

**CUSTOMER AGREEMENT -- PLEASE READ**

**Last Updated: October 14, 2021**

This customer agreement (this "**Agreement**") between you ("**Subscriber**," "**you**" or "**your**") and Sirius XM Radio Inc. (the "**Company**," "**us**," "**our**" or "**we**") applies to your paid, trial, advertising-supported or other subscription ("**Subscription**") to our satellite radio service ("**Satellite Radio**"), our streaming service ("**Streaming**"), and any other service we offer, such as our traffic, weather (including marine and aviation), data and infotainment services (collectively referred to as "**Service(s)**"). If you purchase, redeem or activate a Subscription through a third party (such as through Google, Apple, Roku, Amazon, Best Buy, Sam's Club, any of their affiliates or any other reseller of the Services)(each an "**External Service**"), then you will also be subject to the terms and conditions supplied by the External Service.

**IF YOU DO NOT CANCEL YOUR PAID OR SELF-ACTIVATED TRIAL SUBSCRIPTION WITHIN SEVEN (7) DAYS OF THE START OF YOUR SUBSCRIPTION, THIS AGREEMENT WILL BE LEGALLY BINDING ON YOU. YOUR SUBSCRIPTION WILL BE DEEMED TO START ON THE DAY YOU ARE ABLE TO USE OUR SERVICE OR RECEIVE A COPY OF THIS AGREEMENT, WHICHEVER IS SOONER.**

**FOR NON-SELF ACTIVATED TRIAL SUBSCRIPTIONS, THIS AGREEMENT WILL BE DEEMED BINDING ON YOU IF YOU DO NOT CANCEL YOUR SUBSCRIPTION WITHIN SEVEN (7) DAYS OF RECEIPT OF THIS AGREEMENT OR THIRTY (30) DAYS FROM THE DAY YOU ARE ABLE TO USE OUR SERVICE, WHICHEVER IS SOONER.**

**TO CANCEL YOUR SUBSCRIPTION PLEASE FOLLOW THE INSTRUCTIONS IN "A" BELOW.**

**Trial Subscriptions to our Service will automatically stop at the end of your trial period, unless otherwise stated in our offer details, or you purchase a paid Subscription.**

**If you purchase a Subscription, it will continue under this Agreement for the length of the Plan you've selected (e.g. Annual, Semi-annual, Quarterly, etc.), and will automatically renew for additional periods of the same Plan length, or on a monthly basis, or for the length described in the offer you select, at the rates in effect at that time, unless you cancel it.**

**ANY DISPUTE BETWEEN US MAY BE RESOLVED BY BINDING ARBITRATION ON AN INDIVIDUAL BASIS AS OUTLINED IN SECTION L BELOW. BY AGREEING TO THIS AGREEMENT AND BINDING ARBITRATION YOU ARE WAIVING YOUR RIGHT TO GO TO COURT, INCLUDING THE RIGHT TO A JURY.**

Our Privacy Policy governs the treatment by us of information that we collect when you use the Services, our apps or our website (the "**Site**") and can be found at [www.siriusxm.com/privacy](http://www.siriusxm.com/privacy).

Subscriptions are available to a variety of programming packages, and we refer to them in this Agreement as "**Packages**." Subscriptions are also available in a variety of recurring payment plans, and we refer to them in this Agreement as "**Plans**." Not all Plans are available for all Packages. You have the right to change your Package and your Plan. We reserve the right to

change, rearrange, add, or delete content on the Service or in any Package at any time, without notice. Further, we may modify, offer additional, or cease offering certain Packages or Plans at any time, including adjusting pricing for any Package, fees or components thereof, or modifying the availability of or eligibility requirements for certain Packages or Plans. We reserve the right to migrate you to another Package or Plan at any time.

**A. HOW TO CANCEL:**

**1.** If you purchased your Subscription directly from or through us, you may cancel your Subscription at any time. You must call us or use our online chat feature to cancel your Subscription. In certain circumstances you may be permitted to cancel through other means.

