

TERMS AND CONDITIONS / CUSTOMER AGREEMENT

Last Updated: July 15, 2010

Thank you for choosing XM satellite radio ("**XM**"). These are the terms and conditions ("**Terms**"), which apply to your paid, trial or other subscription ("**Subscription**") in our Service Area (defined below) to the XM Satellite Radio service ("**Satellite Radio**") and/or Internet Radio service ("**Internet Radio**") and/or any Equipment Technology (defined below) relating thereto. The Satellite Radio service, Internet Radio service, our traffic and weather services, including marine weather and aviation weather, and any other programming or data for Equipment Technology for radio, television, online, portable, wireless, mobile, and other receivers now known or later developed ("**Receivers**"), will be collectively referred to here as the "**Service**." **These Terms will remain in effect until modified or terminated. Services will be provided to you for the period agreed to by you and will continue to renew for additional terms of same length on the same billing terms until canceled, terminated or discontinued by you or by us.** Please read these Terms and keep this copy of these Terms for your records.

Our Privacy Policy governs the treatment by XM of both anonymous and personally identifiable information that we collect when you use this website or our Internet Radio online media player (the "**Site**") and when you provide information to us in any medium for the Service, or any other services we may offer. Be sure to read our Privacy Policy. For information on how information is gathered and used at www.xmradio.com or through our Internet Radio service please see our privacy policy found at <http://www.xmradio.com/privacypolicy>.

PLEASE READ THESE TERMS CAREFULLY BEFORE ACCESSING OR USING THE SITE OR SERVICE. BY ACCESSING OR USING THE SITE OR SERVICE, YOU AGREE TO BE LEGALLY BOUND BY THESE TERMS. PLEASE DO NOT USE THE SITE OR SERVICE IF YOU DO NOT AGREE WITH THESE TERMS.

IF YOU DO NOT ACCEPT THESE TERMS, PLEASE NOTIFY US IMMEDIATELY AND WE WILL CANCEL YOUR SUBSCRIPTION. IF YOU DO NOT CANCEL YOUR SUBSCRIPTION WITHIN 3 BUSINESS DAYS OF ACTIVATION OF YOUR RECEIVER, IT WILL MEAN THAT YOU AGREE TO THESE TERMS WHICH WILL BE LEGALLY BINDING ON YOU.

A. CONTACT INFORMATION: You may contact XM Listener Care Monday through Saturday from 8AM through 11PM ET and Sunday from 8AM to 8PM ET, by calling 1-800-XM-RADIO (1-800-967-2346), or by writing to: XM Satellite Radio Inc., P.O. Box 33174, Detroit, MI 48232, Attention: Listener Care.

B. CHANGES IN TERMS AND SERVICE:

1. Changes To Terms: WE RESERVE THE RIGHT TO CHANGE THESE TERMS AT ANY TIME. ANY CHANGES WILL BE EFFECTIVE UPON POSTING OF THE REVISIONS ON THE SITE REFLECTING THE NEW EFFECTIVE DATE. YOUR CONTINUED USE OF THE SERVICE FOLLOWING THE POSTING OF THE CHANGES ONLINE WILL CONSTITUTE YOUR ACCEPTANCE OF SUCH CHANGES. YOU SHOULD FREQUENTLY REVIEW THESE TERMS (INCLUDING THE EFFECTIVE DATE) AND APPLICABLE POLICIES FROM TIME TO TIME TO UNDERSTAND THE TERMS THAT APPLY TO YOUR USE OF THE SERVICE AND/OR USE OF THE SITE.

Other than with respect to programming changes referenced in subsection 2 below, if we make any material changes that, in our sole judgment, would have an adverse effect on your use of the Service, we will either post a notice on the Site that these Terms have changed and the effective date of such change, provide you a notice describing such changes and their effective date, in the manner described in Section J.1. below, or send you revised Terms. In the event of any potential conflict between these Terms and the terms of any offer for the Service, these Terms will govern.

2. Change To Programming: The Service consists of a variety of music, sports, news, and entertainment programming. We reserve the right to change, rearrange, add, or delete programming, including canceling, moving or adding particular channels, at any time, with or without notice to you. Your continued use of the Service following any programming changes will constitute your acceptance of such changes.

C. USE OF SERVICE:

1. Eligibility For Use of Service: You must be at least 18 years old, or the age of majority, as

determined by the laws of your state of residency, to assume the obligations set forth in these Terms.

2. Service Area: We offer the XM Satellite Radio Service solely in the 48 contiguous United States and the District of Columbia, and we offer the Internet Radio Service in Alaska, Hawaii, and Puerto Rico as well (together, our "**Service Area**").¹ If your address is not in our satellite Service Area, your Receiver will not be activated to receive the Satellite Radio Service. We reserve the right to verify any address you provide. Satellite radio service is also available in Canada; see www.xmradio.ca or www.siriuscanada.ca for details. Data for our other Services, including traffic and weather, is not available in all markets in the Service Area. Please consult our FAQs or contact us to find out if those Services include data for your market.

3. Internet Radio: You may listen to our Internet Radio Service on one single Internet enabled device at one time. If you have multiple Subscriptions to the Service, you may be eligible to receive an additional Internet Radio online listening account (username/password) for each such Subscription. You should not provide your username and password to anyone and have the obligation to protect your username and password from unauthorized use. You will not be able to access Internet Radio unless your account for your Subscription is in good standing and you are in compliance with these Terms. Certain devices designed to work with our Internet Radio Service may require a separate subscription. Not all content offered on our Satellite Radio Service is available on our Internet Radio Service and vice versa. Similarly, not all content offered on any of the XM or SIRIUS Services is available through the other modes of distribution of XM or SIRIUS programming (such as through our Internet, satellite TV, wireless, or other distribution affiliates we may engage from time to time). We do not make or install any of the physical equipment, Internet connectivity or web browser software or other hardware or software you may need to use to receive our Internet Radio Service ("**Web Devices**"). Our Internet Radio Service may be unavailable or interrupted from time to time for a variety of reasons, such as unavailability or difficulties with the Internet generally or your web browser, computer, home wiring, or Internet service provider and/or other things that we cannot control. Our Internet Radio Service functions best when streamed over a broadband connection. We do not guarantee continuous, uninterrupted or secure access to the Internet Radio Service and are not responsible for any noise and/or interruptions that occur.

