

DECLARATION OF PATRICK DONNELLY

# I, PATRICK DONNELLY, hereby declare as follows:

- 1. I have been employed by Sirius XM Radio Inc. (including its corporate predecessors, "Sirius XM") since 1998, and I am currently Sirius XM's Executive Vice President, General Counsel and Secretary.
- 2. I am over the age of 18 and this declaration is based on my personal knowledge of the facts stated herein, as well as my general knowledge of Sirius XM's operations over many years and a review of Sirius XM's business records and practices.
- 3. Sirius XM is the product of a July 2008 merger between Sirius Satellite Radio Inc. ("Sirius") and XM Satellite Radio Holding, Inc. ("XM"). Sirius XM provides, among other things, a satellite radio service that currently broadcasts more than 150 channels, including commercial-free music, plus sports, news, talk, entertainment, traffic and weather to more than 34 million subscribers.
- 4. Among other things, Sirius XM sells subscriptions to consumers providing them access to its satellite radio programming through customers' vehicles, aftermarket portable radios, and online streaming.
- 5. Sirius XM is constantly curating new channels of music, entertainment, news, and sports to provide increasing variety to its subscribers. Naturally, the content changes over time. Since 2010, Sirius XM has changed its channel lineups regularly, including, in some cases, a number times each year. In the ordinary course of business, Sirius XM's rights to certain content terminate or expire in accordance with the applicable license's terms. Similarly, Sirius XM is constantly looking to improve its programming and add unique and compelling content in an effort to attract and retain subscribers. For example, over the past decade, Sirius XM has added many artist-branded and focused music channels, such as channels dedicated to the music of Garth Brooks and Tom Petty. In 2017, Sirius XM launched a new channel devoted to The Beatles, the first ever radio

channel dedicated exclusively to The Beatles, 24 hours and day, seven days a week. In addition, from time to time, Sirius XM adds limited run channels focused on the music of popular artists, such as channels focused on the music of Michael Jackson, Coldplay and Queen. The Sirius XM programming lineup changes have not been solely focused on the company's music offerings. During the past ten years, Sirius XM has added a number of news, sports and entertainment channels, including a channel for the Today Show, a channel featuring the work of Joel Osteen, and a channel dedicated to the growing interest in fantasy sports.

- 6. Notwithstanding the merger, Sirius XM has continued to maintain two separate satellite constellations that broadcast satellite radio services on two distinct bands of radio spectrum to legacy Sirius and legacy XM devices, respectively. The content and channel packages available to legacy Sirius and XM devices radios differed at the time of the merger due to licensing restrictions, bandwidth availability and other reasons, and the content and channel packages available on legacy Sirius and legacy XM devices remains distinct to this day. As a result, the transfer of a subscription from a legacy Sirius device to a legacy XM radio, or vice-versa, will result in a change of the content available (loss of some channels, gain of others) at the applicable subscription tier.
- 7. I understand that five individuals have filed objections to the parties' settlement in this case: (1) Yves Doublette; (2) Adam Klock; (3) Mark Raabe; (4) Joshua Sauberman; and (5) Tim Zeichert.

## 1. Yves Doublette

8. Upon learning of Mr. Doublette's objection, Sirius XM searched its business records for all documents related to Mr. Doublette. That search revealed documents showing that Mr. Doublette purchased a lifetime subscription to Sirius XM's services on February 3, 2011. Attached as **Exhibit A** is a true and correct

copy of the terms and conditions that were in effect at the time Mr. Doubletted purchased his subscription.

## 2. Adam Klock

- 9. According to a search of Sirius XM's business records, Mr. Klock purchased two lifetime subscriptions—the first on March 12, 2006 and the second on August 13, 2009. I understand that Mr. Klock only objects regarding his 2009 lifetime subscription plan.
- 10. Attached as **Exhibit B** is a true and correct copy of the terms and conditions that were in effect at the time Mr. Klock purchased his second lifetime subscription in 2009.

## 3. Mark Raabe

- 11. According to a search of Sirius XM's business records, Mr. Raabe purchased three lifetime subscriptions—two on January 27, 2010, and one on March 26, 2010.
- 12. Attached as **Exhibit C** is a true and correct copy of the terms and conditions that were in effect at the time Mr. Raabe purchased all three of his subscriptions.

# 4. Joshua Sauberman

- 13. According to a search of Sirius XM's business records, Mr. Sauberman purchased a lifetime subscription on November 4, 2009.
- 14. Attached as **Exhibit D** is a true and correct copy of the terms and conditions that were in effect at the time of his purchase of a lifetime subscription in 2009.

## 5. Tim Zeichert

15. According to a search of Sirius XM's business records, Mr. Zeichert purchased a lifetime subscription on June 29, 2005.

16. Attached as **Exhibit E** is a true and correct copy of the terms and conditions that were in effect at the time of his purchase of a lifetime subscription in 2005.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated this 18th day of December, 2020, in New York, New York.

PATRICK DONNEL

# **EXHIBIT A**

• Taxes: All amounts charged to your account, including fees and shipping charges for Receivers purchased directly from the Site, 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 this Agreement 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 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 LIPON TERMINATION OF YOUR SLIBSCRIPTION 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 "Everything" to "Everything Plus The Best Of"). You also have the right to change your subscription "Plan" (e.g., ask us to change from a Monthly Plan to a 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

11. Listener Care: If you have a question about the Service, Subscription, Subscription Fees, fees, charges or your bill, or if you would like to change or reactivate your Subscription, please contact Listener Care. If you contact 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 this Agreement) 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 this Agreement 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. INCLLIDING PROGRAMMING AND ON-AIR ADVERTISING ARE PROVIDED "AS IS" AND "AS AVAILABLE" SIRILIS XM AND THÈIR AFFILIATES AS WELL AS 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 THE 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 SIRIUS, XM, THEIR AFFILIATES NOR WSI ASSÚMES ANY RESPONSIBILITY FOR ACCIDENTS. DAMAGES OR OTHER LOSSES RESULTING FROM OR ASSOCIATED WITH LISE AND/OR MISUSE OF THE SERVICE

2. Limitations of Liability: IN NO EVENT ARE SIRIUS, XM, THEIR AFFILIATES 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 THIS AGREEMENT, TORT OR ANY OTHER CAUSE OF ACTION RELATING TO THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT.

IN NO EVENT WILL THE AGGREGATE OF EACH OF SIRIUS, XM, THEIR AFFILIATES 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/ DISTRIBÚTION SOFTWARE OR INTERNÉT SUPPLIERS OR HARDWARE OR SOFTWARE MANUFACTURERS, OR SUPPLIERS, CÓNTRACTORS and licensors. Or independent sellers, arising out of or related to, directly or indirectly, the performance or NONPERFORMANCE OF ORLIGATIONS PLIRSLIANT TO THIS AGREEMENT OR BY THE NEGLIGENCE ACTIVE OR PASSIVE OF SIRILIS, XIV THEIR AFFILIATES 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 SIRIUS OR 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 THIS AGREEMENT. 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 INARII ITY 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 PUNITIVI 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 ÓR 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 THE 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-

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 SIRIUS, XM, THEIR AFFILIATES AND/OR WSI, YOU AGREE TO DEFEND. INDEMNIFY AND HOLD HARMLESS SIRIUS, XM. THEIR AFFILIATES, SUBSIDIARIES, SHAREHOLDERS, OFFICERS, AGENTS. employees, licensors and service providers, and wsi ("**indemnified parties**") fróm any and all claims, liábility and EXPENSES (INCLLIDING 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 THIS AGREEMENT. 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.

PLEASE READ THIS PROVISION OF THIS SECTION CAREFULLY, IT PROVIDES THAT ANY DISPUTE MAY BE RESOLVED BY BINDING ARRITRATION BY AGREFING TO ARRITRATION YOU ARE HEREBY WAIVING THE RIGHT TO GO TO COURT INCLUDING THE RIGHT TO A JURY IN ARRITRATION A DISPLITE IS RESOLVED BY AN ARRITRATOR OR A PANEL OF ARRITRATORS. INSTEAD OF A JUDGE OR JURY THE PARTIES UNDERSTAND THAT THEY WOULD HAVE HAD A RIGHT OR OPPORTUNITY TO LITIGATE DISPUTÉS THROUGH A COURT AND TO HAVE A JUDGE OR JURY DECIDE THEIR CASE, BUT THEY CHOOSE (BY THEIR ACCEPTANCE OF THIS AGREEMENT, 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 this Agreement (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 36th Floor New York NY 10020 Attention 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 ("AAA") in effect at the time the

Claim is filed, and the parties agree that the arbitration shall be administered by the AAA. 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

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.

#### I MISCELL ANEOLIS-

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 regranization, 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 this Agreement or any other policy posted on the Site.

4. Full Agreement: This Agreement constitutes 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 this Agreement 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 this Agreement will remain enforceable. Any specific terms that expressly or by their nature survive termination shall continue thereafter until fully performed. A waiver of any 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 this Agreement 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 SIRIUS OR XM RADIO.

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<sup>1</sup>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 0EM-TC-02-11 11-3814

Thank you for choosing to become a subscriber ("Subscriber") of Sirius or XM. This customer agreement ("Agreement") between you and either Sirius XM Radio Inc. ("Sirius"), which provides the Sirius services or XM Radio Inc. ("XM") which provides the XM services applies to your paid, trial or other subscription ("Subscription") in the Service Area (defined below) to the Sirius or XM Satellite Radio service ("Satellite Radio Service") and/or Internet radio service ("Internet Radio Service") and/or traffic and weather service, and/or any Equipment Technology (defined below) relating thereto, as well as to your use of the web site ("Site") available to Sirius and XM Subscribers and others at www.siriusxm.com. The Satellite Radio Service. Internet Radio Service. our traffic and weather services. including marine weather, XM 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." This Agreement will remain in effect until modified or terminated. Service 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 you selected until modified, canceled, terminated or discontinued by you or by us. Please read this Agreement and keep this copy of it for your records.

Our Privacy Policy governs the treatment by Sirius and XM of both anonymous and personally identifiable information that we collect when you use the Site or the Internet Radio Service online media player 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 the Site or through the Service please see our privacy policy found at www.siriusxm.com/privacypolicy

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

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 THIS AGREEMENT WHICH WILL BE LEGALLY BINDING ON YOU.

A. LISTENER CARE - CONTACT INFORMATION: A listener care center ("Listener Care") is available to Sirius and XM Subscribers and others. You may contact Listener Care by calling 1-888-539-7474 Monday through Saturday from 8AM through 11PM ET and Sunday from 8AM to 8PM ET, or by writing to: SiriusXM, P.O. Box 33174, Detroit, MI 48232, Attention: Listener Care.

1. Changes To Terms: WE RESERVE THE RIGHT TO CHANGE THE TERMS OF THIS AGREEMENT 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 THE AGREEMENT (INCLUDING THE FEFECTIVE 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 this Agreement has changed and the effective date of such change, provide you a notice describing such changes and their effective date, in the manner described in subsection xJ.1. below, or send you the revised Agreement. In the event of any potential conflict between this Agreement and the terms of any offer for the Service, this Agreement 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.

#### 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 this Agreement

2. Service Area: We offer the Satellite Radio Service in the 48 contiquous United States and the District of Columbia. The Sirius Satellite Radio Service is also available in Puerto Rico (with coverage limitations). The Internet Radio Service is also available in Alaska. Hawaii and Puerto Rico, (The Satellite Radio Service and Internet Radio Service areas are collectively referred to as the "Service Area"). 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.siriuscanada.ca or www.xmradio.ca for details. Our other Services, including traffic and weather services, are not available in all markets in the Service Area, Please consult our FAQs or contact us to find out if those Services are available in your market.