Our cancellation contact information is listed below:

| Service   | Phone Number   | Hours  |
|---|--|--|
| Audio, Streaming, Data and Infotainment Subscriptions | 1-866-635-2349   | Monday - Friday 8:00 a.m. - 8:00 p.m. ET   |
| Aviation & Marine                                     | 1-800-985-9200   | Hours same as above  |
|   | <b>Online Chat</b>   |  |
| All the above   | <a href="http://www.siriusxm.com/contactus">www.siriusxm.com/contactus</a> | Monday - Friday 8:00 a.m. - 11:00 p.m. ET<br>Saturday & Sunday 8:00 a.m.- 8:00 p.m. ET |

All hours of operation are subject to change without notice. Please check the Site for the most up to date hours.

Your cancellation will be effective on the date we receive your notification or on a later date that you request. Uninstalling our app from your devices **does not cancel your Subscription**. In certain circumstances, a cancellation fee may apply, such as when you purchase or receive a radio or other device in combination with a Subscription at a discount.

If you purchased or redeemed a Subscription through an External Service, unless otherwise stated within your purchase terms, you must manage and cancel your Subscription directly with the External Service. We do not manage Subscriptions purchased through External Services and cannot cancel those Subscriptions or issue refunds for Subscriptions purchased through an External Service. See Section E(6) below for more information on External Service Subscription purchases.

**2.** We may cancel your Subscription if you fail to pay for your Subscription, breach this Agreement, or for any other reason in our sole discretion. **IF YOUR SUBSCRIPTION IS CANCELLED, YOU ARE RESPONSIBLE FOR PAYMENT OF ANY OUTSTANDING BALANCES ON YOUR ACCOUNT, INCLUDING ANY FEES YOU MAY INCUR OR MAY HAVE INCURRED.**

**B. CONTACT INFORMATION FOR ISSUES, OTHER THAN CANCELLATION:**

**1. By Phone:** To contact us with Service-related issues:

| Service   | Phone Number   | Hours                                    |
|---|----------------|--|
| Audio, Streaming, Data and Infotainment Subscriptions | 1-888-539-7474 | Monday - Friday 8:00 a.m. - 8:00 p.m. ET |
| Aviation and Marine                                   | 1-855-796-9847 | Hours same as above                      |

All hours of operation are subject to change without notice. Please check the Site for the most up to date hours.

**2. By Chat:** To chat with us online, go to [www.siriusxm.com/contactus](http://www.siriusxm.com/contactus) (see hours on the Site).

**3. By Mail:** For all Services, write to: Sirius XM Care, P.O. Box 33174, Detroit, MI 48232. For Aviation and Marine Services, please note, "Attention: AV+MAR Care." For all other Services, please note "Attention: Listener Care."

**C. AUTOMATIC RENEWAL:** A paid Subscription, including those with a free or discounted introductory period, will continue for the length of your selected paid Plan ("**Subscription Term**") and will automatically renew for additional like periods or any other length described in our offer, unless you cancel prior to that renewal, your Subscription is cancelled 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 each renewal, plus fees and taxes. If you do not accept the change in pricing, you have the right to reject the change by cancelling your Subscription prior to the change taking effect. Changes in pricing will take effect at the start of the next Subscription period following the date of the price change. We may, at our option, process your renewal on a month-to-month basis or, if you are on a multi-year Plan (e.g., two- or three-year plan), reduce the renewal to an annual or lesser period instead of your chosen Subscription Term.

**D. CHANGES IN TERMS:** WE RESERVE THE RIGHT TO CHANGE THIS AGREEMENT AT ANY TIME. ANY CHANGES WILL BE EFFECTIVE UPON POSTING OF THE REVISIONS AT [WWW.SIRIUSXM.COM](http://WWW.SIRIUSXM.COM) WHICH IS REFLECTED IN THE DATE LAST UPDATED. FOR EXISTING ACTIVE SUBSCRIPTIONS, SUCH CHANGES SHALL BE EFFECTIVE THIRTY (30) DAYS AFTER POSTING OF THE REVISIONS AT [WWW.SIRIUSXM.COM](http://WWW.SIRIUSXM.COM). YOUR CONTINUED USE OF THE SERVICE AFTER THAT DATE WILL CONSTITUTE YOUR ACCEPTANCE OF SUCH CHANGES. If you access the Service through a mobile device or our 360L radios, such changes may also be communicated through updated versions of the Service software, which you consent to receive without further notice.