4. Personal Use of the Service: We provide the Service only for your personal, non-commercial enjoyment. You may not make commercial use of, reproduce, rebroadcast, or otherwise transmit our programming, or record, charge admission for listening to or distribute play lists of our programming. Neither our Internet Radio Service nor any Recorded Content (defined below) is intended for commercial use. If you use any Service for commercial purposes, we reserve the right to charge you our commercial rate retroactively to the beginning of your Subscription. We or any of our programming providers may prosecute violations of the foregoing against you and other responsible parties in any court of competent jurisdiction. You assume all responsibility for use of the Site. You agree that any person using your identification issued for the Site will be treated by us as having been authorized by you to access your information as contained on the Site, and take any other actions on your behalf. You will indemnify and hold harmless SIRIUS XM Radio Inc. and its affiliates from all damages, costs, expenses, liabilities and claims incurred by them arising out of any action taken by any person or entity using your username/password on the Site. You also waive all claims against SIRIUS XM Radio Inc., its officers, directors, employees, suppliers and programmers that may arise from the utilization of the Site. At the end of each online session you should completely log out of the Service. Should your login ID or username/password be lost, stolen, sold, transferred or otherwise removed from your possession without your permission, contact us immediately so that your personal identifiers may be deactivated and reissued. You also may not attempt to override or circumvent any of our usage rules, limitations, or security measures embedded into the Service or any Receiver.

5. Recorded Content: Certain types of our Receivers have the ability to record programming transmitted over the Service ("**Recorded Content**"). Subject to your Receiver's restrictions and applicable laws, you may access such Recorded Content only as long as you pay your subscription fee. We reserve the right to change, reduce, eliminate or charge a fee for this and/or any related functionality.

6. Service Interruptions: The Service may be unavailable or interrupted from time to time for a variety of reasons, such as environmental or topographic conditions, many of which we cannot control. The Service might also not be available in certain places (e.g., in tunnels, parking garages, or within or next to buildings) or near other technologies. Home, portable and office-based Receivers function best when the antenna is placed in or near a south-facing window with a clear view of the sky. Even if your antenna is near a south-facing window, certain window treatments

¹ While XM does not currently broadcast satellite radio service into Puerto Rico, SIRIUS does (with coverage limitations). SIRIUS satellite radio reception in Puerto Rico is best in the Greater Metropolitan Area of San Juan and may not be available in other areas.

could interfere with reception. We are not responsible for any noise and/or interruptions of the Service.

7. Service Cancellation: We reserve the right to cancel your Subscription at any time if you fail to pay amounts owing to us when due, violate or breach any of these Terms, or for any other reason in our sole discretion. If your Subscription is cancelled, you will still be responsible for payment of all outstanding balances accrued through the cancellation date, including any fees described herein. See also: D.4. "Loss of Receiver Equipment," F.2. "Automatic Renewal," F.8. "Cancellation Fee," F.9. "Service Credits," and G. "Cancellation."

8. Service Choices: We provide Subscriptions in a variety of programming packages which might suit your listening preferences, and we refer to them throughout as "**Packages**." We also offer Subscriptions in a variety of recurring payment plans which might suit your needs, and we refer to them throughout as "**Plans**." Examples of our Plans are "Monthly," "Quarterly," "Annual," "Two Year," and "Five Year." Not all Plans are available for all of our Packages.

9. Lifetime Subscription Plan: A "Lifetime Subscription" is one that continues for the life of the Receiver equipment. Lifetime Subscriptions are nonrefundable. You may cancel a Lifetime Subscription but if you cancel during the first year of service you will be charged a cancellation fee set forth in these Terms. **Non Automotive Receivers:** A Lifetime Subscription associated with a home, portable, or dock & play Receiver is transferable from one Receiver to another Receiver, up to a maximum of three (3) times. For each permitted transfer of a subscription from one Receiver to another or from one person to another you will be charged a transfer fee set forth in these Terms. **Automotive Receivers:** A Lifetime Subscription is not transferable if it is associated with a Receiver installed by an automaker or an automotive dealer in a vehicle, except in the event the original Receiver associated with that Lifetime Subscription is stolen, accidentally damaged or if, in the sole discretion of XM, it is defective. For each permitted transfer of a subscription from one person to another based upon a stolen or accidentally damaged Receiver you will be charged a transfer fee set forth in these Terms. No transfer fee will be charged for the transfer of a Lifetime Subscription associated with a Receiver installed by an automaker or an automotive dealer if, in the sole discretion of XM, the Receiver is defective.

10. Advisory Nature of Services; User Responsibility; User Safety/Reliance; Parental Control: In your use of the Service it is your responsibility to exercise prudent discretion and observe all safety measures required by law and your own common sense. All actions and judgments taken with respect to the Service are your sole responsibility. You assume the entire risk related to your use of the Service. The Service may include traffic, weather, marine weather, and other content and emergency alert information and data, and you acknowledge and agree that such information and data is not for "safety for life," but is merely supplemental and advisory in nature, and therefore cannot be relied upon as safety-critical in connection with any aircraft, sea craft, automobile, or any other usage.

Some programming may include explicit language. It is your responsibility to impose listening restrictions that you consider appropriate on your family members and guests. We are not responsible for content that you or anyone else may find inappropriate.

11. Business Establishment Subscriptions: Details for our commercial subscribers can be found in the FAQs area of the Site.