3. Internet Radio Service: You may listen to the Internet Radio Service on one single Internet enabled device at one time. If you have multiple Subscriptions to the Service, you may be eliqible to purchase 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

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your username and password from unauthorized use. You will not be able to access the Internet Radio Service unless your account for your ubscription is in good standing and you are in compliance with this Agreement. Certain devices designed to work with our Internet Radio Service may require a separate subscription. Not all content offered on the Satellite Radio Service is available on the Internet Radio Service and vice versa. Similarly, not all content offered on any of the Sirius or XM Services is available through the other modes of distribution of Sirius or XM programming (such as through the 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 the Internet Radio Service ("Web Devices"). The Internet Radio Service may be unavailable or internuted 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 network or Internet service provider and/or other things that we cannot control. The 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: The Service is provided only for your personal, non-commercial enjoyment. You may not make commercial use of, reproduce, rebroadcast, or otherwise transmit our programming, or record (except as permitted in subsection 5 below), charge admission for listening to or distribute play lists of our programming. Neither the 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 the 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 and their 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 and their affiliates that may arise from the utilization of the Site. At the end of each online session you should completely log out of the Internet Radio 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 satellite Receivers function best when the antenna is placed outside or 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 screens and window treatments 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 this Agreement 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: C.13, "Service Suspension," D.4. "Loss of Receiver Equipment," F.2. "Automatic Renewal," F.8. "Cancellation Fee." F.9. "Service Credits," and G. "Cancellation.

8 Service Choices: Subscriptions are available in a variety of programming packages which might suit your listening preferences, and we refer to them throughout as "Packages." Subscriptions are also available 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 Packages.

9. Lifetime Subscription Plan: A "Lifetime Subscription" is one that continues for the life of the Receiver equipment. Lifetime Subscriptions are nonrefundable. 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 this Agreement. Automotive Receivers: A Lifetime Subscription is not transferable if it is associated with a Receiver installed in a vehicle by an automaker or an automotive dealer except in the event the original Receiver associated with that Lifetime Subscription is stolen, accidentally damaged or if, in the sole discretion of Sirius or 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 this Agreement. 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 Sirius or XM, the

10. Advisory Nature of Services; User Responsibility; User Safety/Reliance; Parental Control: It is your responsibility to exercise prudent discretion and observe all safety measures required by law and your own common sense in using the Service. 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 commercial subscribers can be found in the FAQs area of the Site. Subscriptions are available in the Service Area for the Satellite Radio Service using satellite Receivers and also for Internet Radio Service requiring no special equipment other than a Web Device.

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 have no obligation to 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 this

Agreement 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 Sirius, XM or their affiliates; 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 this Agreement; (iii) respond to claims that any user content violates the rights of third-parties; or (iv) protect the rights, property, or personal safety of Sirius, XM or their affiliates, 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 this Agreement. 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 on the Site or material submitted or sent to Sinus. XM or their affiliates 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 Sirius, XM and their affiliates the royalty-free unrestricted, worldwide, perpetual, irrevocable, non-exclusive and fully sub-licensable right and license to use, reproduce, modify, adapt. nublish 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.

13. Service Suspension: This subsection applies only to the "XM WX Service" offered by XM which provides comprehensive graphical weather displays in your vehicle, host, plane, or any fixed location in the continental U.S. and 100+ miles into U.S. coastal waters. Subscribers of fee-bearing XM WX subscriptions may request an XM WX "End of Season" subscription package for one time in any twelve month period for a duration of up to seven months. An "End of Season" subscription is a "suspension" of service which can be requested for up to seven months. XM reserves the right to terminate any End of Season subscription remaining active for longer than 7 months at any time thereafter and without prior notification, whereupon a Cancellation Fee shall be assessed against any remaining service credits on the subscriber's account

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 may 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 your vehicle, home or other property resulting from installation or use of any Receiver or Accessories, Unless you nurchased 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 Internet Radio Service. You must purchase your computer, laptop, alternate Web Device, modern 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 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, grouped according to whether they are with Sirius or XM. Such additional subscriptions on any single Sirius or XM account may be eligible for reduced rates which may be offered by us from time to time and a per Receiver activation fee may apply For illustration purposes, one radio on a Sirius account and one radio on an XM account will not be eligible for reduced rates but two radios on an XM account may be eligible for reduced rates

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 iver 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 this Agreement.

#### E. INTELLECTUAL PROPERTY RIGHTS:

1. Technology: You agree not to 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 continuously updated traffic and map data is provided by NAVTEQ, a service of NAVTEQ North America, LLC, to which the following notice applies: © 2011 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 the Service and/or in the 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, 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 this Agreement 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 this Agreement and for no other purpose.

3. Trademarks: Sirius Satellite Radio®, the dog logo, Sirius®, Sirius Internet Radio® and SiriusXM are trademarks, service marks or registered marks of Sirius, and XM® and the XM logo are trademarks, service marks or registered marks of XM ("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 this Agreement 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 Departmen 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

- 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 the Internet Radio Service in any way. You may play the 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 the Internet Radio Service. In addition, you may not re-transmit or otherwise distribute the content provided by the 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, or disassemble the Internet Radio Service, or construct a media player or interface that accesses the Internet Radio Service. In addition, your use of any products or services that access the Internet Radio Service and which are provided by third parties not authorized by us constitutes a violation of this Agreement, even if you did not create such product or services and/or do not understand how they were

**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 SiriusXM 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 administration 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 Sirius or XM Account Number on your check or money order. Payment can be sent to:

For Sirius Accounts Sirius XM Radio Inc PO Box 78211 Phoenix A7 85062-821

For XM Accounts: 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

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 \$15.00. For weather data Service, the activation fees can be found on the following web pages: For Sirius Marine Weather see www.siriusxm.com/siriusmarineweather; for XM WX Satellite Weather for Ground see www.siriusxm.com/xmwxweather.com/ ground/data-service-pricing.html; for XM WX Marine Weather see www.siriusxm.com/xmwxweather.com/marine/data-service-pricing. html; and for XM WX Satellite Weather for Aviation see www.siriusxm.com/xmwxweather.com/aviation/data-service-pricing.html
- U.S. Music Royalty Fee: New and renewing Subscription Packages which include music channels may be charged a U.S. Music Royalty Fee. For further details on how this fee is calculated see FAQs at www.siriusxm.com/usmusicroyalty.
- Invoice Administration Fee: If you elect to receive an invoice or you request an invoice, we may 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, we may charge you 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 may 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 may 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 SLIRSCRIPTION IS NOT TRANSFERABLE IF IT IS ASSOCIATED WITH A RECEIVER INSTALLED BY AN ALITOMAKER OR AN ALITOMOTIVE 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 may be charged a cancellation fee if you cancel a one-year or longer Subscription during the first year of

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# **EXHIBIT B**

9. Service Credits: Service credits will not be refunded in cash, but will be honored in the form of Services 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 If you are cancelling a Subscription that requires payment of an early termination fee if cancelled prior to the end of such commitment, or is subject to any nonrefundable prepayments, you will be responsible for the payment of such fees. 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. 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 Plan, and you will receive a service credit for the unused prepaid portion of the old Plan. The Plan you give up may also be subject to a cancellation fee. If you change to a less expensive Subscription Package or payment Plan, both the service credit and the fees to make this change will be posted to your account and you may still enjoy a service credit or balance on your account when you begin your new Package or Plan.

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- 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 an "XM Everything" Monthly Plan to an "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. For instance, if you would like to add a Subscription to our "Family Friendly" Package for a new Receiver in your home, 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.
- 11. Customer Care: If you have a question about your Service, Subscription, Subscription Fees fees, charges or bill, or if you would like to change or reactivate your Subscription, please contact Listener Care. We will respond to you as promptly as practicable. 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 on our website) 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 all of these Terms of Service and this website or we may cancel your Service.
- 1. Cancellation: You may cancel your Subscription at any time by notifying Customer 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 paid directly by the subscriber, 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 THIS WEBSITE AND THE CONTENT AND FUNCTIONALITY OF THE SERVICE ARE PROVIDED "AS IS" AND "AS AVAILABLE." XM AND WSI MAKE NO REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, REGARDING THE SERVICE OR YOUR RECEIVER OR OTHER EQUIPMENT OR THAT YOUR ACCESS TO OR YOUR USE OF THE SERVICE OR WEBSITE WILL BE UNINTERRUPTED OR 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.
- 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 LÓSSES RELATING TO THE USE, LOSS OF USE OR DATA OR PURCHASE OF ANY RECEIVER OR FOUIPMENT OR YOUR PURCHASE OR USE OF THE SERVICE OR FROM ANY CONTENT POSTED ON OUR WEBSITE BY US OR ANYONE FLSE 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 THIS AGREEMENT.

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 SLIPPLIERS 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 THIS WEBSITE, EXCEED THE PRICE PAID BY YOU TO YM HERELINDER 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 I IMITATION OF LIABILITY REPRESENTS A REASONABLE ALL OCATION OF RISK THIS ALLOCATION OF RISK AND THE DISCLAIMER OF WARRANTIES HERFIN ARE REFLECTED IN OUR PRICES AND ARE A FUNDAMENTAL ELEMENT OF OUR AGREEMENT TO PROVIDE THE SERVICE. 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 WEBSITE 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 PLINITIVE DAMAGES, OR LOST PROFITS RESULTING FROM YOUR ACCESS TO OR LISE OF OR INTERRUPTIONS IN THE TRANSMISSION OR RECEPTION OF THE SERVICE, THIS WEBSITE, INCLUDING WITHOUT LIMITATION ANY DAMAGE TO ANY OF YOUR COMPUTERS OR DATA AND/OR ANY XM 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 WEBSITE.
- 4. Third Parties: THE THIRD PARTY LINKS, SERVICES, GOODS, RESOURCES AND CONTENT AVAILABLE ON THE SERVICE AND THROUGH LINKS ON THIS WEBSITE ARE NOT CONTROLLED BY US. ACCORDINGLY, WE MAKE NO WARRANTIES REGARDING SUCH THIRD-PARTY SERVICES, GOODS, RESOURCES, AND CONTENT, INCLUDING WITHOUT LIMITATION WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY AND NON-INFRINGEMENT, WE WILL NOT BE LIABLE FOR YOUR ACCESS TO LISE OF OR DOWNLOADING OF CONTENT AVAILABLE ON OR THROUGH THE SERVICE OR WERSITE 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 THIS WEBSITE 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 INDEMNIEY AND HOLD HARMLESS SIBILIS XM BADIO 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 YOU'R LISE OF THE SERVICE AND ANY BREACH OF THESE TERMS OF SERVICE 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 INTERNET RADIO 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 AND THE RIGHT TO PARTICIPATE IN A CLASS ACTION OR SIMILAR PROCEEDING. 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 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 Website, 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 choose one of the two arbitration firms listed below and follow its rules and procedures in effect at the time the Claim is filed. You may obtain copies of the current rules of each of the arbitration firms and forms and instructions for initiating an arbitration by contacting them.

