



Content Provider Agreement

1. Legal Agreement

Thank you for using *AudioSnacks.com*. The Content Provider Agreement set forth in this document applies to all content providers of our Site (“Providers”), and constitute a binding, legal agreement between the Provider and *AudioSnacks, LLC*.

Please read the information below carefully. By using the Site, you accept the terms and conditions described below, and you warrant and represent that you have the legal capacity to enter into this Agreement.

2. Introduction

AudioSnacks is a tool for the exchange of information and knowledge in the world. Our site exists to enable Providers to upload audio tours and for users to purchase the content in various digital formats (mp3, jpeg, pdf, etc.). The audio tours may consist of information, data, text, music, sound, photographs, graphics, videos, messages and/or other material.

3. Content

As a Provider posting your work to *AudioSnacks.com*, you retain your copyright in the Content. You do, however, grant *AudioSnacks* the non-exclusive right and license to:

- use, post, publicly display, copy, sell, perform, distribute or otherwise make available on or through *AudioSnacks.com* that content within the limitations you set during the online posting process.
- use any and all trademarks, logos and designs of the Provider (the “Provider Mark(s)”) together with *AudioSnacks’* trademark(s), in

connection with *Audiosnacks*' advertising, promotion and operation of *AudioSnacks.com*

- use the Provider Marks in connection with the identification, marketing and promotion of *AudioSnacks*' content to third parties, provided that such content is also branded with *AudioSnacks*' mark.

Nothing in this Agreement grants *AudioSnacks* ownership or other rights in or to your Content or your Marks, except in accordance with the terms of this Agreement.

For each sale of your Content for which we receive payment, *AudioSnacks* will pay you the royalty amount specified by you during the posting process.

By uploading Content to the Site you represent and warrant that the Content:

- is owned by you, or to the extent owned by someone else, that you have obtained that party's permission to provide the Content to *AudioSnacks* for use, copying and distribution under the license in this Agreement;
- you have the right and power to license and/or sell the Content and permit others to use your Marks, that the use of the Content and your Marks by *AudioSnacks* shall not infringe upon the rights of any third party, and that you have not granted anyone else the right or authority to act for you in a manner which would conflict with *AudioSnacks*.
- does not violate any copyright, trademark, trade secret or other intellectual property right;
- does not invade any individual's right of privacy or publicity;
- does not contain material that is unlawful, obscene, defamatory, pornographic, indecent, lewd, harassing, threatening, harmful, invasive of privacy or publicity rights, abusive, inflammatory, or deep breath-otherwise objectionable;
- does not include malicious code, which includes, without limitation, viruses, Trojan horses, worms, time bombs, cancelbots, or any other computer programming routines that may damage, interfere with, surreptitiously intercept, or expropriate any system, program, data, or personal information;
- does not break the law, facilitate the breaking of the law, or violate any applicable regulation or *AudioSnacks* rule or policy;
- does not offer or disseminate fraudulent goods, services, schemes, or promotions, or promote domain names, URLs, or hyperlinks that

constitute commercial content such as that found in advertising, promotions, or solicitations;

You agree to defend, indemnify and hold *AudioSnacks*, its members, directors, officers, employees, Licensees, parent companies, subsidiaries, and affiliates, harmless from and against any and all claims, liabilities, judgments, penalties, and taxes, civil and criminal, and all costs, expenses (including, without limitation, reasonable attorneys' fees) incurred in connection therewith, which any of them may incur or to which any of them may be subjected, arising out of or relating to a breach of the Provider's representations and warranties.

To the best of your knowledge, all purported factual information in the Content you upload is true and accurate, and the use of any recipe, formula, or instruction in the Content will not result in personal injury to any user. Providers are prohibited from using *AudioSnacks* to impersonate another person or entity or to forge any e-mail communication or message. Despite all this, *AudioSnacks* cannot guarantee the accuracy, integrity or quality of Content.

Since photographs downloaded from heritage sites sometimes require payment of royalties, *AudioSnacks* suggests that you take your own photographs and upload them simultaneously with the audio commentary. If you, however, choose to include such heritage photographs with your Content, then you are solely responsible for the payment of all royalties to all third parties. *AudioSnacks* shall not be responsible for infringement on any third persons' rights with respect to their trademarks or royalties for such photographs.