12. Interactive Services: You acknowledge and agree that (a) we are not responsible for material submitted to us or posted to the Site by users ("**user content**"); (b) we may not pre-screen, monitor, review or edit any user content; (c) we, or our designees have the right (but not the obligation) in our sole discretion to refuse or remove any user content that, in our judgment, does not comply with these Terms or is otherwise undesirable, inappropriate or inaccurate; (d) user content you view, submit or post is at your own discretion and risk, including any reliance on the accuracy, completeness, or usefulness of such user content; (e) user content does not necessarily reflect the views of XM; and (f) we may preserve user content and may disclose user content if required to do so by law or in the good faith belief that such disclosure is reasonably necessary to (i) comply with legal process; (ii) enforce these Terms; (iii) respond to claims that any user content violates the rights of third-parties; or (iv) protect the rights, property, or personal safety of XM, its users or the public.

You represent, warrant and agree that you will not post user content which is harassing, abusive, vulgar, hateful, defamatory, sexually explicit, inflammatory, profane, racially or ethnically objectionable, religious or political, or that encourages inappropriate or unlawful conduct or imposes an unreasonable or disproportionately large load on the Site or otherwise interferes with the Site or infringes the rights of any third party. We may, at our sole discretion, immediately terminate your access to the Site should your conduct fail to conform with these Terms. We do not solicit nor do we

wish to receive any confidential, secret or proprietary information or other material through the Site or mail, or in any other way. Any user content posted or material submitted or sent to XM will be deemed not to be confidential or secret. By posting user content, or sending any other material to us ("**material**") you represent and warrant that the material is original to you and that no other party has any rights to the material and you grant XM the royalty-free, unrestricted, world-wide, perpetual, irrevocable, non-exclusive and fully sub-licensable right and license to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, perform and display such material (in whole or part), including any information, suggestions, ideas, drawings or concepts contained in such material, worldwide and/or to incorporate it in other works in any form, media, or technology now known or later developed. You are and will remain responsible for the accuracy, copyright compliance, legality, decency, or any other aspect of such material.

D. RECEIVERS AND OTHER EQUIPMENT:

1. Authorized Suppliers: You may access and use the Service only with equipment authorized to receive the Service. We do not manufacture or install any of the Receivers or related equipment, including antennas, adapters, adhesive devices or cables ("**Accessories**") you must use to receive the Service. You must purchase your Receiver and Accessories, and any repairs, parts, installation or service, from an authorized seller or manufacturer and the Receiver and/or Accessories will be subject to the applicable seller's or manufacturer's return policy and the manufacturer's warranty, if any. We are not liable for any damage to your personal or real property, including without limitation, your vehicle, home or other property, resulting from installation or use of any Receiver or Accessories. Unless you purchased your Receiver or Accessories through the Site, we are not responsible for the advertising, statements, practices, promises or services of sellers, installers, or manufacturers of Receivers or Accessories. You should consult your owner's manual or the packaging for important information regarding warranties related to Receivers and Accessories. If you have any complaints about your Receiver, Accessories or installation, you should direct them to the seller, manufacturer or installer. Returns of Receivers and Accessories are subject to your authorized seller's, manufacturer's or installer's return policy.

2. Internet Radio: We provide only the online Service. You must purchase your computer, laptop, alternate Web Device, modem or router, and Internet service and/or any other appropriate hardware and/or software, from appropriate sellers, resellers, manufacturers or service providers. We are not responsible for and do not warrant any Web Devices in any way whatsoever and are NOT responsible for the advertising, statements, practices, promises, services or warranties of such sellers, manufacturers or installers. If you have any complaints about your Web Device, you should direct them to the applicable seller, reseller, manufacturer, or service provider.

3. Multiple Receivers: Each Subscription to the Satellite Radio Service is tied to one Receiver. If you want to have the Satellite Radio Service on multiple Receivers, you must purchase a separate Subscription for each Receiver although all of your Subscriptions may be combined on a single account. Such additional subscriptions may be eligible for reduced rates which may be offered by us from time to time and a per Receiver activation fee may apply.

4. Loss of Receiver Equipment: If your Receiver is lost, stolen, sold or otherwise transferred you must cancel or suspend your Subscription or you will remain responsible for the payment obligations for your Satellite Radio Service under the terms of your Subscription.

5. Right to Transfer a Subscription: Satellite Radio Service Subscriptions (other than Lifetime Subscriptions) are transferable from one Receiver to another. A LIFETIME SATELLITE RADIO SUBSCRIPTION (WHICH IS A SUBSCRIPTION THAT CONTINUES FOR THE LIFE OF THE RECEIVER) IS NOT TRANSFERABLE IF IT IS ASSOCIATED WITH A RECEIVER INSTALLED BY AN AUTOMAKER OR AN AUTOMOTIVE DEALER IN A VEHICLE, EXCEPT IN THE EVENT THE ORIGINAL RECEIVER ASSOCIATED WITH THAT LIFETIME SATELLITE RADIO SUBSCRIPTION IS STOLEN, ACCIDENTALLY DAMAGED OR, IN OUR SOLE DISCRETION, IS DEFECTIVE. A LIFETIME SATELLITE RADIO SUBSCRIPTION ASSOCIATED WITH A HOME, PORTABLE OR DOCK & PLAY RECEIVER IS TRANSFERABLE FROM ONE RECEIVER TO ANOTHER RECEIVER, UP TO A MAXIMUM OF THREE TIMES. Permitted transfers are subject to a transfer fee set forth in these Terms.