**E. PACKAGES AND PLANS:**

**1. Multiple Subscriptions:** You may have multiple radios and multiple Subscriptions. Each Subscription to the Satellite Radio Service is tied to one radio. A separate Subscription is required for each radio. If you have more than one Subscription on your account, the additional Subscriptions may be eligible for reduced rates. To qualify for and maintain a reduced rate, you must meet the following qualifications: (1) your Subscriptions must be on one account; and (2) you must have at least one active Subscription on an eligible Package with a full-price Plan. Eligible Packages are determined solely by us. Trial Subscriptions, ad-supported, promotional or discount priced plans are not full-priced Plans and do not qualify for additional Subscriptions for reduced rates.

**2. Lifetime Subscription Plan:** We previously sold Lifetime Subscriptions. This plan is no longer offered for sale. Lifetime Subscriptions are not transferable from one person to another. Lifetime Subscriptions are nonrefundable. You may transfer an active Lifetime Subscription to another radio an unlimited number of times. For each permitted transfer of a Lifetime Subscription, you will be charged a \$35 transfer fee, and the transfer must be effectuated on the Site.

**3. Business Establishment Subscriptions:** Details for commercial subscribers and the Sirius XM Music for Business Services, including FAQs, can be found at [siriusxm.com/siriusxmforbusiness](http://siriusxm.com/siriusxmforbusiness).

**4. Preview Subscriptions:** Preview is our ad-supported Subscription Service. You must subscribe to Preview and such Service will continue until you or we cancel your Subscription, your radio is transferred, or you purchase a paid Subscription. Our Preview Service may differ depending on the capabilities of your radio and the availability of the Preview Subscription Service is subject to eligibility.

**5. Offer Details:** Offers and particular Packages and Plans may be subject to additional limitations and eligibility requirements, which are presented to you at or before the point of sale. Visit the Site for additional limitations that may apply to certain Packages and Plans. You must meet all offer qualifications or adhere to any limitations disclosed with the offer details, including specific radio requirements, Service terms, subscriber eligibility and account qualifications. Eligibility for a particular Package, Plan or rate does not guarantee its future availability to you, its transferability, or your eligibility for such Service on other radios or Subscriptions on your account. We reserve the right to discontinue all discounts or change the terms of such discount, at any time.

**6. Subscriptions Purchased Through An External Service:** If you purchase a Subscription through an External Service: (i) your Subscription account is managed by and your payments will be processed and collected by the External Service, not us; (ii) the External Service will charge you on a recurring basis in accordance with the Package and Plan selected, which fees, refund and credit policies and cancellation requirements may differ from those available directly from us; and (iii) any inquiries related to your Subscription including matters related to payments, renewals, pricing, refunds or cancellation, must be made to the External Service directly. Subscriptions purchased through an External Service cannot be added to any account you may otherwise have directly with us, and such Subscriptions will not qualify for discounts or account features we offer, such as Service suspensions. Subscriptions purchased from External Services cannot be transferred to your account directly with us. If you elect to purchase a Subscription directly from us and you previously purchased a Subscription from an External Service, you must cancel your Subscription managed by that External Service in order to avoid duplicate charges. **If you obtained your Subscription through an External Service, you must cancel directly with such External Service.** You are responsible for reviewing all terms and policies provided by the External Service before purchase. The External Service will be solely responsible for all communications with you regarding your Subscription account, including, renewal terms, billing cycles, fees, rate increases, refund policies, and payments. In the event the External Service is unable to charge your payment method for the Subscription due to insufficient funds, expired or invalid account details or otherwise, you remain responsible for the cost of the Subscription and any cost of collection set out in purchase terms with the External Service. The External Service reserves the right to suspend your access to the Service until such time as your payment method is updated and Subscription fees are paid. The External Service will not support services for technical issues related to accessing the Service or respond to Service product claims and will not be responsible for any product or intellectual property claims associated with the Service.

