this Section 2.1 may result in the immediate termination of your right to use the VoodooVox Services and the Licensed Application. VoodooVox reserves all right, title and interest not expressly granted under this license to the fullest extent possible under applicable laws. ANY USE OF THE VODOOVOX SERVICES OR THE LICENSED APPLICATION NOT SPECIFICALLY PERMITTED UNDER THIS AGREEMENT IS STRICTLY PROHIBITED.

2.2 Updates, Maintenance and Support. VoodooVox may from time to time make available to all users of the VoodooVox Services or the Licensed Application, updates at no cost or subject to additional fees in VoodooVox's sole discretion. "Updates" means any updates, upgrades or error corrections to the VoodooVox Services or the Licensed Application that VoodooVox makes available generally to users of the VoodooVox Services or the Licensed Application. Notwithstanding anything else contained in this Agreement, VoodooVox will have no obligation to continue producing or releasing new versions of the VoodooVox Services or the Licensed Application or any updates thereto. VoodooVox is solely responsible for providing any maintenance and support services with respect to the Licensed Application, as specified in this Agreement, or as required under applicable law. You and VoodooVox agree that Apple

has no obligation whatsoever to furnish any maintenance and support services with respect to the Licensed Application.

### 3. RESTRICTIONS

You agree that you will not:

3.1 use the VoodooVox Services or the Licensed Application to reproduce copyrighted materials;

3.2 copy, store, edit, change, prepare any derivative work of or alter in any way any of the tracks streamed through the VoodooVox Services or the Licensed Application;

3.3 make the VoodooVox Services or the Licensed Application available over a network (other than VoodooVox's network) where it could be used by others;

3.4 provide your password to any other person;

3.5 translate, reverse engineer, decompile, disassemble, modify or create derivative works based on the VoodooVox Services or the Licensed Application or any portion of them;

3.6 circumvent any technology used by VoodooVox or its licensors to protect content accessible via the VoodooVox Services or the Licensed Application;

3.7 rent, lease or sublicense any of the VoodooVox Services or the Licensed Application; or

3.8 use the VoodooVox Services or the Licensed Application in any way that violates the terms of this Agreement.

### 4. COPYRIGHTS

As between you and VoodooVox, you acknowledge that VoodooVox owns or has a license to all title and copyrights in and to the VoodooVox Services and the Licensed Application. All title and intellectual property rights in and to the licensed content in the VoodooVox Services and the Licensed Application is the property of the respective content owner and may be protected by applicable copyright or other intellectual property laws and treaties and subject to use restrictions under such laws or treaties.

### 5. VOODOOVOX TRADEMARKS AND THIRD-PARTY TRADEMARKS

The following are registered trademarks or trademarks of VoodooVox: VoodooVox, and its design logo, RadioVoodoo, and its design logo, as well as certain other VoodooVox trademarks, service marks, graphics, and logos (collectively, the "VoodooVox Trademarks") used in connection with the VoodooVox Services and the Licensed Application. The VoodooVox Services and the Licensed Application may contain third-party trademarks, service marks, graphics, and logos. You are not granted any right or license with respect to VoodooVox Trademarks or the trademarks of any third party.

## 6. SECURITY

The VoodooVox Services and the Licensed Application use technology to protect the digital information provided by VoodooVox from unauthorized use. Your use of the VoodooVox Services and the Licensed Application may be limited by such technology. You acknowledge that, from time to time, VoodooVox may modify or discontinue using such technology. Security modifications made by VoodooVox may from time to time include required updates to the VoodooVox Services or the Licensed Application. IF YOU ATTEMPT TO VIOLATE OR CIRCUMVENT ANY SYSTEM OR NETWORK SECURITY COMPONENTS OR TECHNOLOGY, YOU MAY BE SUBJECT TO CIVIL OR CRIMINAL LIABILITY.

## 7. PRIVACY POLICY

VoodooVox cares about your privacy. It is important that you read and understand the terms of VoodooVox's Privacy Policy. VoodooVox may cooperate with and disclose information (including your Account Information) to any authority, government official or third-party, without giving any notice to you, in connection with any investigation, proceeding or claim arising from an asserted illegal action or infringement due to your use of the VoodooVox Services or the Licensed Application.