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

National Arbitration Forum P.O. Box 50191 Minneanolis MN 55405-2371 Web site: www.adrforum.com (800) 474-2371

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, or the Electronic Communications Privacy Act, 18 U.S.C. §§2510-2521, 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. Individual Claims: If either of us elects to resolve a claim by arbitration, that Claim shall be arbitrated on an individual basis. There shall be no right or authority for any claims to be arbitrated on a class action basis or on bases involving Claims brought in a purported representative capacity on behalf of the general public other Subscribers or persons similarly situated. The arbitrator's authority to make awards is limited. to awards to you and us alone. Furthermore, Claims brought by you and against us, or by us against you, may not be joined or consolidated in arbitration with Claims brought by or against someone other than you, unless agreed to in writing by all parties. 'Claim' (as defined in this section above) does not include any challenge to the validity and effect of the class action waiver in this subsection 5, which must be decided by a court.
- 6. 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, provided that the entire arbitration agreement shall be null and void if the class action waiver in subsection 5 above is held to be invalid with respect to any class or representative Claim, subject to any right to appeal such holding.
- 7. 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 our website at any time and without notice. We will terminate your right to use our website if you violate any of these Terms of Service or any other policy posted on our website, or if we become aware that you are a copyright infringer.
- 4. Full Agreement: These Terms constitute the entire agreement between us concerning your access to and use of the Service or website 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. These Terms are subject to modification if required by such laws. Notwithstanding the foregoing, Section I. shall be governed by the Federal Arbitration Act without reference to state law.

THANK YOU FOR CHOOSING XM RADIO.



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SIR 09-79XX CRM0-XM-TC-8-09





### TERMS AND CONDITIONS / CUSTOMER AGREEMENT

#### Last Updated: August 1, 2009

Thank you for choosing XM Satellite Radio ("XM"). These are the terms and conditions ("Terms" or "Customer Agreement"), which apply to your paid, trial or other subscription in the United States ("Subscription") to the XM Satellite Radio service (the "Satellite Radio Service") and/or XM Internet Radio ("Internet Radio") and/or any Equipment Technology (as defined below) relating thereto. The Satellitè Radio Service, Internet Radio, our traffic and weather, including marine weather, and any other programming, data and Equipment Technology for radio, television, online, portable, wireless, mobile, and other receivers now known or later developed ("Receivers"), will be collectively referred to herein 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 keep this copy of

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 our Services, or any other services we may offer. Be sure to read our Privacy Policy. Our Privacy Policies for SIRIUS Radio and XM Radio are identical. 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 www.xmradio.com/about/privacy-policy.xmc. PLEASE READ THESE TERMS OF SERVICE CAREFULLY BEFORE ACCESSING OR USING OUR WEBSITE OR OUR SERVICES. BY ACCESSING OR USING OUR WEBSITE OR SERVICES, YOU AGREE TO BE LEGALLY BOUND BY THESE TERMS OF SERVICE. PLEASE DO NOT USE OUR WEBSITE OR SERVICE IF YOU DO NOT AGREE WITH THESE TERMS OF SERVICE.

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, 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: SATELLITE AND INTERNET TECHNOLOGY AND THE APPLICABLE LAWS, RULES, AND REGULATIONS CHANGE FREQUENTLY. ACCORDINGLY, WE RESERVE THE RIGHT TO CHANGE THESE TERMS AT ANY TIME. ANY CHANGES OR MODIFICATIONS WILL BE EFFECTIVE UPON POSTING OF THE REVISIONS ON OUR WEBSITE REFLECTING THE NEW EFFECTIVE DATE. YOUR CONTINUED LISE OF THE SERVICE FOLLOWING THE POSTING OF THE CHANGES OR MODIFICATIONS ONLINE WILL CONSTITUTE YOUR ACCEPTANCE OF SUCH CHANGES OR MODIFICATIONS. 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 WEBSITE.

Other than with respect to programming changes referenced in subsection 2 below, if we make any material changes that, in our judgment, would have an adverse effect on your use of the Service, we will either post a notice on our website 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 other offer for the Service, these Terms will govern.

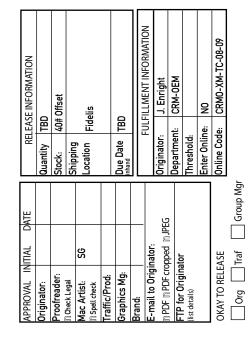
2. Change To Programming: The Service consists of a wide variety of music, sports, news, talk, children's and other entertainment programming. Many different and changing considerations affect the availability, cost and quality of programming and customer demand. Accordingly, we reserve the unrestricted right to change, rearrange, add, or delete programming, including canceling, moving or adding particular channels, at any time, with or without notice to you. You always have the right to cancel your subscription to the Service if you do not accept any change. 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 Satellite Radio Service solely in the 48 contiguous United States and the District of Columbia (together, our "Service Area"), although we might expand our Satellite Radio Service in the future. If your address is not in our Service Area, your Receiver will not be able to 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.siriuscanada.ca or www.xmradio.ca for details.
- 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 any third party 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. We may or may not offer the same content on all of our platforms of the Service. 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

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SIR\_09-79XX\_XM\_T&C\_8-09\_R.indd 1 Back Cover 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 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 this website. You agree that any person using your identification issued for the website will be treated by us as having been authorized by you to access your information as contained on the website, and take any other actions on your behalf. You will indemnify and hold harmless SIRIUS XM Radio Inc. and its affiliated companies 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 this website. You also waive all claims against SIRIUS XM Radio Inc., its officers, directors, employees, suppliers and programmers that may arise from the utilization of this website. 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 our Service or any radio or Receiver.
- 5. Recorded Content: Certain types of our radios and Receivers have the ability to record programming transmitted over the Service ("Recorded Content"). Subject to your radio's restrictions and applicable laws, you may access such Recorded Content only as long as you pay your monthly subscription fee. We reserve the right to change, reduce, eliminate or charge a fee for this and/or related functionality.
- 6. Service Interruptions: Service may be unavailable or interrupted from time to time for a variety of reasons, such as environmental or topographic conditions and other things, many of which we cannot control. 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 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 Equipment," F.2. "Automatic Renewal," F.8. "Cancellation Fee," F.9. "Service Credits," and G.
- 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." Examples of Packages are "XM Everything PLUS The Best of SIRIUS," "Family Friendly," and "Mostly Music." We also offer Subscriptions in a variety of convenient 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 but when longer Plans are offered they are often priced to provide a discount.
- 9. Lifetime Subscription Plan: A "Lifetime Subscription" is one that continues for the life of the Receiver equipment. 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 SIRIUS XM Radio Inc., it is defective. 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. Each permitted transfer of a Subscription is subject to a transfer fee. If you transfer a Lifetime Subscription from one Receiver to another or from one person to another, you will be charged a transfer fee. The current transfer fee is 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 SIRIUS XM Radio Inc., the Receiver is defective, 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
- 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. XM programming and on-air advertising is provided "as is" and "as available" and XM disclaims any and all warranties, express and/ or implied, with respect thereto or the transmission or reception thereof. Neither XM nor WSI Corporation ("WSI") makes any representations or warranties with respect to the reliability predictive value or accuracy of the information contained within the Service, and neither XM nor WSI shall be responsible for inaccurate omitted delayed or erroneous information and do not warrant the accuracy reliability completeness or timeliness, of any information disclosed on the Service. You further acknowledge and agree that the Service may be interrupted due to adverse weather or other conditions and that neither XM nor WSI shall have any liability for such interruptions. You are urged to verify the contents of the Service against other sources prior to use. You acknowledge and agree that under no circumstances should a user of this Service make decisions based solely or primarily on traffic or weather information contained within the Service. Neither XM nor WSI assumes any responsibility for accidents resulting from or associated with use and/or misuse of the Service.

In addition, 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. Please contact Customer Care to discuss options

- 11. Business Commercial Subscribers (Radio Service only): Details for our commercial subscribers can be found in the FAQs area of this website.
- 12. Interactive Services: We may provide an opportunity for users to exchange information, ideas and opinions on our website. Information, ideas and opinions posted by users do not necessarily reflect the views of SIRIUS XM Radio Inc. We do not assume responsibility or accept liability for the accuracy of any information, ideas and opinions posted by users. We are not liable for any claims, damages or losses resulting from any information, ideas and opinions posted by users. You authorize us to use and publish any materials that you post on this website in any manner we choose and without any obligation to compensate you or anyone else. If you post any materials on our website, you will not:
- · Harass, defame, intimidate or threaten another user;
- · Interfere with another user's rights to privacy;
- · Distribute chain letters, surveys or contests;
- Post any material that is defamatory (i.e., disparaging to the reputation of an individual or business);
- Post any material that is obscene or indecent;
- · Post any trademarks, logos or copyrighted material without the authorization of the owner; Post any materials that may damage the operation of a computer (such as a virus, worm or Trojan
- Advertise or sell any goods or services.

#### D. RECEIVERS AND OTHER EQUIPMENT:

- 1. Authorized Suppliers: You may access and use the Service only with equipment authorized to receive the Service. However, we do not manufacture or install any of the Receivers or related equipment, including antennas, adapters, adhesive devices, cables, etc. ("Equipment") you must use to receive the Service. You must purchase your Receiver and Equipment, and any repairs, parts, installation or service, from an authorized seller or manufacturer and the Receiver and/or Equipment 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 Equipment, Unless you purchased your Equipment or Receiver through one of our direct channels (such as through our website), we are not responsible for the advertising, statements, practices, promises or services of sellers, installers, or manufacturers of Equipment or Receivers. You should consult your owner's manual or the packaging for important information regarding warranties related to Receivers and Equipment. If you have any complaints about your Receiver. Equipment or installation, you should direct them to the seller. manufacturer or installer. Returns of Receivers and Equipment 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 radio activation fee may apply.
- 4. Loss of Equipment: Because your Satellite Radio Service Subscription is tied to a particular Receiver, 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, regardless of your use of the Satellite Radio Service
- 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 SUBSCRIPTIÓN (WHICH IS A SUBSCRIPTION THAT CONTINUES FOR THE LIFE OF THE RECEIVER) IS NOT TRANSFERÀBLE 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 of Satellite Radio Service Subscriptions are subject to a transfer fee, as set forth herein.

#### 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 this website 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 convright 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 this or any other software contained in a SIRIUS or XM Radio or our website and/or all hardware and/or software used in connection with either 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, noncommercial use in connection with the Service.

- 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 our website or included in any Service we offer 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 either 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). Certain real-time traffic data and map data is provided by NAVTEQ, a service of NAVTEO North America 11.C. to which the following notice applies: © 2009 NAVTEO You may download one copy of the Content to any single computer for your personal, non-commercial home use only, provided that you keep intact all copyright and other proprietary notices. You may not otherwise reproduce, perform, distribute, display or create derivative works from the Content. You may only use the Content and the Intellectual Property, access our website and use any services we provide through our website as expressly permitted in these Terms of Service and for no other purposes.
- 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 website may be the trademarks of third parties. Neither your access to and use of the Service or website 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 XM.
- 4. Copyright: If you are authorized to act on behalf of a copyright owner, and any material on our website infringes on the rights of the owner, please notify our designated agent:

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
- 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 also pay in advance by electronic funds transfer ("EFT"). You may combine payment with an XM Prepaid Subscription card. You may also pay by check or money order. If you pay by check or money order you will receive an invoice by mail and will be required to make your first payment before your Subscription is activated. 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:

XM Satellite Radio Inc. P 0 Rox 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 monthto month basis instead of your chosen Subscription Term.

- Changes in Fees: Our fees and other charges are subject to change without notice.
- 4. Change of Address or Account Information: You must notify Customer 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 statement (via electronic mail unless otherwise requested) for the billing plan you selected. If vou elect to pay by check or money order, we may charge you a fee of up to \$2.00 per invoice. Otherwise, billing statements will be provided only upon request. If you would like to receive a statement for a particular period, please contact Customer 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
- 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 immediately 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 prepayments 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. 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 pay by check or money order, we will charge you an administration fee. The 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 such charge or payment 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 such charge or payment 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 a Subscription Package which is "A La Carte." while there is no fee for the initial selection of channels, for each subsequent change to 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 SURSCRIPTION 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 SLIRSCRIPTION 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 standard 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 Services to be received and that are ordered by you in accordance with the terms of the applicable billing plan and promotion that you agree to, including, without limitation, payments of any early termination fees if you terminate your Services 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.