E. INTELLECTUAL PROPERTY RIGHTS:

1. Technology: It is prohibited to, and you agree that you will not, and you agree that you shall not, copy, decompile, disassemble, reverse engineer, make derivative works of or manipulate any technology or data or content stored or incorporated in any equipment (including Receivers) used to receive the Service (collectively, "**Equipment Technology**"), or otherwise modify or tamper with, any such equipment. You also agree not to upload, post, transmit or otherwise make available any material that contains software viruses or any other computer code, files, or programs designed to interrupt, disable or limit the functionality of the Site or the Internet Radio Service. AMBE® voice compression software included in certain products or the Service is protected by intellectual property rights including patent rights, copyrights, and trade secrets of Digital Voice Systems, Inc. The

software is licensed solely for use within certain products or the Service. Furthermore, the music, talk, news, entertainment, data and other content on the Service are protected by copyright and other intellectual property laws and all ownership rights remain with the respective content and data service providers. You are prohibited from any export of the data (or derivative thereof) except in compliance with applicable export laws, rules and regulations. The user of software contained in the Equipment Technology or the Site is explicitly prohibited from attempting to copy, decompile, reverse engineer, hack, manipulate or disassemble the object code, or in any other way convert the object code into human-readable form. You may use the Equipment Technology only for your personal, non-commercial use in connection with the Service. Certain real-time traffic and map data is provided by NAVTEQ, a service of NAVTEQ North America, LLC, to which the following notice applies: © 2010 NAVTEQ.

2. Content: All music, programming, text, software (including source and object codes), data, information, visual, oral or other digital material, and all other content of any description available on the Site or included in any Service and/or in Equipment Technology (collectively, the "**Content**"), and all worldwide copyrights, trademarks, service marks, patents, patent registration rights, trade secrets, know-how, database rights and all other rights in or relating to the Content (collectively, the "**Intellectual Property**") are owned by SIRIUS XM Radio Inc., XM Satellite Radio Inc., or are the property of our licensors and suppliers who have given us permission to use it. Neither your access to and use of the Service nor these Terms grant you any right, title or interest or license in or to any such Content, and you may not use such Content without the express written permission of the owner(s). You may not reproduce, perform, distribute, display or create derivative works from the Content. You may only use the Content and the Intellectual Property, access the Site and use any Services we provide as expressly permitted in these Terms and for no other purpose.

3. Trademarks: XM Radio® and XM®, and the XM logo are trademarks, service marks or registered marks of XM Satellite Radio Inc. ("**Marks**"). Other trademarks, service marks, graphics, logos and domain names appearing on the Service or the Site may be the trademarks of third parties. Neither your access to and use of the Service or the Site nor these Terms grant you any right, title or interest or license to reproduce or otherwise use the Marks or any third-party trademarks, service marks, graphics, logos or domain names. Any goodwill in the Marks generated as a result of your use of the Service will inure to our benefit. You shall not at any time, nor shall you assist others to, challenge our right, title, or interest in or to, or the validity of, the Marks or any other intellectual property rights of ours.

4. Copyright: If you are authorized to act on behalf of a copyright owner, and any material on the Site infringes on the rights of the owner, please notify us:

SIRIUS XM Radio Inc.
Attention: Legal Department
1221 Avenue of the Americas, 37th Floor
New York, NY 10020
Fax: (212) 584-5353

To be effective, your notification must provide us with information that meets the requirements of the U.S. Copyright Act, which are summarized as follows:

- A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- A detailed identification of the copyrighted work or works claimed to have been infringed;
- Information sufficient to permit us to locate the allegedly infringing material;
- Information sufficient to permit us to contact you, such as an address, telephone number or email address;
- A statement that you have a good faith belief that the use of the allegedly infringing material in the manner complained of is not authorized by the copyright owner, its agent or the law;
- Your sworn statement that the information in your notification is accurate; and
- Your sworn statement that you are authorized to act on behalf of the copyright owner of the allegedly infringing material.

5. Internet Radio: You may not rebroadcast our Internet Radio Service in any way. You may play our Internet Radio Service through speakers or headphones for your personal listening pleasure. You may not make any recordings of, or otherwise duplicate, the content provided by our Internet Radio Service. In addition, you may not re-transmit or otherwise distribute the content provided by our Internet Radio Service in any way, including online streaming such content or making such content available for download. You may not re-skin, re-package, decompile, reverse engineer,

disassemble our Internet Radio Service, or construct a media player or interface that accesses our Internet Radio Service. In addition, your use of any products or services that access our Internet Radio Service and which are provided by third parties not authorized by us constitutes a violation of these Terms, even if you did not create such product or services and/or do not understand how they were created.

F. PAYMENT: In return for receiving the Service, you agree to pay us as follows:

1. Subscription Fee: You must pay in advance by credit card or debit card. You may combine payment with a SIRIUS|XM Prepaid Subscription card. You may also pay by check or money order. If you elect to receive an invoice or you request an invoice, you will be required to pay an invoice fee on each invoice rendered. Please do not include comments or questions with your check or money order payment. If paying by check or money order against invoices, mail all payments to the address contained on your invoice and include your XM Account Number on your check or money order. Payment can be sent to:

XM Satellite Radio Inc.
P. O. Box 9001399
Louisville, KY 40290-1399

By sending your completed, signed check to us, you authorize us to copy your check and to use the account information from your check to make a one-time electronic fund transfer from your account for the same amount as the check. Funds will be withdrawn from your account within 24 hours and you will not receive your check back from your financial institution. The electronic fund transfer from your account will be on the account statement you receive from your financial institution.

2. Automatic Renewal: Your Subscription will continue for the length of the initial term you select on your Plan ("**Subscription Term**") and at the end of your prepaid Subscription Term, it will automatically renew for another prepaid period of the same length unless you choose to cancel prior to that renewal, or your Service is cancelled, terminated, or discontinued by you or by us, or you select a different Plan. Your account will automatically be charged (or you will be billed, as applicable) at the rates in effect at the time of renewal. We may, at our option, process your renewal on a month-to-month basis instead of your chosen Subscription Term.