**7. Promotional Offers:** Our Service may be offered with third-party products, services or

other offers (a "**Co-Promotion**") in accordance with the applicable terms for the Co-Promotion. We are not responsible for the products and services provided by third parties. Co-Promotions will be subject to additional terms, including those provided by such third parties. Your eligibility for use of our Service through a Co-Promotional offer will be solely determined by us and we may limit participation in our Service through any Co-Promotional offering. By subscribing to a Package that includes a Co-Promotion, you agree that certain contact information (e.g. name, email, phone, postal address) may be provided to the third parties providing such Co-Promotional service for purposes of accessing your eligibility, activating, fulfilling and communicating with you about such services. Any contact information received by these third-party providers will be subject to such their respective privacy policies.

**F. FINANCIAL MATTERS:** If you purchase a paid Subscription, you agree to pay us in advance as follows:

**1. Subscription Billing Payments:**

- **Credit Card Billing:** You may pay by credit card, debit card, a SiriusXM® Prepaid Service card or a SiriusXM® Visa gift card. We may obtain updated information regarding your selected payment method as made available by your financial institution or through a credit card updater service. For recurring payments, the gift card issuer may not permit you to use gift cards. Your card will be charged on the day you select the Subscription and on the day of each renewal of your Plan, or according to the payment terms in any offer you accepted.
- **Invoice Billing:** For some Packages and Plans, you may request to receive an invoice by mail (a "**paper invoice**") or by email (an "**e-bill**"). If you choose a paper invoice, you may be charged an Invoice Administration Fee. Payments may be made by check mailed to the address on the paper invoice. You must include your SiriusXM Account Number on your check. You may also pay online with a credit or debit card by logging into your account. If you choose an e-bill you will receive an email with a link to your online account where you can view your e-bill and make your payment with a credit or debit card or via ACH payment (electronic debit from your account) as available. There is no Invoice Administration fee charged with an e-bill. Invoice billing is not available for all Packages or Plans.

**2. Payments:** All payments must be made in U.S. Dollars. If you do not pay your balance, we will deactivate your Subscription for non-payment and charge a late fee. For unpaid amounts, we reserve the right to retry your payment method. If you choose to reactivate your Subscription we may charge you an activation fee, and we will apply payments first to any past due amounts and then to your current and future obligations.

**3. Taxes:** All amounts charged to your account may be subject to tax, which will vary according to the address on your account and are your responsibility.

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

- **Activation Fee:** For each radio on your account, we may charge you a fee to activate, reactivate, upgrade or modify your Service.
- **U.S. Music Royalty Fee:** Packages which include music channels may be charged a U.S. Music Royalty Fee. See [www.siriusxm.com/usmusicroyalty](http://www.siriusxm.com/usmusicroyalty).
- **Invoice Administration Fee:** If you request to receive a paper invoice, we may charge you an invoice administration fee on each paper invoice rendered,

except where prohibited.

- **Late Fee:** If payment is not received in a timely manner, we may charge you a late fee. This fee is not an interest charge, finance charge, or other charge of a similar nature.
- **Returned Payment Fee:** If any financial institution refuses to honor your payment, we may charge you a fee. 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.
- **A La Carte Channel Change Fee:** If you have an "A La Carte" Package, for each subsequent transaction to change your initial channel selections, you may be charged a fee.
- **Transfer Fee:** If you transfer a Subscription from one radio to another you may be charged a transfer fee. Lifetime Subscription transfer fees may differ from traditional packages transfer fees. SATELLITE RADIO SERVICE SUBSCRIPTIONS ARE TRANSFERABLE ONLY TO THE EXTENT PROVIDED HEREIN.
- **Cancellation Fee:** Cancellation fees or early termination fees may be charged in connection with certain offers.

We reserve the right to waive any of these fees at our discretion.

- 5. Credits:** If you change an existing Package or Plan, we will charge you the difference for the new Subscription. If the new fee is less than the fee you already paid for your current Package or Plan, you may request a refund or leave the credit on your account and it will be automatically applied to the next charge. If you make changes to a Lifetime Subscription, trial Subscription, Subscription included in the sale or lease price of an automobile, and certain promotional Subscriptions, no credits will apply.

IF A SERVICE CREDIT IS APPLIED TO YOUR ACCOUNT (THAT IS A CREDIT PROVIDED AS AN ACCOMMODATION, AND NOT DUE TO A CHANGE IN SERVICE), SUCH UNUSED SERVICE CREDIT WILL EXPIRE UPON TERMINATION OF YOUR SUBSCRIPTION AND MAY NOT BE REFUNDED OR TRANSFERRED TO ANOTHER PERSON.