4. Community Use

You understand that Content, whether publicly posted or privately transmitted, is the sole responsibility of the person from whom such Content originated. This means that you, Provider, and not *AudioSnacks*, are entirely responsible for all Content that you upload, post or otherwise transmit via the Site.

All Providers agree not to use the Site to:

- Upload, post or otherwise transmit any Content that is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable;
- Harm any one, including minors, in any way;
- Use "spam," "blast-faxes," or recorded telephone messages to market or sell Content;

- Interfere with the operation of the Site via the use of viruses, programs or technology designed to disrupt or damage software or hardware;
- Employ a robot, spider or other process or device to harvest email addresses or other Provider information or to monitor the activity on the Site.
- Transmit or post Content that violates the terms described in the section of this Agreement specifically dedicated to Content.

In addition to complying with all restrictions on conduct and Content, you are responsible for adhering to all local and national laws that pertain to your location, wherever you are.

Please understand that we will remove and/or place warnings on any and all material that we feel is inappropriate or illegal, or offensive, or harmful in any respect. At our discretion, we will remove content and/or ban the Provider who violates our policies from the Site.

5. Payment Terms

In order to buy or sell Content on Site, you must possess either a valid credit card or a PayPal account (<https://www.paypal.com>). *AudioSnacks* agrees to pay you a variable use fee based on the actual use of the Provider's Content on *AudioSnacks.com*, as determined by the number of users that purchase the Provider's Content (the "Variable Use Fee"). For each sale of Provider's Content for which we receive payment, *AudioSnacks* will pay Provider the Variable Use Fee specified during the publication process.

6. Records Inspection and Audit

AudioSnacks will compute the Variable Use Fee on a monthly basis and shall remit the appropriate payment for such fees to the Provider within forty-five (45) days after the conclusion of the applicable month. Acceptance by the Provider of any statement or payment shall not preclude the Provider from challenging the accuracy thereof. In general, *AudioSnacks* commission is generated on a per transaction basis by taking 20% of the transaction total.

During the publication process, Providers are asked to specify Variable Use Fee they will receive for each piece of Content they choose to post. In order to calculate the 20% margin, *AudioSnacks* will mark-up this Variable Use Fee by 20%. For example, if a Provider chooses to make a tour available to buy via download, he might set his Variable Use Fee at \$5.00. The price of the download will then be calculated as follows:

Variable Use Fee:	\$ 5.00
<i>AudioSnacks</i> commission:	\$ 1.00
Final price of download (before taxes):	\$ 6.00

The minimum posting for *AudioSnacks* commission is \$2.00, but if you choose to make your content free, *AudioSnacks* waives its minimum altogether.

The price of the download of your tour, including *AudioSnacks*' markup shall be equal to or lower than the price of the same download being sold elsewhere, including other websites, or brick and mortar locations.

If you have posted and sold Content on the Site, the amount you are owed will be visible in your account under the 'sales statistics' link that appears in your Profile account information. No later than forty five (45) days following the end of the month, *AudioSnacks* will make a good faith effort to pay you, using the contact information in our records. You are responsible for keeping your contact information current.

If *AudioSnacks* owes you less than \$20 for Content sales within a given month, we reserve the right, at our discretion, to roll the Variable Use Fees forward to the following month until \$20 is reached.

The Provider shall have the right, upon reasonable notice, to inspect the books and records and all other documents and material in the *AudioSnacks*' possession or control with respect to the subject matter of this Agreement and shall have free and full access thereto for such purposes and may make copies thereof.

In the event that such inspection reveals an underpayment of the actual monies or fee owed the Provider, *AudioSnacks* shall pay the difference.

If your account is inactive or terminated and we are unable to contact you using the contact information provided, we may also, at our discretion, charge a termination fee equal to the amount of unpaid Variable Use Fees to cover administrative costs.

If your Content generates Variable Use Fees of greater than \$10.00 in a tax year and such Variable Use Fees paid to you by *AudioSnacks* hereunder are subject to income taxation in the United States, *AudioSnacks* will require you to provide taxpayer information as required by the United States Internal Revenue Service ("IRS") for the purpose of issuing a 1099 form for your earnings. If Variable Use Fees paid to you by *AudioSnacks* hereunder are not subject to income taxation in the United States, you will be required to confirm this fact in connection with the publication process. By so confirming you hereby (i) represent and warrant that all such Variable Use Fees are not subject to income taxation in the United States; (ii) agree to forever release *AudioSnacks* and its representatives from all obligations and liability in connection with filing a 1099 form with the IRS for such royalties; and (iii) agree to indemnify, defend, and hold *AudioSnacks* and its representatives harmless from and against any and all claims arising out of or relating to taxation of such royalties, including, but not limited to, payment thereof. Absent such confirmation, the provisions of the first sentence of this paragraph shall apply to all Variable Use Fees paid to you by *AudioSnacks* hereunder.