3. Changes in Fees: Our fees and other charges are subject to change without notice.

4. Change of Address or Account Information: You must notify Listener Care immediately of any change in your name, billing address, service address, email address, telephone number, credit card or other account information.

5. Statements: If you are not using an electronic method of payment, we will send you a paper statement for the billing plan you selected. If you receive an invoice or you request an invoice, we will charge you an invoice administration fee on each invoice rendered. Billing statements will be provided only upon request. If you would like to receive a paper statement for a particular period, please contact Listener Care. Please include the name and service address on your account in your letter. Statements will show: (1) payments, credits, purchases and any other charges to your account, (2) your account balance, and (3) the payment due date.

6. Payments: All payments must be made in U.S. dollars. We do not accept recurring payment plans from cards issued by Canadian Card Issuers nor any gift cards issued by Visa, MasterCard, American Express or Discover. These types of cards may only be used for one-time payments to us. Your outstanding balance is due in full each payment period. Undisputed portions of your account must be paid by the due date to avoid a late fee and possible deactivation of the Service. No "payment in full" notation or other restrictive endorsement written on your payments will restrict our ability to collect all amounts owing to us. We expect you to pay your account balance on time. If you are delinquent in any payment to us, we reserve the right to suspend or terminate your Subscription, deactivate your Receiver and report any late payment or non-payment to credit reporting agencies. If your account is past due, and if we deactivate your Service, we will prorate your Subscription and amounts owed to us and will apply your pre-payments to past due amounts and any remaining credit to future obligations.

7. Taxes: You are responsible for all taxes or other government fees and charges, if any, which are assessed based on the Service address on your account.

8. Fees: We will charge you one or more of the following fees, all of which are subject to change without notice:

- **Activation Fee:** For each Receiver on your account, we may charge you a one-time fee to activate, reactivate, upgrade or modify your Service. The fee is payable with your first

subscription fee payment. For audio Service, the activation fee is currently \$14.99 for XM and \$15.00 for SIRIUS.

- **U.S. Music Royalty Fee:** As of July 29, 2009, new and renewing Subscription Packages which include music channels will be charged a U.S. Music Royalty Fee. For further details on how this fee is calculated see [FAQs](#).
- **Invoice Administration Fee:** If you elect to receive an invoice or request an invoice, we will charge you an invoice administration fee on each invoice rendered. The invoice administration fee is currently \$2.00 per invoice.
- **Late Fee:** If we do not receive your payment by the billing due date, we may charge you a late fee. The late fee is currently the lesser of (a) \$5.00 or (b) the maximum amount permitted under applicable law per month or partial month until the delinquent amount is paid in full, in each case, subject to applicable law. We do not extend credit to customers and you acknowledge that this fee is not an interest charge, finance charge, or other charge of a similar nature and it is reasonably related to the actual expense we incur due to unsatisfied payment and may be subject to limitations set forth by law in your state.
- **Returned Payment Fee:** If any bank or other financial institution refuses to honor any payment of yours, we may charge you a fee that is the lesser of (i) \$20.00 (\$15.00 for residents of West Virginia); and (ii) the maximum amount permitted under applicable law. You acknowledge that this fee is not an interest charge, finance charge, or other charge of a similar nature and it is reasonably related to the actual expense we incur due to unsatisfied payment.
- **Package Change Fee:** If you convert your Subscription to a different Package where the fee is less than or equal to the fee for your current Package on the same Receiver, you will be charged a \$5.00 fee.
- **A La Carte Channel Change Fee:** If you have an "A La Carte" Package, while there is no fee for the initial selection of channels, for each subsequent transaction to change your channel selections, you will be charged a fee of \$5.00.
- **Transfer Fee:** If you transfer a Subscription from one Receiver to another or from one person to another, you will be charged a transfer fee of \$15 for all but Lifetime Plans. If you transfer a Lifetime Subscription Plan from one Receiver to another or from one person to another the transfer fee is currently \$75.00. SATELLITE RADIO SERVICE SUBSCRIPTIONS ARE TRANSFERABLE ONLY TO THE EXTENT PROVIDED FOR HEREIN. A LIFETIME SATELLITE RADIO SUBSCRIPTION IS NOT TRANSFERABLE IF IT IS ASSOCIATED WITH A RECEIVER INSTALLED BY AN AUTOMAKER OR AN AUTOMOTIVE DEALER IN A VEHICLE, EXCEPT IN THE EVENT THE ORIGINAL RECEIVER ASSOCIATED WITH THAT LIFETIME SUBSCRIPTION PLAN IS STOLEN, ACCIDENTALLY DAMAGED OR, IN OUR SOLE DISCRETION, IS DEFECTIVE. No transfer fee will be charged for the transfer of a Lifetime Subscription Plan associated with a Receiver installed by an automaker or an automotive dealer if, in our sole discretion, the Receiver is defective.
- **Cancellation Fee:** You will be charged a cancellation fee if you cancel a one-year or longer Subscription during the first year of service. The cancellation fee is currently \$75.00. Promotional offers may have different cancellation fees. From time to time, we may offer a Service on a multi-month commitment or promotional basis. In such event, you agree to make payments for the Service to be received and ordered by you in accordance with the terms of the applicable billing plan and promotion that you agree to, including payments of any early termination fees if you terminate the Service prior to the end of a minimum commitment period.
- **Taxes:** All amounts charged to your account, including fees and shipping charges for Receivers purchased directly from XM may be subject to tax, which will vary according to your billing or shipping address and applicable law.

We reserve the right to waive any of these fees, in whole or in part, at our discretion. Our failure to enforce any of these fees or any other provisions of these Terms shall not be construed as a waiver of the right to assert any such Terms on any future occasion.