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GRAPHICS GROUP Avenue of the Americas, NY, NY 212-901-6536 or 212-584-5117

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# **EXHIBIT C**

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: Service credits will not be refunded in cash, but will be honored in the form of Services 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 If you are cancelling a Subscription that requires payment of an early termination fee if cancelled prior to the end of such commitment, or is subject to any nonrefundable prepayments, you will be responsible for the payment of such fees. 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. 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 Plan, and you will receive a service credit for the unused prepaid portion of the old Plan. The Plan you give up may also be subject to a cancellation fee. If you change to a less expensive Subscription Package or payment Plan, both the service credit and the fees to make this change will be posted to your account and you may still enjoy a service credit or balance on your account when you begin your new Package or Plan.
- 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 an "XM Everything" Monthly Plan to an "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 balance's 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. For instance, if you would like to add a Subscription to our "Family Friendly" Package for a new Receiver in your home, 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.
- 11. Listener Care: If you have a question about your Service, Subscription, Subscription Fees, fees, charges or bill, or if you would like to change or reactivate your Subscription, please contact Listener Care. We will respond to you as promptly as practicable. 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 on our website) 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 all of these Terms of Service and this website or we
- 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 paid directly by the subscriber, 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 THIS WEBSITE AND THE CONTENT AND FUNCTIONALITY OF THE SERVICE ARE PROVIDED "AS IS" AND "AS AVAILABLE." XM AND WSI MAKE NO REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, REGARDING THE SERVICE OR YOUR RECEIVER OR OTHER EQUIPMENT OR THAT YOUR ACCESS TO OR YOUR USE OF THE SERVICE OR WEBSITE WILL BE UNINTERRUPTED OR 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.
- 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 OUR WERSITE BY US OR ANYONE FLSE 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 THIS AGREEMENT
- 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 PÚRSUANT 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 THIS WEBSITE, 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 REASONARI E ALLOCATION OF RISK THIS ALLOCATION OF RISK AND THE DISCLAIMER OF WARRANTIES HEREIN ARE REFLECTED IN OUR PRICES AND ARE A FLINDAMENTAL FLEMENT OF OUR AGREEMENT TO PROVIDE THE SERVICE. 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 WEBSITE IS AT YOUR SOLE RISK, YOU WILL NOT HOLD US. OUR PROGRAMMING OR DATA SUPPLIERS, SERVICE PROVIDERS, MARKETING/DISTRIBUTION, SOFTWARE OR INTERNET SLIPPLIERS, 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. THIS WEBSITÉ. INCLUDING WITHOUT LIMITATION ANY DAMAGE TO ANY OF YOUR COMPUTERS OR DATA, AND/OR ANY XM 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 WEBSITE
- 4. Third Parties: THE THIRD PARTY LINKS, SERVICES, GOODS, RESOURCES AND CONTENT AVAILABLE ON THE SERVICE AND THROUGH LINKS ON THIS WEBSITE ARE NOT CONTROLLED BY US. ACCORDINGLY. WE MAKE NO WARRANTIES REGARDING SUCH THIRD-PARTY SERVICES GOODS RESOURCES AND CONTENT INCLUDING WITHOUT LIMITATION WARRANTIES OF FITNESS FOR A PARTICUL AR PURPOSE MERCHANTARILITY AND NON-INFRINGEMENT WE WIL NOT BE LIABLE FOR YOUR ACCESS TO LISE OF OR DOWNLOADING OF CONTENT AVAILABLE ON OR THROUGH. THE SERVICE OR WEBSITE, WE ARE NOT LIABLE FOR ANY DIRECT OR INDIRECT DAMAGES OR LOSSES CAUSED BY YOUR USE OF THIRD-PARTY WERSITES, YOU ASSUME FULL RESPONSIBILITY WHEN YOU CHOOSE TO FOLLOW ANY LINKS ON THIS WEBSITE 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 OF SERVICE. 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 INTERNET RADIO SERVICE USING YOUR LOGIN ID, WITH OR WITHOUT YOUR PERMISSION.

#### I RESOLVING DISPLITES:

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 AND THE RIGHT TO PARTICIPATE IN A CLASS ACTION OR SIMILAR PROCEEDING. 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 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 Website, 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 choose one of the two arbitration firms listed below and follow its rules and procedures in effect at the time the Claim is filed. You may obtain copies of the current rules of each of the arbitration firms and 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

National Arbitration Forum P.O. Box 50191 Minneapolis, MN 55405-0191 Web site: www.adrforum.com (800) 474-2371

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, or the Electronic Communications Privacy Act, 18 U.S.C. §§2510-2521, 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. Individual Claims: If either of us elects to resolve a claim by arbitration, that Claim shall be arbitrated on an individual basis. There shall be no right or authority for any claims to be arbitrated on a class action basis or on bases involving Claims brought in a purported representative capacity on behalf of the general public, other Subscribers or persons similarly situated. The arbitrator's authority to make awards is limited to awards to you and us alone. Furthermore, Claims brought by you and against us, or by us against you, may not be joined or consolidated in arbitration with Claims brought by or against someone other than you, unless agreed to in writing by all parties. 'Claim' (as defined in this section above) does not include any challenge to the validity and effect of the class action waiver in this subsection 5, which must be decided by a court.
- 6. 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, provided that the entire arbitration agreement shall be null and void if the class action waiver in subsection 5 above is held to be invalid with respect to any class or representative Claim, subject to any right to appeal such holding.
- 7. 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. MISCELLANFOUS:

- 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 our website at any time and without notice. We will terminate your right to use our website if you violate any of these Terms of Service or any other policy posted on our website, or if we become aware that you are a copyright infringer.
- 4. Full Agreement: These Terms constitute the entire agreement between us concerning your access to and use of the Service or website 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. These Terms are subject to modification if required by such laws. Notwithstanding the foregoing, Section I. shall be governed by the Federal Arbitration Act without reference to state law.

THANK YOU FOR CHOOSING XM RADIO.

(TERMINOS Y CONDICIONES/ACUERDO CON EL CLIENTE en español — www.xmradio.com/



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#### TERMS AND CONDITIONS / CUSTOMER AGREEMENT

#### Last Undated: October 1, 2009

Thank you for choosing XM Satellite Radio ("XM"). These are the terms and conditions ("Terms" or "Customer Agreement"), which apply to your paid, trial or other subscription in the United States ("Subscription") to the XM Satellite Radio service (the "Satellite Radio Service") and/or XM Internet Radio ("Internet Radio") and/or any Equipment Technology (as defined below) relating thereto. The Satellite Radio Service, Internet Radio our traffic and weather including marine weather and any other programming data and Equipment Technology for radio television online portable wireless mobile and other receivers now known or later developed ("Receivers"), will be collectively referred to herein 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 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 our Services, or any other services we may offer. Be sure to read our Privacy Policy. Our Privacy Policies for XM Radio and SIRIUS Radio are identical. 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 www.xmradio.com/about/privacy-policy.xmc. PLEASE READ THESE TERMS OF SERVICE CAREFULLY BEFORE ACCESSING OR USING OUR WEBSITE OR OUR SERVICES. BY ACCESSING OR USING OUR WEBSITE OR SERVICES, YOU AGREE TO BE LEGALLY BOUND BY THESE TERMS OF SERVICE. PLEASE DO NOT USE OUR WEBSITE OR SERVICE IF YOU DO NOT AGREE WITH THESE TERMS OF SERVICE.

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, 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.

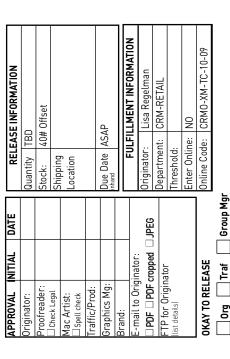
#### B. CHANGES IN TERMS AND SERVICE:

1. Changes To Terms: SATELLITE AND INTERNET TECHNOLOGY AND THE APPLICABLE LAWS RULES, AND REGULATIONS CHANGE FREQUENTLY. ACCORDINGLY, WE RESERVE THE RIGHT TO CHANGE THESE TERMS AT ANY TIME. ANY CHANGES OR MODIFICATIONS WILL BE EFFECTIVE UPON POSTING OF THE REVISIONS ON OUR WEBSITE REFLECTING THE NEW EFFECTIVE DATE. YOUR CONTINUED USE OF THE SERVICE FOLLOWING THE POSTING OF THE CHANGES OR MODIFICATIONS ONLINE WILL CONSTITUTE YOUR ACCEPTANCE OF SUCH CHANGES OR MODIFICATIONS. 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 WEBSITE.

Other than with respect to programming changes referenced in subsection 2 below, if we make any material changes that, in our judgment, would have an adverse effect on your use of the Service, we will either post a notice on our website 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 other offer for the Service, these Terms will govern.

2. Change To Programming: The Service consists of a wide variety of music, sports, news, talk, children's and other entertainment programming. Many different and changing considerations affect the availability, cost and quality of programming and customer demand. Accordingly, we reserve the unrestricted right to change, rearrange, add, or delete programming, including canceling, moving or adding particular channels, at any time, with or without notice to you. You always have the right to cancel your subscription to the Service if you do not accept any change. Your continued use of the Service following any programming changes will constitute your acceptance of such changes.

- 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 Satellite Radio Service solely in the 48 contiguous United States and the District of Columbia (together, our "Service Area"), although we might expand our Satellite Radio Service in the future. (This is the Service Area for XM. SIRIUS does currently broadcast satellite radio service into Puerto Rico. However, 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. SIRIUSIXM Internet Radio Service is available in all areas of Puerto Rico.) If your address is not in our XM Service Area, your Receiver will not be able to 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
- 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 any third party 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



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3.5"

- 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, reproadcast, 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 this website. You agree that any person using your identification issued for the website will be treated by us as having been authorized by you to access your information as contained on the website, and take any other actions on your behalf. You will indemnify and hold harmless SIRIUS XM Radio Inc. and its affiliated companies 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 this website. You also waive all claims against SIRIUS XM Radio Inc., its officers, directors, employees, suppliers and programmers that may arise from the utilization of this website. 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 our Service or any radio or Receiver.
- 5. Recorded Content: Certain types of our radios and Receivers have the ability to record programming transmitted over the Service ("Recorded Content"). Subject to your radio's restrictions and applicable laws, you may access such Recorded Content only as long as you pay your monthly subscription fee. We reserve the right to change, reduce, eliminate or charge a fee for this and/or related functionality.
- 6. Service Interruntions: Service may be unavailable or interrunted from time to time for a variety of reasons, such as environmental or topographic conditions and other things, many of which we cannot control. 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 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 Equipment," F.Z. "Automatic Renewal," F.S. "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." Examples of Packages are "XM Everything PLUS The Best of SIRIUS," "Family Friendly," and "Mostly Music." We also offer Subscriptions in a variety of convenient 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 but when longer Plans are offered they are often priced to provide a discount.
- 9. Lifetime Subscription Plan: A "Lifetime Subscription" is one that continues for the life of the Receiver equipment. 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 SIRIUS XM Radio Inc., it is defective. 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. Each permitted transfer of a Subscription is subject to a transfer fee. If you transfer a Lifetime Subscription from one Receiver to another or from one person to another, you will be charged a transfer fee. The current transfer fee is 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 SIRIUS XM Radio Inc., the Receiver is defective. 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
- 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. XM programming and on-air advertising is provided "as is" and "as available" and XM disclaims any and all warranties, express and/ or implied, with respect thereto or the transmission or reception thereof. Neither XM nor WSI Corporation ("WSI") makes any representations or warranties with respect to the reliability, predictive value or accuracy of the information contained within the Service, and neither XM nor WSI shall be responsible for inaccurate, omitted, delayed, or erroneous information, and do not warrant the accuracy, reliability, completeness or timeliness, of any information disclosed on the Service. You further acknowledge and agree that the Service may be interrupted due to adverse weather or other conditions and that neither XM nor WSI shall have any liability for such interruptions. You are urged to verify the contents of the Service

against other sources prior to use. You acknowledge and agree that under no circumstances should a user of this Service make decisions based solely or primarily on traffic or weather information contained within the Service. Neither XM nor WSI assumes any responsibility for accidents resulting from or associated with use and/or misuse of the Service.