## 8. AGREEMENT TO PAY

If you elect to become a subscriber to the VoodooVox Services or the Licensed Application, you agree to pay all fees and charges associated with your mobile service providers subscription terms and services for your mobile device.

## 9. TERM

This Agreement will remain effective until terminated by you or terminated by us.

## 10. DISCLAIMERS

10.1 THE VOODOOVOX SERVICES AND THE LICENSED APPLICATION (INCLUDING ANY SOFTWARE CONTAINED THEREIN) AND ANY UPGRADES OR PLUG-INS AND ANY LICENSED CONTENT ARE LICENSED TO

YOU "AS IS." ANY USE OF THE VOODOOVOX SERVICES AND/OR THE LICENSED APPLICATION WILL BE AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VOODOOVOX DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. VOODOOVOX MAKES NO REPRESENTATIONS OR GUARANTEES THAT THE VOODOOVOX SERVICES AND THE LICENSED APPLICATION WILL BE FREE FROM LOSS, DESTRUCTION, DAMAGE, CORRUPTION, ATTACK, VIRUSES, INTERFERENCE, HACKING, OR OTHER SECURITY INTRUSION, AND VOODOOVOX DISCLAIMS ANY LIABILITY RELATING THERETO.

10.2 VOODOOVOX MAKES NO GUARANTEES, REPRESENTATIONS, OR WARRANTIES THAT USE OR RESULTS OF THE USE OF THE VoodooVox SERVICES OR THE LICENSED APPLICATION WILL BE ACCURATE, RELIABLE, CURRENT, UNINTERRUPTED OR WITHOUT ERRORS. WITHOUT PRIOR NOTICE, VOODOOVOX MAY MODIFY, SUSPEND, OR DISCONTINUE THE VOODOOVOX SERVICES OR THE LICENSED APPLICATION (INCLUDING ANY CONTENT) OR YOUR USE OF THEM. WHENEVER VOODOOVOX ELECTS TO MODIFY, SUSPEND, OR DISCONTINUE THE VOODOOVOX SERVICES OR THE LICENSED APPLICATION, IT WILL NOT BE LIABLE TO YOU OR ANY THIRD PARTY.

10.3 YOU ACKNOWLEDGE THAT YOUR SUBMISSION OF ANY INFORMATION TO US IS AT YOUR OWN RISK. VOODOOVOX DOES NOT ASSUME ANY LIABILITY TO YOU WITH REGARD TO ANY LOSS OR LIABILITY RELATING TO SUCH INFORMATION IN ANY WAY.

10.4 YOU UNDERSTAND THAT YOU MAY ENCOUNTER OFFENSIVE, INDECENT OR OTHER OBJECTIONABLE CONTENT WHEN USING THE VOODOOVOX SERVICES. VOODOOVOX x WILL HAVE NO LIABILITY TO YOU FOR ANY SUCH CONTENT.

10.5 SOME OF THE CONTENT, PRODUCTS, AND SERVICES AVAILABLE THROUGH THE VOODOOVOX SERVICES MAY INCLUDE MATERIALS THAT BELONG TO THIRD PARTIES. YOU ACKNOWLEDGE THAT VOODOOVOX ASSUMES NO RESPONSIBILITY FOR SUCH CONTENT, PRODUCTS OR SERVICES.

10.6 In the event of any failure of the Licensed Application to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the Licensed Application to you, if applicable. To the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the VoodooVox Services or the Licensed Application, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be VoodooVox's sole responsibility.

## 11. LIMITATION OF LIABILITY

11.1 IN NO EVENT WILL VOODOOVOX BE LIABLE TO YOU FOR INDIRECT, GENERAL, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR OTHER DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR

LOSS OF PROFITS, BUSINESS INTERRUPTION, CORRUPTION OF FILES, LOSS OF BUSINESS INFORMATION OR ANY OTHER PECUNIARY LOSS) EVEN IF VOODOOVOX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY VOODOOVOX OR OTHERS WILL CREATE A WARRANTY AND NEITHER YOU NOR ANY THIRD PARTY MAY RELY ON ANY SUCH INFORMATION OR ADVICE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE EXCLUSIONS AND LIMITATIONS MAY OR MAY NOT APPLY TO YOU.