- 6. Billing Disputes:** If you purchased your Subscription directly with us and you have a question about your bill, please contact us by mail, phone, or by chat at [www.siriusxm.com/contactus](http://www.siriusxm.com/contactus). If you contact us in writing (as provided in Section B above), please include the following information: Your name, service address, account number, and the details of your question. If you wish to dispute any charge, you must contact us within thirty (30) days after the date of the charge in question. OTHERWISE YOU WAIVE YOUR RIGHT TO DISPUTE THE CHARGE.
- 7. Refunds:** LIFETIME SUBSCRIPTIONS, TRIAL SUBSCRIPTIONS, SUBSCRIPTIONS INCLUDED IN THE SALE OR LEASE PRICE OF AN AUTOMOBILE AND CERTAIN PROMOTIONAL SUBSCRIPTIONS ARE NONREFUNDABLE. If you cancel any other paid Subscription prior to its renewal date or expiration, we will refund amounts paid in advance, on a pro-rated basis, less any applicable fees, unless stated otherwise in the specific offer for Service that you accepted. Fees attributable to certain promotional offerings or Service received during trial periods may not be refunded.
- G. RIGHT TO TRANSFER A SUBSCRIPTION:** Paid Subscriptions are generally transferable to another inactive radio and may be subject to the payment of a transfer fee. Subscriptions purchased through an External Service are not transferrable. Subscriptions are not

transferable to another person. SUBSCRIPTIONS THAT ARE INCLUDED AS PART OF THE SALE OR LEASE OF A VEHICLE ARE NOT TRANSFERABLE to another radio. Subscriptions may be cancelled by us upon the sale and/or transfer of the vehicle to a subsequent owner provided we receive notice of such sale or transfer. For your convenience and based upon new vehicle sale records, we may transfer your current active satellite Subscription from your previous vehicle to your new vehicle. We will provide written notice of this automatic transfer and you will have the right to cancel your Service at any time. Preview Subscriptions are not transferrable.

## **H. USE OF SERVICE:**

**1. Eligibility:** You must be at least 18 years old to purchase a Subscription.

**2. Service Area:** We offer the Satellite Radio Service in the 48 contiguous United States and the District of Columbia. Our Satellite Radio Service is also available in Puerto Rico (with coverage limitations and capable receivers). The Streaming Service area includes our Satellite Radio Service area and also Alaska, Hawaii and Puerto Rico. (The Satellite Radio Service and Streaming Service areas are collectively referred to as the "**Service Area**"). Our aviation and marine weather Services are available in the continental United States and its coastal waters as well as Southern Canada. Our other Services, including traffic and weather services, are not available in all markets in the Service Area. Please consult our FAQs at [www.Siriusxm.com/FAQs](http://www.Siriusxm.com/FAQs) or contact us to find out if those Services are available in your area.

**3. Streaming Service:** You may use the Streaming Service on one device at a time per Subscription, unless otherwise described in our offer. The Streaming Service is intended to be enjoyed within the Service Area only. Any manipulation of the Service or "spoofing" of a web device or any other activities undertaken to deliver a false geographical location or any other false information to our servers is a violation of this Agreement.

**4. Personal Use of the Service:** The Service is provided only for your personal, non-commercial enjoyment. You may not make commercial use (except through our Music For Business service) of, or record (except as permitted in subsection 5 below), charge admission for listening to or distribute playlists of our programming. Should your username and/or password be lost or stolen, go to [www.siriusxm.com/myaccount](http://www.siriusxm.com/myaccount) to change it immediately.

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

**6. Service Interruptions:** The Satellite Radio Service may be unavailable or interrupted for a variety of reasons, many of which we cannot control. The Streaming Service may be unavailable or interrupted from time to time as a result of difficulties with the Internet generally or other things we cannot control. Your use of the Service may count toward your data usage, depending on the terms of your agreement with your Internet service provider.