9. Service Credits: If you change an existing Subscription Package or Plan and keep the same Receiver, we must cancel your existing Subscription, we will charge you for the new Subscription, and you will receive a Service credit for the unused prepaid portion of the old Subscription. A Subscription you give up may be subject to fees to make a change, early cancellation fees, or nonrefundable prepayments. You will be responsible for the payment of such fees, which will be posted to your account, but you may still enjoy a Service credit or balance on your account when you begin your new Package or Plan. SERVICE CREDITS WILL NOT BE REFUNDED IN CASH, BUT WILL BE HONORED IN THE FORM OF SERVICE FOR THE REMAINING LENGTH OF THE CREDIT. UNUSED SERVICE CREDITS WILL EXPIRE UPON TERMINATION OF YOUR SUBSCRIPTION AND MAY NOT BE TRANSFERRED TO ANOTHER PERSON OR SUBSCRIPTION. Lifetime, automotive pre-packaged, monthly and certain promotional Subscriptions are nonrefundable; if you make changes to such Subscriptions, no Service credits will be due on your account.

10. Changes to Packages and Plans: You have the right to change your subscription "Package" (e.g., ask us to change from "XM Everything" to "XM Everything PLUS The Best of SIRIUS"). You also have the right to change your subscription "Plan" (e.g., ask us to change from a "XM Everything" Monthly Plan to a "XM Everything" 3-Year Plan). How the change will affect your account and charges will depend upon the choices you make. Each Subscription to the Satellite Radio Service is tied to one Receiver. You may have multiple Receivers and multiple Subscriptions. All of your Subscriptions may be combined on a single account. Service fees and balances are account-related, with a few exceptions. Sometimes they are Receiver-related. If you add additional Receivers to your account, you must purchase a separate Subscription for each one.

11. Listener Care: If you have a question about the Service, Subscription, Subscription Fees, fees, charges or bill, or if you would like to change or reactivate your Subscription, please contact Listener Care. If you contact XM Listener Care in writing, please include the following information:

- Your name, service address, and account number;
- The dollar amount in question; and
- The details of your question.

Please do not include any payment with your correspondence. If you wish to dispute any charge, you must contact us by mail or phone (by following the instructions in these Terms) within 30 days after the date you receive the statement in question. OTHERWISE YOU WAIVE YOUR RIGHT TO DISPUTE THE CHARGE. Undisputed portions of the statement must be paid by the due date to avoid a late fee and possible deactivation of the Service.

G. CANCELLATION: The term of your Subscription will automatically renew for additional terms of the same length as your initial Subscription Term or, at our option, on a month-to-month basis until you cancel the Service. You are responsible for payment of all outstanding balances accrued through that date. You must comply with these Terms or we may cancel the Service.

1. Cancellation: You may cancel your Subscription at any time by notifying Listener Care. Your cancellation will become effective on your next Subscription "cycle date," which is the next month anniversary of your initial activation date (i.e., if you activated your Subscription on January 15th and cancel on April 1st your Subscription will end on April 15th). A cancellation fee may apply.

2. Refunds: LIFETIME, AUTOMOTIVE PRE-PACKAGED, MONTHLY AND CERTAIN PROMOTIONAL SUBSCRIPTIONS ARE NONREFUNDABLE. If you cancel your Subscription prior to its expiration (excluding the aforementioned types of Subscriptions), you will receive a refund of amounts you paid directly, if any, on a pro-rata basis, less any applicable fees, unless provided otherwise in any offer for the Service that you accept. If your subscription was included in the financing of your purchase or lease of a vehicle, any refund will be payable to your finance company unless the finance company has notified us that your loan has been paid in full. Fees attributable to certain promotional offerings or Service received during trial periods may not be refunded. **IN THE UNLIKELY EVENT THAT WE CEASE BROADCASTING THE SERVICE, WHETHER AS A RESULT OF A LIQUIDATION, BANKRUPTCY, OR OTHERWISE, ALL PREPAID SUBSCRIPTIONS WILL BE TREATED AS NONREFUNDABLE.**

H. DISCLAIMERS/LIMITATION OF LIABILITY:

1. Disclaimers: YOU UNDERSTAND AND AGREE THAT THE SITE AND THE CONTENT AND FUNCTIONALITY OF THE SERVICE, INCLUDING PROGRAMMING AND ON-AIR ADVERTISING, ARE PROVIDED "AS IS" AND "AS AVAILABLE." XM AND WSI CORPORATION ("**WSI**") MAKE NO REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, REGARDING THE SERVICE, THE RELIABILITY, PREDICTIVE VALUE, COMPLETENESS, TIMELINESS, RELIABILITY, OR ACCURACY OF THE INFORMATION CONTAINED WITHIN THE SERVICE, YOUR RECEIVER OR OTHER EQUIPMENT, OUR TRANSMISSION, YOUR RECEPTION, OR THAT YOUR ACCESS TO OR YOUR USE OF THE SERVICE OR SITE WILL BE UNINTERRUPTED, ERROR FREE OR TIMELY WITH ALL UPDATES. ALL SUCH WARRANTIES (INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT) ARE HEREBY DISCLAIMED.

YOU ACKNOWLEDGE AND AGREE THAT UNDER NO CIRCUMSTANCES SHOULD A USER OF THE SERVICE MAKE DECISIONS BASED SOLELY OR IN PART ON TRAFFIC, WEATHER, OR OTHER INFORMATION CONTAINED WITHIN THE SERVICE. NEITHER XM NOR WSI ASSUMES ANY RESPONSIBILITY FOR ACCIDENTS, DAMAGES OR OTHER LOSSES RESULTING FROM OR ASSOCIATED WITH USE AND/OR MISUSE OF THE SERVICE.