7. Returns

Returns of Content by users will be acceptable only if the digital file is damaged. In the event there is a return of Content, the Provider's account will be debited for such return.

Because *AudioSnacks* provides a provider-controlled posting tool, *AudioSnacks* cannot be held responsible for the quality of the Content purchased (including misspelled words, grammatical errors, incorrect "factual" information etc.), its formatting, design or overall appearance. The Provider approves the presentation and content of each item. Our staff does not monitor or check individual Content prior to posting on our web site.

8. Providers Registration and Information

We want to make sure that you have completed (or that you will promptly complete, after you read all this) the information in the Provider Registration form on the Site ("Providers Information") correctly and completely. In the event that any of your Providers Information changes in the future, please be sure to promptly update your Providers Information on the Site.

You will have the opportunity to select a Provider ID and Password during the Provider registration process. You are solely responsible in all respects for: (a) all use of the Site made using your Provider ID and Password, and (b) maintaining the confidentiality of your Provider ID and Password. Only one individual may access the Site at the same time using the same Provider ID and Password. You agree to notify us immediately of any unauthorized use of your email address, Provider ID or Password or any other breach of security regarding the Site of which you are aware. *AudioSnacks* may refuse to grant you a Provider ID or Password that impersonates someone else, is protected by trademark or other proprietary right law, is vulgar or otherwise offensive, or for any other reasons that strike us as sound.

9. Retiring Content and/or Terminating Membership

When you choose to 'retire' or 'delete' your Content from *AudioSnacks*, it will no longer be available or visible to other visitors. If your Content has never sold a copy or been used in a collaborative project, you can delete it from your Project List. The exceptions to your ability to remove Content are as follows:

- Content that you have granted permission to other Providers to incorporate into collaborative projects. If Content has been incorporated into another work for sale on *AudioSnacks*, then the derivative work remains available even when the original work is retired.
- Content retained in our archives to the extent required by our data backup systems.
- Content that has been sold or used in another project may still be Retired, but that Content will continue to appear on your Project List.

- Content that you have made available to purchasers in electronic formats may also remain available on the Site (in purchasers' Libraries) to Providers who have purchased that Content.

AudioSnacks does not retain any residual rights to deleted or retired work other than those outlined above.

If you wish to terminate your Membership, please contact support with a specific request to do so. Request for termination shall be effective within thirty (30) days. All accrued but unpaid royalties, if any, shall be paid within thirty (30) days.

If you choose to terminate your Membership, the terms above regarding the status of Content you have uploaded remain applicable.

10. International Providers

AudioSnacks makes no representation that material on the Site is appropriate or available at locations outside of the United States. Providers may not use the Site or export the contents in violation of U.S. export regulations. If you access this Site from a location outside of the United States, you are responsible for compliance with all applicable local laws.

11. Operation of Site

Although it would pain us to do so, *AudioSnacks* may at its discretion suspend or terminate operation of the Site for maintenance or other reasons. In addition, because we live in an imperfect world, technical and other issues may make *AudioSnacks* unavailable from time to time. *AudioSnacks* makes no commitment, warranty or guarantee that the Site will operate in a timely, uninterrupted or error-free manner, or that the Site will meet Provider's purposes.

AudioSnacks may also in its discretion modify the features, availability, operation and/or look and feel of the Site from time to time without notice to our Providers.

As noted above, we will remove Content or Providers we deem to be in violation of our Terms of Use.

12. Disclaimers

The Site and all software, services, information, materials, forums, tools and Content provided or offered on the Site are provided or offered by *AudioSnacks* and its third-party licensors and content providers on an "as-is", "as-available" basis, without representation or warranty of any kind by *AudioSnacks*, including but not limited to the implied warranties of merchantability, non-infringement and fitness for a particular purpose. Without limiting the prior statement, *AudioSnacks* cannot vouch for the quality, accuracy,

completeness, or currentness of any Content or information sold or provided through the Site.