**7. Advisory Nature of Services; User Responsibility; User Safety/Reliance; Parental Control:** You assume the entire risk related to your use of the Service. The traffic, weather, marine weather, aviation weather, and other content and emergency alert information and data on the Service is not for "safety for life," but is merely advisory in nature. You should not rely on such information in any aircraft, sea craft, automobile, or any other usage, including disease or diagnosis. We are not responsible for any errors or inaccuracies in information provided over the Service or its use. Some programming includes explicit language. We are

not responsible for content that you or anyone else may find offensive or inappropriate.

**8. Service Suspension:** Subscribers to our audio, data, marine weather and aviation weather Services may request that their paid Subscription be temporarily suspended one time in any calendar year for a duration of up to six months. You must call us to suspend service. Suspended Subscriptions will receive no service, accrue no Subscription fees, and be charged no fees to restore service to active status, provided that service is restored within the permitted six-month period. Services that are suspended will be automatically reactivated on the earlier of the date requested, or the six-month anniversary of the date the paid Subscription was suspended. If you requested a service suspension while in a promotional period, this suspension will not change the end date of your promotional period.

**9. Service Updates:** We reserve the right to automatically update the Service and related software, including providing bug fixes and other changes. These updates may happen automatically in the background at any time (and that they cannot be disabled by you). By using the Service, you hereby agree to receive such updates.

**10. User Code of Conduct:** You may not reproduce, sell, resell or otherwise exploit any resource, or access to any resource, contained on the Service. You are prohibited from using any services or facilities provided in connection with the Service to compromise security or tamper with system resources and/or accounts. The use or distribution of tools designed for compromising security (e.g., hacking, data mining, account stuffing, cracking tools or network probing tools) is strictly prohibited. If we believe that you have engaged in any of the fraudulent, deceptive or malicious activity in connection with your use of the Service, we reserve the right to take any action to remedy such activity, including termination of your account and other legal or corrective action.

**11. User Submissions and Appearances:** We are free to use and sublicense any comments, information, ideas, concepts, reviews, or techniques, or any other material including your name, likeness, personality, voice, and any other materials or information you provide to us or contained in any communication you may send to us ("**Feedback**"), including responses to questionnaires or through postings to our Website, mobile application(s), social media, blogs, forums, contests, appearances on our programming or at our events, in perpetuity without further compensation, acknowledgement or payment to you for any purpose whatsoever including developing, manufacturing and marketing products and creating, modifying or improving our Service or use in our broadcasts. In addition, you agree not to enforce any "moral rights" in and to the Feedback, to the extent permitted by applicable law.

## **I. RADIOS AND OTHER EQUIPMENT:**

**1. Authorized Equipment:** 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 radio or accessories. Consult your owner's manual or the packaging for important information regarding warranties related to radios and accessories.

**2. Loss or Transfer of Radio:** If your radio is lost, stolen, sold or otherwise transferred, including by sale of your vehicle, you must cancel your Subscription or you will remain responsible for the payment obligations.

**3. For Customers Using Certain 360L Equipment; Your Relationship with the Wireless Service Provider:** Certain radios and equipment that receive our 360L service may be sold or provided with wireless Internet service by a telecommunications carrier arranged by



us or by a third party, such as an automaker. Our "360L" service refers to the service we provide to radios utilizing a combination of our satellite network and a wireless Internet connection. Certain features and/or content may not be available unless an active data connection is enabled in the vehicle or on the device. Content may vary between our satellite and Internet streaming platforms and by subscription package. Subscribers that receive our 360L service with wireless Internet service by a telecommunications carrier arranged by us or a third party: (1) have no contractual relationship with the underlying wireless service carrier for your 360L service; (2) are not a third party beneficiary of any agreement with that wireless service provider; (3) agree that the wireless service provider has no liability of any kind to you, whether for breach of contract, warranty, negligence, strict liability in tort or otherwise; (4) acknowledge that data transmissions and messages may be delayed, deleted or not delivered, and 911 or similar emergency calls may not be completed; and (5) understand that such wireless service provider does not guarantee the security of wireless transmissions and will not be liable for any lack of security relating to the use of the service. Sound and display quality may be affected by various factors such as device, location, bandwidth and available speed of your wireless Internet service. In cases where the wireless Internet service is not arranged by us or a third party, you are responsible for your wireless service connection and for all related service charges. Please check with your wireless service provider regarding any data use fees. Use of 360L service in a vehicle may be subject to acceptance of additional automaker terms and conditions.