2. Limitations of Liability: IN NO EVENT ARE WE, OR WSI, LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, LOST PROFITS, OR LOSSES RELATING TO THE USE, LOSS OF USE OR DATA, OR PURCHASE OF ANY RECEIVER OR

EQUIPMENT OR YOUR PURCHASE OR USE OF THE SERVICE, OR FROM ANY CONTENT POSTED ON THE SITE BY US OR ANYONE ELSE, WHETHER BASED ON NEGLIGENCE OR OTHERWISE, AND WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY THEREOF, WHETHER ARISING OUT OF BREACH OF AGREEMENT, TORT OR ANY OTHER CAUSE OF ACTION RELATING TO THE PERFORMANCE OR NON-PERFORMANCE OF THESE TERMS.

IN NO EVENT WILL THE AGGREGATE OF EACH OF XM'S AND WSI'S LIABILITY FOR ANY AND ALL OF YOUR CLAIMS, OR ANY THIRD PARTY CLAIMS, AGAINST US AND OUR PROGRAMMING OR DATA SUPPLIERS, SERVICE PROVIDERS, MARKETING/DISTRIBUTION SOFTWARE OR INTERNET SUPPLIERS OR HARDWARE OR SOFTWARE MANUFACTURERS, OR SUPPLIERS, CONTRACTORS AND LICENSORS, OR INDEPENDENT SELLERS, ARISING OUT OF OR RELATED TO, DIRECTLY OR INDIRECTLY, THE PERFORMANCE OR NONPERFORMANCE OF OBLIGATIONS PURSUANT TO THESE TERMS OR BY THE NEGLIGENCE, ACTIVE OR PASSIVE, OF XM AND/OR WSI, OR YOUR ACCESS TO OR USE OF OR INABILITY TO USE THE SERVICE OR SITE, EXCEED THE PRICE PAID BY YOU TO XM HEREUNDER FOR THE MOST RECENT SIX MONTHS OF SERVICE IMMEDIATELY PRIOR TO THE SPECIFIC EVENT WHICH GAVE RISE TO THE APPLICABLE DAMAGE OR LOSS. YOU AGREE THAT THIS LIMITATION OF LIABILITY REPRESENTS A REASONABLE ALLOCATION OF RISK. THIS ALLOCATION OF RISK AND THE DISCLAIMER OF WARRANTIES HEREIN ARE REFLECTED IN OUR PRICES AND ARE A FUNDAMENTAL ELEMENT OF THESE TERMS. YOU MAY HAVE GREATER RIGHTS THAN DESCRIBED ABOVE UNDER YOUR STATE'S LAWS.

3. Your Risk: YOU AGREE THAT YOUR ACCESS TO AND USE OF, OR INABILITY TO ACCESS OR USE THE SERVICE OR THE SITE IS AT YOUR SOLE RISK. YOU WILL NOT HOLD US, OUR PROGRAMMING OR DATA SUPPLIERS, SERVICE PROVIDERS, MARKETING/DISTRIBUTION, SOFTWARE OR INTERNET SUPPLIERS, OR HARDWARE OR SOFTWARE MANUFACTURERS, OR SUPPLIERS, OR OUR CONTRACTORS OR LICENSORS, AS APPLICABLE, RESPONSIBLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, OR LOST PROFITS RESULTING FROM YOUR ACCESS TO OR USE OF, OR INTERRUPTIONS IN THE TRANSMISSION OR RECEPTION OF THE SERVICE OR SITE, INCLUDING ANY DAMAGE TO ANY OF YOUR COMPUTERS OR DATA, AND/OR ANY RECEIVER. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY ANY PERSON SHALL CREATE A WARRANTY OR GUARANTEE IN ANY WAY WHATSOEVER RELATING TO THE SERVICE OR SITE.

4. Third Parties: THE THIRD PARTY LINKS, SERVICES, GOODS, RESOURCES AND CONTENT AVAILABLE ON THE SERVICE AND THROUGH LINKS ON THE SITE ARE NOT CONTROLLED BY US. ACCORDINGLY, WE MAKE NO WARRANTIES REGARDING SUCH THIRD-PARTY SERVICES, GOODS, RESOURCES, AND CONTENT, INCLUDING WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY AND NON-INFRINGEMENT. WE WILL NOT BE LIABLE FOR YOUR ACCESS TO, USE OF OR DOWNLOADING OF CONTENT AVAILABLE ON OR THROUGH, THE SERVICE OR SITE. WE ARE NOT LIABLE FOR ANY DIRECT OR INDIRECT DAMAGES OR LOSSES CAUSED BY YOUR USE OF THIRD-PARTY WEBSITES. YOU ASSUME FULL RESPONSIBILITY WHEN YOU CHOOSE TO FOLLOW ANY LINKS ON THE SITE THAT LEAD TO THIRD-PARTY WEBSITES.

5. State Law: SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OF CERTAIN IMPLIED WARRANTIES OR THE LIMITATION OF CERTAIN DAMAGES, SO SOME OF THE ABOVE DISCLAIMERS, WAIVERS AND LIMITATIONS OF LIABILITY MAY NOT APPLY TO YOU.

6. Miscellaneous: UNLESS LIMITED OR MODIFIED BY APPLICABLE LAW, THE FOREGOING DISCLAIMERS, WAIVERS AND LIMITATIONS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED, EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE. OUR LICENSORS AND CONTRACTORS ARE INTENDED THIRD-PARTY BENEFICIARIES OF THESE DISCLAIMERS.

7. Indemnification: EXCEPT FOR WILLFUL MISCONDUCT ON THE PART OF XM AND/OR WSI, YOU AGREE TO DEFEND, INDEMNIFY AND HOLD HARMLESS SIRIUS XM RADIO INC. AND ITS AFFILIATES, SUBSIDIARIES, SHAREHOLDERS, OFFICERS, AGENTS, EMPLOYEES, LICENSORS AND SERVICE PROVIDERS, AND WSI ("**INDEMNIFIED PARTIES**") FROM ANY AND ALL CLAIMS, LIABILITY AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES), WHETHER IN TORT, CONTRACT OR OTHERWISE, RELATING TO OR ARISING OUT OF YOUR USE OF THE SERVICE AND ANY BREACH OF THESE TERMS, APPLICABLE LAW OR ANY RIGHT OF THE INDEMNIFIED PARTIES OR ANY THIRD PARTY. THIS INDEMNIFICATION OBLIGATION INCLUDES THE ACTS OR OMISSIONS OF ANYONE ACCESSING THE SERVICE USING YOUR LOGIN ID, WITH OR WITHOUT YOUR PERMISSION.