13. Limitation of Liability

In no event shall *AudioSnacks, LLC.* or any of its officers, employees, directors, affiliates, agents or third-party licensors and Content Providers be liable to you or anyone else for any special, consequential, indirect, cover, punitive, incidental or similar damages (including, without limitation, lost profits, lost sales, or lost business) directly or indirectly related to or arising out of the Site, Content on the Site, or any transaction entered hereunder, whether in contract, tort or otherwise, even if *AudioSnacks* or one of its officers, employees, affiliates or agents has been advised of the possibility of such damages. You agree that the liability of *AudioSnacks*, officers, employees, its affiliates, and agents, if any, arising out of any kind of legal claim (whether in contract, tort or otherwise) in any way connected with any transaction entered hereunder or the Site shall not exceed the amount you paid to *AudioSnacks* in connection with the transaction giving rise to such claim. Any action under this Agreement must be commenced within one (1) year after such cause of action occurs.

14. Proprietary Rights

AudioSnacks is the owner of all intellectual property rights, including all copyright, patents, and trademarks, associated with the Site, including all associated software, text, graphics, and logos, but exclusive of content provided by third parties, which are owned by the licensors of such content. In addition, the overall look and feel and the compilation of all materials and content on Site are owned by *AudioSnacks*. Provider agrees not to modify, copy, distribute or reverse engineer any of the software included on the Site. *AudioSnacks* and its third-party licensors reserve all rights not expressly granted in this Agreement.

15. Miscellaneous Legal Stuff

This Agreement is binding. No amendments or modifications may be made except as set forth in the Agreement and Amendments section below or in a written document, signed by both parties. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

The failure by any party to exercise any right provided herein shall not be deemed a waiver or forfeiture of any such right.

Every provision of this Agreement is intended to be severable. If any section of this Agreement is found to be invalid or unenforceable, then such section will be deemed amended and interpreted, if possible, in a way that renders it enforceable. If such an interpretation is not possible, then the section will be deemed removed from this Agreement and the rest of this Agreement will remain in full force and effect.

This Agreement is governed by the laws of the State of Illinois, without regard to its choice of law provisions. The parties agree that any dispute involving *AudioSnacks*, LLC related to this Agreement or the Site that cannot be settled by good faith negotiation shall be submitted to arbitration in accordance with the rules of the American Arbitration Association. The location of the arbitration shall be Chicago, IL. The arbitration shall be conducted by a single arbitrator with experience in computer/technology matters and in the publishing industry. The decision of the arbitrator shall be legally binding, shall not be subject to appeal and shall be enforceable in any court of competent jurisdiction.

Each party shall be excused from performance and shall not be liable for any delay caused by the occurrence of any contingency beyond the reasonable control either of the excused party or its subcontractors or suppliers, except for obligations to make payments hereunder. These contingencies include, but are not limited to, war, sabotage, insurrection, riot or other act of civil disobedience, labor disturbance or shortage, act of public enemy, failure or delay in transportation, act of any government affecting the terms hereof, accident, fire, explosion, flood, severe weather or other act of God.

This Agreement does not designate either party as the agent, employee, legal representative, partner or joint venturer of the other party for any purpose whatsoever.

16. Term

This Agreement is effective until terminated. *AudioSnacks* may terminate or suspend this Agreement immediately if in *AudioSnacks*' sole judgment Provider breaches any of the terms and conditions of this Agreement. All provisions of this Agreement relating to payment, disclaimers, limitation of liability, indemnification, confidentiality, and proprietary rights shall survive termination or expiration of this Agreement.

17. Agreement and Amendments

By completing the registration process- and using the Site, you are indicating that you have the full power and authority to enter into and perform in accordance with the terms of this Agreement. You also agree that this Agreement is a legal, valid and binding obligation, and that its terms and conditions can be enforced. We encourage you to print and keep a copy for reference.

AudioSnacks may change the terms in this Agreement from time to time. When the terms are changed, *AudioSnacks* will make a posting on the Site regarding the change. You agree to review the terms of this Agreement from time to time. If you do not agree to be bound by any future changes, you should promptly notify *AudioSnacks* and discontinue your use of the Site. If you use the Site after *AudioSnacks* has posted a change to these terms on the Site, you are agreeing to be bound by all of the changes.

Whew. Welcome to *AudioSnacks*!