In addition, 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. Please contact Listener Care to discuss options

- 11. Business Commercial Subscribers (Radio Service only): Details for our commercial subscribers can be found in the FAQs area of this website.
- 12. Interactive Services: We may provide an opportunity for users to exchange information, ideas and opinions on our website. Information, ideas and opinions posted by users do not necessarily reflect the views of SIRIUS XM Radio Inc. We do not assume responsibility or accept liability for the accuracy of any information, ideas and opinions posted by users. We are not liable for any claims, damages or losses resulting from any information, ideas and opinions posted by users. You authorize us to use and publish any materials that you post on this website in any manner we choose and without any obligation to compensate you or anyone else. If you post any materials on our website, you will not:
- · Harass, defame, intimidate or threaten another user;
- Interfere with another user's rights to privacy;
- · Distribute chain letters, surveys or contests;
- Post any material that is defamatory (i.e., disparaging to the reputation of an individual or business);
- · Post any material that is obscene or indecent;
- · Post any trademarks, logos or copyrighted material without the authorization of the owner • Post any materials that may damage the operation of a computer (such as a virus, worm or Trojan
- Advertise or sell any goods or services.

#### D. RECEIVERS AND OTHER EQUIPMENT:

- 1. Authorized Suppliers: You may access and use the Service only with equipment authorized to receive the Service. However, we do not manufacture or install any of the Receivers or related equipment, including antennas, adapters, adhesive devices, cables, etc. ("Equipment") you must use to receive the Service, You must purchase your Receiver and Equipment, and any repairs, parts, installation or service. from an authorized seller or manufacturer and the Receiver and/or Equipment 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 Equipment. Unless you purchased your Equipment or Receiver through one of our direct channels (such as through our website), we are not responsible for the advertising, statements, practices, promises or services of sellers, installers, or manufacturers of Equipment or Receivers. You should consult your owner's manual or the packaging for important information regarding warranties related to Receivers and Equipment. If you have any complaints about your Receiver, Equipment or installation, you should direct them to the seller, manufacturer or installer. Returns of Receivers and Equipment 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 radio activation fee may apply.
- 4. Loss of Equipment: Because your Satellite Radio Service Subscription is tied to a particular Receiver, 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, regardless of your use of the Satellite Radio Service.
- 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 TRANSFERÀBLE 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 of Satellite Radio Service Subscriptions are subject to a transfer fee, as set forth herein.

## 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 this website or the Internet Radio Service AMRE® 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 this or any other software contained in an XM or SIRIUS Radio or our website and/or all hardware and/or software used in connection with either 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.

- 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 our website or included in any Service we offer 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 either 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). Certain real-time traffic data and map data is provided by NAVTEQ. a service of NAVTEQ North America, LLC, to which the following notice applies: © 2009 NAVTEQ. You may download one copy of the Content to any single computer for your personal, non-commercial home use only, provided that you keep intact all copyright and other proprietary notices. You may not otherwise reproduce, perform, distribute, display or create derivative works from the Content. You may only use the Content and the Intellectual Property, access our website and use any services we provide through our website as expressly permitted in these Terms of Service and for no other purposes.
- 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 website may be the trademarks of third parties. Neither your access to and use of the Service or website 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
- 4. Copyright: If you are authorized to act on behalf of a copyright owner, and any material on our website infringes on the rights of the owner, please notify our designated agent:

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
- 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 also pay in advance by electronic funds transfer ("EFT"). You may combine payment with an XM Prepaid Subscription card. You may also pay by check or money order. If you pay by check or money order you will receive an invoice by mail and will be required to make your first payment before your Subscription is activated. 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:

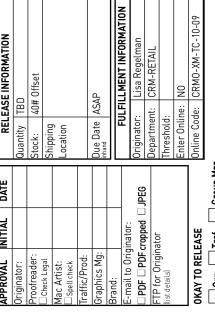
XM Satellite Radio Inc. P O Box 9001399 Louisville, KY 40290-1399

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 vour 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 statement for the billing plan you selected. If you elect to pay by check or money order, we may charge you a fee of up to \$2.00 per invoice. Otherwise, billing statements will be provided only upon request. If you would like to receive a 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 immediately 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 prepayments 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. 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 pay by check or money order, we will charge you an administration fee. The 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 such charge or payment 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 such charge or payment of a similar nature and it is reasonably related to the actual expense we incur due to insatisfied 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 a Subscription Package which is "A La Carte," while there is no fee for the initial selection of channels, for each subsequent change to 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 satelliti RADIO SUBSCRIPTION IS NOT TRANSFERABLE IF IT IS ASSOCIATED WITH A RECEIVER INSTALLED BY AN ALITOMAKER OR AN ALITOMOTIVE DEALER IN A VEHICLE EXCEPT IN THE EVENT THE ORIGINAL RECEIVER ASSOCIATED WITH THAT LIFETIME SURSCRIPTION 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 standard 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 Services to be received and that are ordered by you in accordance with the terms of the applicable billing plan and promotion that you agree to, including, without limitation, payments of any early termination fees if you terminate your Services 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.



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# **EXHIBIT D**

we reserve the right to waive any or tress lees, in whose or in part, at our discretion, our nature to enforce any of these fees or any other provisions of these ferms shall not be construed as a waiver of the right to assert any such ferms on any future occasion.

9. Service Credits: Service credits will not be refunded in cash, but will be honored in the form of Services 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. If you are cancelling a Subscription that requires payment of an early termination fee if cancelled prior to the end of such commitment, or is subject to any nonrefundable prepayments, you will be responsible for the payment of such fees. Lifetime, automotive pre-packaged, monthly and certain promotional Subscription of nonrefundable; if you make changes to such Subscriptions, no service credits will be due on your account. 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 Plan, and you will receive a service credit for the unused prepaid portion of the old Plan. The Plan you give up may also be subject to a cancellation fee. If you change to a less expensive Subscription Package or payment Plan, both the service credit and the fees to make this change will be posted to your account and you may still enjoy a service credit or balance on your account when you begin your new Package or Plan.

10. Changes to Packages and Plans: You have the right to change your subscription "Package" (e.g., ask us to change from "SIRIUS Everything" to "SIRIUS Everything PLUS The Best of AM"). You also have the right to change your subscription "Plan" (e.g., ask us to change from a "SIRIUS Everything" Monthly Plan to a "SIRIUS 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 fed 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 halances 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. For instance, if you would like to add a Subscription to our "Family Friendly" Package for a new Receiver in your home, 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.

11. Customer Care: If you have a question about your Service, Subscription, Subscription Fees, fees, charges or bill, or if you would like to change or reactivate your Subscription, please contact Customer Care. We will respond to you as promptly as practicable. If you contact SIRIUS Customer 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 on our website) within 30 days after the date you receive the statement in question. OTHERWISE YOU WAIVE YOUR RIGHT 10 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 all of these Terms of Service and this website or we have cancel your Service.

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

2. Retunds: LIFETIME, AUTOMOTIVE PRE-PACKAGED, MONTHLY AND CERTAIN PROMOTIONAL SUBSCRIPTIONS ARE NONREPUNDABLE. If you cancel your Subscription prior of its expiration (excluding the aforementioned types of Subscriptions), you will receive a refund of amounts paid directly by the subscriber, if any, on a pro-rata basis, less any applicable fees, missis 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 mance company unless the finance company has notified us that your loan has been paid in full. It is 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. Discialment: You understand and agree that this website and the content and functionality of the service are provided "as is" and "as available." Sirius and was no representation or warranty, either express or implied, regarding the service or your receiver or other equipment or that your access to or your use of the service or website will be uninterrupted or broken 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.

2. LIMITATIONS OF LIAbility: IN NO EVENT ARE WE, OR WSI, LIABLE FOR ANY DIRECT, NDIRECT, SPECIAL, INCIDENTIAL, OR CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DIMAGES, LOST PROFITS, OR LOSSES RELATING TO THE USE, LOSS OF USE OR DATA. IR PURCHASE OF ANY RECEIVER OR EQUIPMENT OR YOUR PURCHASE OR USE OF THE LEVICE, OR FROM ANY CONTENT POSTED ON OUR WEBSITE BY US OR ANYONE ELSE, WHETHER BASED ON NEGLIGENCE OR OTHERWISE, AND WHETHER OR NOT WE HAVE IF ADVISED OF THE POSSIBILITY THEREOF, WHETHER ARISING OUT OF BREACH OF CAREEMENT, TORT OR ANY OTHER CAUSE OF ACTION RELATING TO THE PERFORMANCE.

N NO EVENT WILL THE AGGREGATE OF EACH OF SIRIUS' AND WSI'S LIABILITY FOR NAY AND ALL OF YOUR CLAIMS, OR ANY THIRD PARTY CLAIMS, AGAINST US, AND OUR 117GRAMMING OR DATA SUPPLIERS, SERVICE PROVIDERS, MARKETING/DISTRIBUTION SUPTIWATE UN INTERNET SUPPLIERS UN HARDWARE UN SUPTIWATE MANUFACTURERS, UN SUPPLIERS, CONFRACTORS AND LIGENSORS, OR INDEPENDENT SELLERS, ARISING OUT OF OR RECEARCH OF ANY OR METAL THE PERFORMANCE OR NOMERHORMANCE OF THE ORIGINAL SELECTION OF RESERVE OF SIRIUS AND/OR WSI, OR YOUR ACCESS TO OR USE OF OR INABILITY TO USE THE SERVICE OR THIS WEBSITE, EXCEED THE PRICE PAID BY YOU TO SIRIUS 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 OUR AGREEMENT TO PROVIDE THE SERVICE, YOU MAY HAVE GREATER RIGHTS THAN DESCRIBED ABOVE UNDER YOUR STATE'S LAWS.

3. YOUR RISE: YOU AGREE THAT YOUR ACCESS TO AND USE OF, OR INABILITY TO ACCESS OR USE THE SERVICE OR THE WEBSITE 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, THIS WEBSITE, INCLUDING WITHOUT LIMITATION ANY DAMAGE TO ANY OF YOUR COMPUTERS OR DATA, AND/OR ANY SIRIUS 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 WEBSITE.