I. RESOLVING DISPUTES:

PLEASE READ THIS PROVISION OF THIS SECTION CAREFULLY. IT PROVIDES THAT ANY DISPUTE MAY BE RESOLVED BY BINDING ARBITRATION. ARBITRATION REPLACES THE RIGHT TO GO TO COURT, INCLUDING THE RIGHT TO A JURY. IN ARBITRATION, A DISPUTE IS RESOLVED BY AN ARBITRATOR, OR A PANEL OF ARBITRATORS, INSTEAD OF A JUDGE OR JURY. THE PARTIES UNDERSTAND THAT THEY WOULD HAVE HAD A RIGHT OR OPPORTUNITY TO LITIGATE DISPUTES

THROUGH A COURT AND TO HAVE A JUDGE OR JURY DECIDE THEIR CASE, BUT THEY CHOOSE (BY THEIR ACCEPTANCE OF THESE TERMS, IN ACCESSING OR USING THE SERVICE OR THE SITE) TO HAVE ANY DISPUTES RESOLVED THROUGH ARBITRATION.

In order to expedite and control the cost of disputes, you agree that any legal or equitable claim relating to the Service, the Site, your Subscription or these Terms (a "**Claim**"), will be resolved as follows:

1. Informal Claim Resolution: To initiate an informal resolution to a Claim, you must send a notice by first class United States mail to SIRIUS XM Radio Inc., 1221 Avenue of the Americas, New York, NY 10020, Attention: XM Listener Care (a "**Notice**"). Neither of us may start a formal proceeding (except for Claims described in subsection 3 below) for at least 60 days after one of us notifies the other of a Claim in writing. If we initiate a Claim, we will send our notice to the billing address on file with us.

2. Formal Resolution: If we cannot resolve a Claim informally, including any Claim between us, and any Claim by either of us against any agent, employee, successor, or assign of the other, including, to the full extent permitted by applicable law, third parties who are not signatories to this agreement, whether related to this agreement or otherwise, including past, present, and future Claims and disputes, and including any dispute as to the validity or applicability of this arbitration clause, then these Claims shall be resolved, upon election by either party, exclusively and finally by binding arbitration.

The party initiating arbitration must follow the rules and procedures of the American Arbitration Association in effect at the time the Claim is filed. You may obtain copies of the current rules, forms and instructions for initiating an arbitration by contacting.

American Arbitration Association
1633 Broadway, 10th Floor
New York, New York 10019
Web site: www.adr.org
(800) 778-7879

This arbitration agreement is made pursuant to a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act ("**FAA**"), and not by any state law concerning arbitration.

3. Exceptions: Notwithstanding the foregoing, any dispute involving a violation of the Communications Act of 1934, 47 U.S.C. §605, the Electronic Communications Privacy Act, 18 U.S.C. §§2510-2521, or a violation of our intellectual property rights may be decided only by a court of competent jurisdiction.

4. Small Claims: Instead of proceeding to arbitration, either you or we have the option to pursue a Claim in small claims court (or the equivalent) so long as 1) the Claim remains in that court, and 2) is made solely on our behalf (if brought by us), or on your behalf. However, if that Claim is transferred or appealed to a different court, we reserve our right to elect arbitration.

5. Severability: If any portion of this arbitration agreement cannot be enforced, that portion will be severed, and the rest of the arbitration agreement will continue to apply.

6. Binding Effect: In the arbitration proceeding, the arbitrator must follow applicable law, and any award may be challenged, as set forth in the FAA. Any court with jurisdiction may enter judgment upon the arbitrator's award. The arbitrator's decision is final and binding on all parties and may be enforced in any federal or state court with jurisdiction.

J. MISCELLANEOUS:

1. Notices: Notices to you will be deemed given when deposited in the mail or when sent by email. Notices may be included in statements or other communications to you. We may also provide notice to you by telephone, which will be deemed given when a message is left with you, someone answering the telephone at your residence or on an answering machine or voice mail system at your phone number on record with us. Your notices to us will be deemed given when we receive them at the telephone number or, in writing at the address, set forth above at "CONTACT INFORMATION."

2. Assignment of Account: We may assign your account and all rights and/or obligations hereunder to any third party without notice for any purpose, including, without limitation, collection of unpaid amounts, in the event of an acquisition, corporate reorganization, merger or sale of substantially all of our assets to another entity. You hereby consent to such assignment. You must

continue making all required payments to us in accordance with your billing statement, unless notified otherwise.

3. Termination: We may terminate your right to use the Site at any time and without notice. We will terminate your right to use the Site if you violate any of these Terms or any other policy posted on the Site.

4. Full Agreement: These Terms constitute the entire agreement between us concerning your access to and use of the Service or Site and may be modified by the unilateral amendment of these Terms and the posting by us of such amended version. No salesperson or other representative is authorized to change it for you. If any provision is declared by a competent authority to be invalid, that provision will be deleted or modified to the extent necessary, and the rest of these Terms will remain enforceable. Any specific Terms that expressly or by their nature survive termination shall continue thereafter until fully performed. A waiver of any of these Terms or any breach thereof, in any one instance, will not waive such term or condition or any subsequent breach thereof.

5. Applicable Law: The interpretation and enforcement of these Terms shall be governed by the rules and regulations of the State of New York and other applicable federal laws. Notwithstanding the foregoing, Section I. shall be governed by the FAA without reference to state law.

THANK YOU FOR CHOOSING XM RADIO.

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