## **J. OUR HARDWARE, TECHNOLOGY AND CONTENT:**

**1. Technology:** You agree not to copy, decompile, disassemble, reverse engineer, make derivative works of or manipulate any technology, data or content stored or incorporated in any radios, our apps, equipment or software used to receive the Service. You 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 Streaming 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 available on the Site or included in the Service (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 are owned by us 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 or our apps, nor does 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).

**3. Trademarks:** Sirius Satellite Radio®, Sirius®, SXM®, SiriusXM Internet Radio®, SiriusXM®, XM® and the XM logo 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 Site may be the trademarks of third parties. Neither your access to and use of the Service or the Site grants 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.

## **K. LIMITATION OF LIABILITY:**

**1. Disclaimers:** ALL OF OUR SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE." ALL WARRANTIES (INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF

MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT) ARE HEREBY DISCLAIMED.

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 OR OUR APPS. WE ASSUME NO RESPONSIBILITY FOR ACCIDENTS, DAMAGES OR OTHER LOSSES RESULTING FROM OR ASSOCIATED WITH USE AND/OR MISUSE OF THE SERVICE OR OUR APPS.

**2. Limitations of Liability:** IN NO EVENT ARE WE OR ANY THIRD PARTY, INCLUDING ANY EXTERNAL SERVICE, 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 RADIO OR EQUIPMENT, OR YOUR PURCHASE OR USE OF THE SERVICE, YOUR USE OF THE SITE OR OUR APPS, 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 LIABILITY OF THE COMPANY AND COMPANY'S AFFILIATES OR ANY THIRD PARTY ARISING OUT OF OR RELATED TO, DIRECTLY OR INDIRECTLY, THE PERFORMANCE OR NONPERFORMANCE OF THIS AGREEMENT OR BY THE NEGLIGENCE, ACTIVE OR PASSIVE, OF THE COMPANY, AND/OR ITS AFFILIATES, EXCEED THE PRICE PAID BY YOU TO THE COMPANY OR YOUR EXTERNAL SERVICE PROVIDER 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 A FUNDAMENTAL ELEMENT OF THIS AGREEMENT.

**3. Your Risk:** YOU AGREE THAT YOUR ACCESS TO AND USE OF, OR INABILITY TO ACCESS OR USE THE SERVICE, OUR APPS, OR THE SITE IS AT YOUR SOLE RISK. NEITHER WE NOR ANY EXTERNAL SERVICE ARE RESPONSIBLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, OR LOST PROFITS RESULTING FROM YOUR ACCESS TO OR USE OF, OR INTERRUPTIONS IN THE TRANSMISSION OR RECEPTION OF THE SERVICE OR SITE, INCLUDING ANY DAMAGE TO ANY OF YOUR COMPUTERS OR DATA, AND/OR ANY RADIO. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY ANY PERSON SHALL CREATE A WARRANTY OR GUARANTEE IN ANY WAY WHATSOEVER RELATING TO THE SERVICE OR SITE.

**4. 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.

**5. 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.

**6. Indemnification:** EXCEPT FOR OUR WILLFUL MISCONDUCT, YOU AGREE TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE COMPANY, ITS SUBSIDIARIES, SHAREHOLDERS, OFFICERS, AGENTS, EMPLOYEES, LICENSORS AND SERVICE PROVIDERS ("**INDEMNIFIED PARTIES**") FROM ANY AND ALL CLAIMS, LIABILITY AND EXPENSES (INCLUDING ATTORNEYS'

FEES AND EXPENSES), WHETHER IN TORT, CONTRACT OR OTHERWISE, RELATING TO OR ARISING OUT OF YOUR USE OF THE SERVICE, OUR APPS, OR THE SITE, AND ANY BREACH OF THIS AGREEMENT OR APPLICABLE LAW. THIS INDEMNIFICATION OBLIGATION INCLUDES THE ACTS OR OMISSIONS OF ANYONE ACCESSING THE SERVICE, WITH OR WITHOUT YOUR PERMISSION.