4. Third Parties: The Third Party Links, Services, Goods, Resources and Content available on the Service and Through Links on this Website are not controlled by us. Accordingly, we make no warranties regarding such third-party services, goods, resources, and content, including without Limitation Warranties of Fitness for a particular purpose, Merchantability and Non-Intringement, we will not be Liable for Your access to, use of or Downloading of Content available on on through, the Service or Website. 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 this Website 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 SIRIUS 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 OF SERVICE, 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 INTERNET RADIO 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 ABBITRATION. ARBITRATION REPLACES THE RIGHT TO GO TO COURT, INCLUDING THE RIGHT TO A JURY AND THE RIGHT TO PARTICIPATE IN A CLASS ACTION OR SIMILAR PROCEEDING. 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 RIGHT OR POPORTUNITY TO LITIGATE DISPUTES THROUGH A COURT AND TO HAVE A JUDGE OR JURY DECIDE THEIR CASE, BUT THEY CHOOSE 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 Website, your Subscription or these Terms (a "Claim"), will be resolved as follows:

1. Informal Ctalm Resolution: To initiate an informal resolution to a Claim, you must send a notice by first class United States mail of ISIRUS XM Radio Inc., 1221 Avenue of the Americas, New York, NY 10020, Attention: SIRIUS Customer 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 choose one of the two arbitration firms listed below and follow its rules and procedures in effect at the time the Claim is filed. You may obtain copies of the current rules of each of the arbitration firms and forms and instructions for initiating an arbitration by contacting them.

American Arbitration Association

(800) 778-7879

89 1633 Broadway 10th Roop / 18/20 New York, New York 16049 / 18/20 Web site: www.adr.org

Page Bp 50191 20 Page ID #:936
Web site: www.adrforum.com

(800) 474-2371
e pursuant to a transaction involving interstate commerce and shall be

National Arbitration Forum

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.

 Exceptions: Notwithstanding the foregoing, any dispute involving a violation of the Communications Act of 1934, 47 U.S.C. \$605, or the Electronic Communications Privacy Act, 18 U.S.C. \$§2510-2521, 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. Individual Claims: If either of us elects to resolve a claim by arbitration, that Claim shall be arbitrated on an individual basis. There shall be no right or authority for any claims to be arbitrated on a class action basis or on bases involving Claims brought in a purported representative capacity on behalf of the general public, other Subscribers or persons similarly situated. The arbitrator's authority to make awards is limited to awards to you and us alone. Furthermore, Claims brought by you and against us, or by us against you, may not be joined or consolidated in arbitration with Claims brought by or against someone other than you, unless agreed to in writing by all parties. 'Claim' (as defined in this section above) does not include any challenge to the validity and effect of the class action waiver in this subsection 5, which must be decided by a court.

6. 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, provided that the entire arbitration agreement shall be null and void if the class action waiver in subsection 5 above is held to be invalid with respect to any class or representative Claim, subject to any right to appeal such holding.

7. 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 our website at any time and without notice. We will terminate your right to use our website if you violate any of these Terms of Service or any other policy posted on our website, or if we become aware that you are a copyright infringer.

4. Full Agreement: These Terms constitute the entire agreement between us concerning your access to and use of the Service or website and may be modified by the unitateral amendment of these Terms and the posting by us of such amended version. No salesperson or other representative is authorized to change if 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. These Terms are subject to modification if required by such laws. Notwithstanding the foregoing, Section I. shall be governed by the Federal Arbitration Act without reference to state law.

Thank you for choosing SIRIUS Radio.

(TERMINOS Y CONDICIONES on español — www.sirius.com/servicetermsespanol)



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## TERMS AND CONDITIONS

Last updated: October 1, 2009.

Thank you for choosing SIRIUS Satellite Radio ("SIRIUS"). These are the terms and conditions ("Terms"), which apply to your paid, trial or other subscription in the United States ("Subscription") to the SIRIUS Satellite Radio service (the "Satellite Radio Service") and/or SIRIUS Internet Radio ("Internet Radio") and/or any Equipment Technology (as defined below) relating thereto. The Satellite Radio Service, Internet Radio, our traffic and weather, including marine weather, and any other programming, data and Equipment Technology for radio, television, online, portable, wireless, mobile, and other receivers now known or later developed ("Receivers"), will be collectively referred to herein 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 keep this copy of these Terms for your records.

Our Privacy Policy governs the treatment by SIRIUS 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 our Services, or any other services we may offer. Be sure to read our Privacy Policy. Our Privacy Policies for SIRIUS Radio and XM Radio are identical. For information on how information is gathered and used at www.sirius.com or through our Internet Radio Service please see our privacy policy found at www.sirius.com/privacypolicy.

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

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 SIRIUS Customer Care Monday through Saturday from 8AM through 11PM ET and Sunday from 8AM to 8PM, by calling 1-888 539-7474, or by writing to: SIRIUS XM Radio, 1221 Avenue of the Americas, New York, NY 10020, Attention: Customer Care.

#### B. CHANGES IN TERMS AND SERVICE:

1. Changes To Terms: SATELLITE AND INTERNET TECHNOLOGY AND THE APPLICABLE LAWS, RULES, AND REGULATIONS CHANGE FREQUENTLY. ACCORDINGLY, WE RESERVE THE RIGHT TO CHANGE THESE TERMS AT ANY TIME. ANY CHANGES OR MODIFICATIONS WILL BE EFFECTIVE UPON POSTING OF THE REVISIONS ON OUR WEBSITE REFLECTING THE NEW EFFECTIVE DATE. YOUR CONTINUED USE OF THE SERVICE FOLLOWING THE POSTING OF THE CHANGES OR MODIFICATIONS ONLINE WILL CONSTITUTE YOUR ACCEPTANCE OF SUCH CHANGES OR MODIFICATIONS, YOU SHOULD FREQUENTLY REVIEW THESE TERMS (INCLUDING THE EFFECTIVE DATE) AND APPLICABLE POLICIES FROM TIME TO TIME TO UNIDERSTAND THE TERMS THAT APPLY TO YOUR USE OF THE SERVICE AND/OR USE OF THE WEBSITE.

Other than with respect to programming changes referenced in subsection 2 below, if we make any material changes that, in our judgment, would have an adverse effect on your use of the Service, we will either post a notice on our website 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 other offer for the Service, these Terms will govern.

2. Change To Programming: The Service consists of a wide variety of music, sports, news, talk, children's and other entertainment programming. Many different and changing considerations affect the availability, cost and qualify of programming and customer demand. Accordingly, we reserve the unrestricted right to change, rearrange, add, or delete programming, including canceling, moving or adding particular channels, at any time, with or without notice to you. You always have the right to cancel your subscription to the Service if you do not accept any change. Your continued use of the Service following any programming changes will constitute your acceptance of such changes.

#### C. USE OF SERVICE

 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 Satellite Radio Service solety in the 48 contiguous United States, District of Columbia and Pentro Rico (together, our "Service Area"), although we might expand our Satellite Radio Service in the future. This is the Service Area for SIRIIUS. XM does not currently broadcast satellite radio service into Puerto Rico. (Satellite radio reception in Puerto Rico is best in the Greater Metropolitan Area of San Juan and may not be available in other areas. Puerto Rico residents should consult SIRIUS Customer Care for the most current reception information. SIRIUSXM Internet Radio Service is available in all areas of Puerto Rico.) It your address is not in our Service Area, your Receiver will not be able to 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.siriuscanada.ca or www.cmradio.ca for details.

3. Intermet 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 any third party and have the obligation to protect your username and password to any third party 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 devives 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. We may or may not offer the same content on all of our platforms of the Service. Similarly, not all content offered







in any of the XM or SIRIUS Services is available through the other modes of distribution of XM or ...RRUS programming (such as through our internet, satellite TV, wireless, or other distribution affiliates as many engage from time to time). We do not make or install any of the physical equipment, Internet ontroctivity or web browser software or other hardware or software you may use to receive our Internet tadio Service ("Web Devices"). Our Internet Radio Service may be unavailable or interrupted from time time for a variety of reasons, such as unavailability or difficulties with the Internet generally or your wh browser, computer, home wiring, or Internet service provider and/or other things that we cannot untrol. Our Internet Radio Service functions best when streamed over a broadband connection. We to not guarantee continuous, uninterrupted or secure access to the Internet Radio Service and are not - ponsible for any noise and/or interruptions that occur.

- Personal Use of the Service: We provide the Service only for your personal, non-commercial expresent. You may not make commercial use of, reproduce, rebroadcast, or otherwise transmit our anagramming, or record, charge admission for listening to or distribute play lists of our programming. lenther our Internet Radio Service nor any Recorded Content (defined below) is intended for commercial ing. If you use any Service for commercial purposes, we reserve the right to charge you our commercial ate retroactively to the beginning of your Subscription. We or any of our programming providers may #0xxxcute violations of the foregoing against you and other responsible parties in any court of competent eradiction. You assume all responsibility for use of this website. You agree that any person using your tentification issued for the website will be treated by us as having been authorized by you to access your formation as contained on the website, and take any other actions on your behalf. You will indemnify and hold harmless SIRIUS XM Radio Inc. and its affiliated companies from all damages, costs, expenses. abilities and claims incurred by them arising out of any action taken by any person or entity using your rsername/password on this website. You also waive all claims against SIRIUS XM Radio Inc., its officers, firectors, employees, suppliers and programmers that may arise from the utilization of this website. It the end of each online session you should completely log out of the Service. Should your login ID ir username/password be lost, stolen, sold, transferred or otherwise removed from your possession athout 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 accurity measures embedded into our Service or any radio or Receiver.
- i. Recorded Content: Certain types of our radios and Receivers have the ability to record programming unarmitted over the Service ("Recorded Content"). Subject to your radio's restrictions and applicable aws, you may access such Recorded Content only as long as you pay your monthly subscription fee. We eserve the right to change, reduce, eliminate or charge a fee for this and/or related functionality.
- i. Service Interruptions: Service may be unavailable or interrupted from time to time for a variety of easons, such as environmental or topographic conditions and other things, many of which we cannot untrol. 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 integra is near a south-facing window, certain window treatments could interfere with reception. We are not responsible for any noise and/or interruptions of the Service.
- ! Service Cancellation: We reserve the right to cancel your Subscription at any time if you fail to pay. anounts owing to us when due, violate or breach any of these Terms, or for any other reason in our sole Inscretion. If your Subscription is cancelled, you will still be responsible for payment of all outstanding alances accrued through the cancellation date, including any fees described herein. See also: D.4. Loss of Equipment," F.2. "Automatic Renewal," F.8. "Cancellation Fee," F.9. "Service Credits," and G.
- 1. Service Choices: We provide Subscriptions in a variety of programming packages which might suit our listening preferences, and we refer to them thibughout as "Packages." Examples of Packages are SIRIUS Everything PLUS The Best of XM," "Family Friendly," "Mostly Music," and "A La Carte Gold." We ilso offer Subscriptions in a variety of convenient 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 but when longer Plans are aftered they are often priced to provide a discount.
- ), Litetime Subscription Plan: A "Lifetime Subscription" is one that continues for the life of the Receiver routement. A Lifetime Subscription is not transferable if it is associated with a Receiver installed by an utornaker or an automotive dealer in a vehicle, except in the event the original Receiver associated with hat Lifetime Subscription is stolen, accidentally damaged or if, in the sole discretion of SIRIUS XM Radio nc., it is defective. A Lifetime Subscription associated with a home, portable, or dock & play Receiver is consterable from one Receiver to another Receiver, up to a maximum of three (3) times. Each permitted conster of a Subscription is subject to a transfer fee. If you transfer a Lifetime Subscription from one Receiver to another or from one person to another, you will be charged a transfer fee. The current transfer ee is set forth in these Terms. No transfer fee will be charged for the transfer of a Lifetime Subscription issociated with a Receiver installed by an automaker or an automotive dealer if, in the sole discretion if SIRIUS XM Radio Inc., the Receiver is defective, Lifetime Subscriptions are nonrefundable. You may ancel a Lifetime Subscription but if you cancel during the first year of service you will be charged a ancellation fee set forth in these Terms.
- :0. Advisory Nature of Services; User Responsibility; User Safety/Reliance; Parental Control: In your ise of the Service it is your responsibility to exercise prudent discretion and observe all safety measures equired 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 ind data, and you acknowledge and agree that such information and data is not for "safety for life," but 3 merely supplemental and advisory in nature, and therefore cannot be relied upon as safety-critical a connection with any aircraft, sea craft, automobile, or any other usage, SIRIUS programming and m-air advertising is provided "as is" and "as available" and STRIUS disclaims any and all warranties, express and/or implied, with respect thereto or the transmission or reception thereof. Neither SIRIUS or WSI Corporation ("WSI") makes any representations or warranties with respect to the reliability, iredictive value or accuracy of the information contained within the Service, and neither SIRIUS nor WSI hall be responsible for inaccurate, omitted, delayed, or erroneous information, and do not warrant the ecuracy, reliability, completeness or timeliness, of any information disclosed on the Service. You further icknowledge and agree that the Service may be interrupted due to adverse weather or other conditions and that neither SIRIUS nor WSI shall have any liability for such interruptions. You are urged to verify he contents of the Service against other sources prior to use. You acknowledge and agree that under to circumstances should a user of this Service make decisions based solely or primarily on traffic or

weather information contained within the Service. Neither Sikius nor wai assumes any responsibility for acidents resulting reproductive control with the second the Service cument 89 In addition, some programming may include explicit language. It is your responsibility to impose listening

restrictions that you consider appropriate on your family members and quests. We are not responsible for content that you or anyone else may find inappropriate. Please contact Customer Care to discuss options

11. Business Commercial Subscribers (Radio Service only): Details for our commercial subscribers can be found in the FAQs area of this website.