11.2 TO THE EXTENT PERMITTED BY APPLICABLE LAW, VOODOOVOX'S ENTIRE LIABILITY AND YOUR EXCLUSIVE REMEDY UNDER THIS AGREEMENT WILL BE LIMITED TO THE GREATER OF ONE DOLLAR (US \$1.00) OR THE TOTAL AMOUNT PAID BY YOU FOR THE APPLICABLE VOODOOVOX SERVICES OR LICENSED APPLICATION AT ISSUE.

## 12. INDEMNITY

YOU WILL INDEMNIFY AND HOLD VOODOOVOX, ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, CONTRACTORS, AND LICENSORS HARMLESS WITH RESPECT TO ANY SUITS OR CLAIMS ARISING OUT OF (I) YOUR BREACH OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY INFRINGEMENT BY YOU OF THE COPYRIGHT OR INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY; OR (II) YOUR USE OF THE VOODOOVOX SERVICES.

You and VoodooVox acknowledge that in the event of any third party claim that the Licensed Application or your possession and use of that Licensed Application infringes that third party's intellectual property rights, VoodooVox, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim.

## 13. GENERAL INFORMATION

13.1 You will be responsible for providing the DSL, cable modem and any other hardware and software necessary to use the VoodooVox Services.

13.2 VoodooVox or its business partners may present advertisements or promotional materials via the VoodooVox Services. Your dealings with, or participation in promotions of any third-party advertisers via the VoodooVox Services are solely between you and such third party and your participation is subject to the terms and conditions associated with that advertisement or promotion. You agree that VoodooVox is not responsible or liable for any loss or damage of any sort incurred as the result of any such dealings or as the result of the presence of such third parties via the VoodooVox Services.

13.3 The VoodooVox Services may present links to third-party Web sites or third-party services not owned or operated by us. We are not responsible for the availability of these third-party sites or services or their contents. You agree that we are not responsible or liable, directly or indirectly, for any damage or loss caused by or in connection with your use of or reliance on any content of any such third-party site or services or goods or services available through any such third-party site or service.

13.4 The VoodooVox Services are owned or licensed by VoodooVox and are protected by United States copyright laws and international treaty provisions. You will not sublicense, assign, or transfer the license granted to you under this Agreement. Any attempt to sublicense, assign, or transfer any of the rights, duties, or obligations in violation of the provisions of this Agreement is void.

13.5 VoodooVox, not Apple, is responsible for addressing any claims of the end-user or any third party relating to the Licensed Application or your possession and/or use of that Licensed Application, including, but not limited to: (i) product liability claims; (ii) any claim that the Licensed Application fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.

13.6 This Agreement will be governed by the laws of the State of Massachusetts. The exclusive jurisdiction for any claim, action or dispute with VoodooVox or relating in any way to your use of the VoodooVox Services will be in the state and federal courts of the State of Massachusetts and the venue for the adjudication or disposition of any such claim, action or dispute will be in the County of Berkshire, Massachusetts.

13.7 Should you have any questions concerning this Agreement or need technical support, you may contact VoodooVox support by visiting [www.voodoovox.com/iphonesupport](http://www.voodoovox.com/iphonesupport).

13.8 VoodooVox may provide notifications, whether such notifications are required by law or are for marketing or other business related purposes, to you via email, mobile text message, written or hard copy notice, or through conspicuous posting of such notice on Site, as determined by VoodooVox in its sole discretion. VoodooVox reserves the right to determine the form and means of providing notifications to you, provided that you may opt out of certain means of notification as described in this Agreement.

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT AND WILL BE BOUND BY ITS TERMS AND CONDITIONS. YOU FURTHER ACKNOWLEDGE THAT THIS AGREEMENT REPRESENTS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN US AND THAT IT SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT ORAL OR WRITTEN, AND ANY OTHER COMMUNICATIONS BETWEEN US RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.