12. Interactive Services: We may provide an opportunity for users to exchange information, ideas and opinions on our website. Information, ideas and opinions posted by users do not necessarily reflect the views of SIRIUS XM Radio Inc. We do not assume responsibility or accept liability for the accuracy of any information, ideas and opinions posted by users. We are not liable for any claims, damages or losses resulting from any information, ideas and opinions posted by users. You authorize us to use and publish any materials that you post on this website in any manner we choose and without any obligation to compensate you or anyone else. If you post any materials on our website, you will not

- . Harass, defame, intimidate or threaten another user.
- · Interfere with another user's rights to privacy;
- · Distribute chain letters, surveys or contests;
- . Post any material that is defamatory (i.e., disparaging to the reputation of an individual or business);
- Post any material that is obscene or indecent:
- · Post any trademarks, logos or copyrighted material without the authorization of the owner:
- Post any materials that may damage the operation of a computer (such as a virus, worm or Trojan horse); or
- · Advertise or sell any goods or services.

#### D. RECEIVERS AND OTHER EQUIPMENT:

- 1. Authorized Suppliers: You may access and use the Service only with equipment authorized to receive the Service. However, we do not manufacture or install any of the Receivers or related equipment, including antennas, adapters, adhesive devices, cables, etc. ("Equipment") you must use to receive the Service, You must purchase your Receiver and Equipment, and any repairs, parts, installation or service, from an authorized seller or manufacturer and the Receiver and/or Equipment 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 Equipment. Unless you purchased your Equipment or Receiver through one of our direct channels (such as through our website), we are not responsible for the advertising, statements, practices, promises or services of sellers, installers, or manufacturers of Fourinment or Receivers. You should consult your owner's manual or the packaging for important information regarding warranties related to Receivers and Equipment. If you have any complaints about your Receiver, Equipment or installation, you should direct them to the seller, manufacturer or installer. Returns of Receivers and Equipment 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, atternate Web Device, modern 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
- 4. Loss of Equipment: Because your Satellite Radio Service Subscription is tied to a particular Receiver, 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, regardless of your use of the Satellite Radio Service.
- 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 TRANSFERÅBLE 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 of Satellite Radio Service Subscriptions are subject to a transfer fee, as set forth herein.

#### F. 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 this website 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 this or any other software contained in a SIRIUS or XM Radio or our website and/or all hardware and/or software used in connection with either is explicitly prohibited from attempting to copy, decompile,

reverse engineer, nack, manipulate or disassembre are object code, or at any other way conven Hite object code into human, readable form. You may use the Equipment Tephnology only for your. Hersonal, nen commercial use in connected with the cervice. ZU Tage in a great the connected with the cervice.

- 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 our website or included in any Service we offer 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 either 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). Certain real-time traffic data and map data is provided by NAVTEQ, a service of NAVTEQ North America, LLC, to which the following notice applies: @ 2009 NAVTEQ. You may download one copy of the Content to any single computer for your personal, non-commercial home use only, provided that you keep intact all copyright and other proprietary notices. You may not otherwise reproduce, perform, distribute, display or create derivative works from the Content. You may only use the Content and the intellectual Property, access our website and use any services we provide through our website as expressly permitted in these Terms of Service and for no other
- 3. Trademarks: SIRIUS Satellite Radio®, the dog loop, and SIRIUS Internet Radio® are trademarks. service marks or registered marks of SIRIUS XM Radio Inc. ("Marks"). Other trademarks, service marks, graphics, logos and domain names appearing on the Service or the website may be the trademarks of third parties. Neither your access to and use of the Service or website 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 SIRIUS.
- 4. Copyright: If you are authorized to act on behalf of a copyright owner, and any material on our website infringes on the rights of the owner, please notify our designated agent:

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 infrinced:
- 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 swom 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 also pay in advance by electronic funds transfer ("EFT"). You may combine payment with, as applicable, a SIRIUS or XM Prepaid Subscription card. You may also pay by check or money order. If you pay by check or money order you will receive an invoice by mail and will be required to make your first payment before your Subscription is activated. 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 SIRIUS Account Number on vour check or money order

SIRIUS XM Radio Inc. PO Box 78211 Phoenix AZ 85062-8211

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 enect at the time of fenewal, we may, at our option, diocess your fenewal 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 Customer 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 statement for the billing plan you selected, if you elect to pay by check or money order, we may charge you a fee of up to \$2.00 per invoice. Otherwise, billing statements will be provided only upon request. If you would like to receive a statement for a particular period, please contact Customer 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.
- 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 immediately 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 prepayments to past due amounts and any remaining credit to future obligations.
- 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
  - · 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. The activation fee is currently \$15.00 for SIRIUS and \$14.99 for
  - . 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 FAOs.
  - . Invoice Administration Fee: If you elect to pay by check or money order, we will charge you an administration fee. The 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 such charge or payment 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 such charge or payment 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 charned a \$5.00 fee.
- A La Carte Channel Change Fee: If you have a Subscription Package which is "A La Carte," while there is no fee for the initial selection of channels, for each subsequent change to 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.
- Canceltation Fee: You will be charged a cancellation fee if you cancel a one-year or longer Subscription during the first year of service. The standard 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 navments for Services to be received and that are ordered by you in accombance with the terms of the applicable billing plan and promotion that you agree to, including, without limitation, payments of any early termination fees if you terminate your Services 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 SIRIUS may be subject to tax, which will vary according to your billing or shipping address and applicable law.









# **EXHIBIT E**

## . CUSTOMER LIST.

is our policy not to share our customer list with third arties. If we revise this policy, we will notify you in advance nd comply with legal and other applicable obligations.

#### . LIMITS ON OUR RESPONSIBILITY.

) DISCLAIMERS. YOU UNDERSTAND AND AGREE THAT HE SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE."
/E MAKE NO WARRANTY, EITHER EXPRESS OR IMPLIED, :EGARDING THE SERVICE OR YOUR SIRIUS RECEIVER OR THER EQUIPMENT. ALL SUCH WARRANTIES (INCLUDING, //ITHOUT LIMITATION, THE IMPLIED WARRANTIES OF 1ERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ITLE AND NONINFRINGEMENT) ARE HEREBY ISCLAIMED.

) LIMITATIONS OF LIABILITY. WE ARE NOT RESPONSIBLE OR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL AMAGES OR LOSSES RELATING TO THE USE OR 'URCHASE OF ANY SIRIUS RECEIVER OR EQUIPMENT OR HE SERVICE, WHETHER BASED ON NEGLIGENCE OR THERWISE, AND WHETHER OR NOT WE HAVE BEEN DVISED OF THE POSSIBILITY THEREOF. OUR TOTAL JABILITY TO YOU AND ANY OTHER PERSONS RECEIVING HE SERVICE, REGARDLESS OF THE CAUSE, WILL IN NO EVENT EXCEED THE AMOUNTS THAT YOU HAVE PAID TO US FOR THE SERVICE THAT YOU RECEIVED DURING THE SIX-40NTH PERIOD IMMEDIATELY PRIOR TO THE SPECIFIC EVENT THAT GAVE RISE TO THE APPLICABLE DAMAGE OR .OSS. THIS ALLOCATION OF RISK AND THE DISCLAIMER )F WARRANTIES IN SECTION 8(a) ARE REFLECTED IN OUR PRICES AND ARE A FUNDAMENTAL ELEMENT OF OUR AGREEMENT TO PROVIDE THE SERVICE. YOU MAY HAVE REATER RIGHTS THAN DESCRIBED ABOVE UNDER YOUR STATE'S LAWS.

#### ). RESOLVING DISPUTES.

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

I) Informal Resolution. We will first try to resolve any Claim nformally. Accordingly, neither of us may start a formal proceeding (except for Claims described in Section 9(d)) for it least 60 days after one of us notifies the other of a Claim n writing. To initiate a Claim, you must send notice by US mail to the address at the beginning of these Terms. If SIRIUS nitiates a Claim, we will send our notice to the service address on file with us.

a) Formal Resolution. Except as provided in Section 9(d), if we cannot resolve a Claim informally, any Claim either of us asserts will be resolved only by binding arbitration. The arbitration will be conducted under the Commercial Arbitration Rules of the American Arbitration Association "AAA Rules") that are in effect at the time the arbitration is nitiated and under the rules set forth in these Terms. If there is a conflict between the AAA Rules and these Terms,

these Terms will govern. ARBITATION MEANS THAT OUT TO A REPORT TO

WAIVE YOUR RIGHT TO A JURY TRIAL. If you initiate an arbitration, you agree to pay a fee of \$125 or, if less and you tell us in writing, the amount that you would pay to initiate a lawsuit against us in the appropriate court of your state. We agree to pay any additional fee or deposit required by the American Arbitration Association in excess of your filing fee. We also agree to pay the costs of the arbitration proceeding up to a maximum of one-half day (four hours) of hearings. Other fees, such as attorney's fees, expenses, travel to the arbitration and the costs of a proceeding that goes beyond one-half day, will be paid in accordance with the AAA rules. The arbitration will be held at a location within 100 miles of your residence unless you and we both agree to another location. To start the arbitration, you or we must do the following things:

(i) Write a demand for arbitration. The demand must include a description of the Claim and the amount of damages sought to be recovered:

(ii) Send three copies of the demand for arbitration plus the appropriate filing fee to: American Arbitration Association, 601 Pennsylvania Avenue, N.W., Suite 700, Washington, DC 20004;

(iii) Send one copy of the demand for arbitration by US mail to the address at the beginning of these Terms (if you start the arbitration), or to the Subscription address on file with us (if we start the arbitration).

c) Binding Effect. In the arbitration proceeding, the arbitrator must follow applicable law, and any award may be challenged if the arbitrator fails to do so. Otherwise, the arbitrator's decision is final and binding on all parties and may be enforced in any federal or state court that has jurisdiction. A court may sever any portion of this Section 9 that it finds to be unenforceable.

d) Exceptions. Notwithstanding the foregoing, any:

(i) Dispute over the validity of either party's intellectual property rights or our licenses to operate our business;

(ii) Claim based on Section 1(b) above; and

(iii) Dispute involving a violation of the Communications Act of 1934, 47 U.S.C. §605, or the Electronic Communications Privacy Act, 18 U.S.C. §§2510-2521,

may be decided only by a court of competent jurisdiction. Nothing in these Terms shall affect our ability to terminate your Subscription for nonpayment of amounts owed to us when due. Furthermore, nothing in these Terms will prevent us from bringing an action in a court of competent jurisdiction in order to collect any unpaid amounts.

## 10. MISCELLANEOUS.

a) Notice. 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

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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 address (regular or email) or telephone number set forth at the beginning of these Terms.

b) Applicable Law. The interpretation and enforcement of these Terms shall be governed by the rules and regulations of the Federal Communications Commission, other applicable federal laws, and the internal laws of the State of New York. These Terms are subject to modification if required by such laws. Notwithstanding the foregoing, Section 9 shall be governed by the Federal Arbitration Act.

c) 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.

d) Other. These Terms make up our entire agreement relating to your Subscription. No salesperson or other representative is authorized to change it for you, although SIRIUS may modify it without prior notice to you (see Section 2). 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.

THANK YOU FOR CHOOSING SIRIUS SATELLITE RADIO.



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WK-T&C-0405

Thank you for choosing SIRIUS Satellite Radio ("SIRIUS"). These are the ferms and Conditions (the "Terms") for your subscription to the SIRIUS Satellite Radio service. Please keep this copy of the Terms for your records.

IF YOU DO NOT ACCEPT THESE TERMS, PLEASE NOTIFY US IMMEDIATELY (OUR ADDRESS AND PHONE NUMBER ARE BELOW) AND WE WILL CANCEL YOUR SUBSCRIPTION. IF YOU DO NOT CANCEL YOUR SUBSCRIPTION WITHIN 3 DAYS, IT WILL MEAN THAT YOU AGREE TO THESE TERMS AND THAT THEY WILL BE LEGALLY BINDING ON YOU.

#### CONTACT INFORMATION:

You may contact Customer Care 24 hours a day, 7 days a week, by calling [888] 539-7474, by email at: customercare@sirius-radio.com or by writing to:

SIRIUS Satellite Radio 1221 Avenue of the Americas New York, NY 10020 Attention: Customer Care

### 1. GENERAL.

a) Programming. SIRIUS Satellite Radio (the "Service") consists of a wide variety of music, sports, news, talk, children's and other entertainment. Many different and changing considerations affect the availability, cost, quality of programming and customer demand for it. Accordingly, we reserve the unrestricted right to change, rearrange, add or delete programming, including canceling; moving or adding particular channels, and our prices, at any time, with or without notice to you. You always have the right to cancel your subscription to the Service (your "Subscription"), in whole or in part, if you do not accept any change. If you do not cancel your Subscription within 30 days of a change, your continued receipt of the Service will constitute your acceptance of such changes.

b) Eligibility; Use Limitations. You must be at least 18 years old to assume the obligations set forth in these Terms. Minors may use the Service only if a parent or legal quardian assumes the obligations set forth in these Terms and thereby assumes full responsibility for the minor's use of the Service. We provide the Service only for your personal, noncommercial 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. If you use the Service for commercial purposes, we reserve the right to charge you our commercial rate retroactively to the beginning of your Subscription. Notwithstanding the provisions of Section 9, we or any of our programming partners may prosecute violations of the foregoing against you and other responsible parties in any court of competent jurisdiction. under the rules and regulations of the FCC and other applicable laws. Subscription to the Service does not grant you the right to use any of our or our partners' trademarks.

- c) Service Area. We offer the Service solely in the continental United States. If your service address is not in the continental US, your SIRIUS Receiver (as defined below) will not be activated to receive the Service. We reserve the right to verify any address you provide, and to terminate your Subscription and keep any payments you have made to us, in the event you have provided an incorrect service address.
- d) Safety. It is your responsibility to exercise discretion and observe all safety measures required by law and your own common sense. SIRIUS assumes no responsibility for accidents resulting from or associated with use of the Service.
- e) Parental Control. Some programming may include explicit language. It is your responsibility to impose listening restrictions that you consider appropriate on your family members and quests as you feel appropriate. We are not responsible for content that you or anyone else may find inappropriate. Please contact Customer Care to discuss options for channel blocking.
- 2. SPECIAL OFFERS; CHANGES TO TERMS AND CONDITIONS. a) Special Offers. We may from time to time make available special offers which supplement or modify the terms and conditions set forth in these Terms. Details of such special offers, including eligibility requirements for participation, will be made available separately. In the event of any conflict between these Terms and the terms of such offers, the terms of such offers shall govern. Only offers made or expressly authorized by SIRIUS can alter the terms and conditions set forth in these Terms.
- b) Changes to Terms and Conditions. We reserve the right to change these Terms, including our fees and charges, from time to time. If we make any changes, we will send you a notice describing them and their effective date, in the manner described in Section 10(a), or we will send you an entirely new set of Terms to replace these Terms. You always have the right to cancel your Subscription at any time if the Terms are not acceptable to you. If you do not cancel your Subscription within 30 days, your continued receipt of the Service will constitute acceptance of the changed Terms. If you notify Customer Care that you do not accept such Terms, then we may cancel your Subscription as provided in Section 6.

## 3. SERVICE INTERRUPTIONS.

Service may be unavailable or interrupted from time to time for a variety of reasons, such as environmental or topographic conditions and other things we cannot control. 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. We are not responsible for any interruptions of Service that occur beyond our reasonable control.

a) Authorized Suppliers. You may access and use the Service only with equipment authorized to receive the Service. We only provide the Service. We do not make or install any of the receivers ("SIRIUS Receivers") or related equipment ("Equipment") you may use to receive the Service. You must purchase your SIRIUS Receiver and Equipment, and any repairs, parts, installation or service, from an authorized seller or manufacturer. We are not liable for any damage to your vehicle,

any SIRIUS Receiver or Equipment. We do not warrant any SIRIUS Receiver or Equipment in any way whatsoever and are not responsible for the advertising, statements, practices, promises, services or warranties of such sellers or manufacturers. If you have any complaints about your SIRIUS Receiver, Equipment or installation, you should direct them to your authorized seller, manufacturer or installer. Returns of SIRIUS Receivers and Equipment are subject to your authorized seller's or manufacturer's return policy.

- b) Multiple SIRIUS Receivers. If you add additional SIRIUS Receivers, you must purchase a separate Subscription for each one. All of your Subscriptions may be on a single
- c) Loss of Equipment. You should report to SIRIUS and cancel or suspend (see Section 6(d)) your Subscription if your SIRIUS Receiver is lost, stolen, sold, transferred or otherwise removed from your possession without your permission. Otherwise you will continue to be liable for use of the Service.
- d) Technology. You may not, and you agree that you shall not, copy, decompile, disassemble, reverse engineer or manipulate any technology incorporated in, or otherwise modify or tamper with, any Equipment.

### 5. PAYMENT.

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

- a) Subscription Fee. You must pay in advance, by credit card or branded debit/check card, or, for committed Subscriptions of at least one year in length, by check or money order, at the rates in effect at the time of payment, for any Service ordered for use with your SIRIUS Receiver (including Service ordered by your children or other family members or drivers of your vehicle), with or without your permission, through all periods until your Service is canceled. You will receive a paper invoice only if you commit to a Subscription of at least one year in length and elect to pay by check or money order. You will be responsible for all Subscription fees, other charges and fees and purchases under your account. Our Subscription fees and other charges and fees are subject to change.
- b) Billing Statements. Billing statements will be provided only upon request. If you would like to receive a statement for a particular period, please contact Customer Care as provided at the top of these Terms. Please include the name and service address on your account in your letter or email. Statements will show: (1) payments, credits, purchases and any other charges to your account; (2) your account balance; and (3) the payment due date
- c) Administrative Fees. In order to minimize our monthly subscription fees, we may charge you one or more of the following fees, all of which are subject to change:
- 1. Activation Fee: We may charge you a one-time fee to activate, reactivate, upgrade or modify each Subscription on your account. The fee is payable in the billing period immediately following the date that the charge was incurred.

# home or other properly resulting from installation or use of S Document 89-2. Filed 12/18/20. Page 20 of 20 Page ID #:940. Section 9 for how to notify us that you are disputing a

of at least one year in length and elect to pay by check or money order, we may charge you an administration fee of up to \$2.00 per invoice.

- 3. Cancellation Fee: If you cancel your Subscription prior to the end of a prepaid Subscription or committed Subscription period, we may charge you a cancellation fee of up to \$75.00.
- 4. Transfer Fee: If you wish to transfer your Subscription to a different SIRIUS Receiver during the term of a prepaid subscription or committed subscription period, we may charge you a transfer fee of up to \$75.00. You may only transfer a lifetime subscription to a different SIRIUS Receiver a maximum of three times.
- 5. Late Fee: If we do not receive your payment by the billing due date, we may charge you a late fee of up to \$5.00 (plus applicable taxes) per month or partial month until the delinquent amount is paid in full, subject to applicable law. We do not extend credit to customers and this late fee is not an interest charge. This fee is reasonably related to the actual expense we incur due to late payment and may be subject to limitations set forth by law in your state.
- 6. Deposits: If you wish to reactivate your Subscription after a deactivation for nonpayment, you must pay your account in full and we may require a deposit toward future service. Deposits will appear on your bills as credits, from which we will deduct our charges. Deposits will not earn interest.
- 7. Account History: If you request a paper history itemizing past payments and changes on your account, we may charge you a fee of up to \$10.00 to offset our costs.
- 8. Returned Payment Fee: If any bank or other financial institution refuses to honor any payment of yours, we may charge you a collection 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 collection fee is not an interest charge, finance charge, time price differential or other such charge or payment of a similar nature and that it is reasonably related to the actual expense we incur due to unsatisfied payment,
- d) Questions About Your Bill. If you have a question about your Subscription or bill, or if you would like to change or reactivate your Subscription, please contact Customer Care as provided on the first page of these Terms. We will respond to you as promptly as we can. If you write or email Customer Care, please include the following information:
  - Your name and service address;
  - Your account password;
  - . 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 within 45 days after the due date of the payment in question (see

charge): OTHERWISE YOU WAIVE YOUR RIGHT TO DISPUTE THE CHARGE. Undisputed portions of your account must be paid by the due date to avoid a late fee and possible deactiva tion of the Service.

- e) Payments. You must pay in US dollars, by credit card or branded debit/check card. The outstanding balance is due in full each payment period. We may, in our discretion, accept partial payments, which will be applied to the oldest outstanding charges on your account.
- f) Consents Regarding Credit. In applying to establish an account with us, you authorize us to inquire into your creditworthiness by checking with credit reporting agencies. If you are delinquent in any payment to us, you also authorize us to report any late payment or nonpayment to credit reporting agencies.
- g) Change of Address or Credit or Charge Card Information You must notify Customer Care immediately of any change in your name, billing address, service address, email address, telephone number, or credit or charge card information.
- h) 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.

## 6. CANCELLATION.

- a) Term. The term of your subscription is indefinite and Service will continue until canceled.
- b) Your Cancellation. You may cancel your Subscription at any time by notifying Customer Care. If you cancel your Subscription prior to the expiration of a prepaid Subscription (that is not a lifetime Subscription), you will receive a refund of any unused Subscription fees based on the number of days remaining in your Subscription. Lifetime Subscriptions are nonrefundable. 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. In addition, if you cancel your Subscription prior to the expiration of a prepaid subscription or committed subscription period, you may be charged a cancellation fee as described in Section 5.
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