#### **L. RESOLVING DISPUTES:**

**PLEASE READ THE PROVISIONS OF THIS SECTION CAREFULLY. IT PROVIDES THAT ANY DISPUTE MAY BE RESOLVED BY BINDING ARBITRATION.** YOU ARE HEREBY WAIVING THE RIGHT TO GO TO COURT, INCLUDING THE RIGHT TO A JURY. IN ARBITRATION, A DISPUTE IS RESOLVED BY AN ARBITRATOR, OR A PANEL OF ARBITRATORS, INSTEAD OF A JUDGE OR JURY. THE PARTIES UNDERSTAND THAT THEY WOULD HAVE HAD A RIGHT OR OPPORTUNITY TO LITIGATE DISPUTES THROUGH A COURT AND TO HAVE A JUDGE OR JURY DECIDE THEIR CASE, BUT THEY CHOOSE TO HAVE ANY DISPUTES RESOLVED THROUGH ARBITRATION.

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, 35th Floor, New York, NY 10020, Attention: General Counsel. Neither of us may start a formal proceeding (except for Claims described in subsection 3 below) for at least sixty (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 dispute as to the validity or applicability of this arbitration clause, then the 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](http://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 the Claim 1) remains in that court, 2) is made solely on our behalf (if brought by us) or on your behalf, and 3) does not seek damages or other monetary relief in excess of \$5,000. However, if that Claim is transferred or appealed to a different court, we reserve our right to elect arbitration.

**5. Cost Sharing:** Whoever files the arbitration pays the initial filing fee. If we file, we pay; if you file, you pay. If you have paid the initial filing fee and you prevail, we will reimburse you for that fee. If there is a hearing, we will pay any fees of the arbitrator and arbitration firm for the first day of that hearing. All other fees will be allocated as provided by the rules of the arbitration firm and applicable law. In no event will you be required to reimburse us for any arbitration filing, administrative, or hearing fees in an amount greater than what your court costs would have been if the Claim had been resolved in a state court with jurisdiction. However, we will advance or reimburse your fee if the arbitration firm or arbitrator determines there is good reason requiring us to do so, or if you ask us and we determine there is good reason for doing so. Each party will bear the expense of its own attorneys, experts, and witnesses, and other expenses, regardless of which party prevails, but a party may recover any or all expenses from another party if the arbitrator, applying applicable law, so determines.

**6. Opt-out of Arbitration:** You may elect to exclude yourself from the agreement to arbitrate by sending a letter (an "**Opt-Out Notice**") to Sirius XM Radio Inc., 1221 Avenue of the Americas, 35<sup>th</sup> Floor, New York, New York 10020; Attention: General Counsel: Arbitration Opt-Out. The Opt-Out Notice must include (1) your first and last name; (2) your postal mailing address; (3) phone number; (4) email address; (5) your Radio ID/ESN (if your Subscription is for vehicle or portable radio); (6) Vehicle Identification Number (if your Subscription is for a vehicle radio); and (7) a clear statement that you do not wish to resolve disputes with the Company through arbitration. The Opt-Out Notice must be received no later than thirty (30) days after the start of your Subscription. You must submit a separate Opt-Out Notice for each of your Subscriptions. All other terms of this Agreement will continue to apply to your Service, including the requirement to participate in informal dispute resolution (Section L(1)), the Class Action Waiver (Section L(7)), and the Applicable Law provision (Section M(4)).

**7. Class Actions and Severability:** You do not have the right to act as a class representative or participate as a member of a class of claimants with respect to any Claim submitted to arbitration or litigation (to the extent you elect to Opt-Out of Arbitration) ("**Class Action Waiver**"). A "**Claim**" does not include any challenge to the validity and effect of the Class Action Waiver, which must be decided by a court. 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, as a private attorney general, or other Subscribers, or other persons similarly situated. The parties acknowledge and agree that under no circumstances will a class action be arbitrated.

The Class Action Waiver is material and essential to the arbitration of any disputes between the parties and is non-severable from this agreement to arbitrate Claims. If the Class Action Waiver is limited, voided or cannot be enforced, then the parties' agreement to arbitrate (except for this sentence) shall be null and void, subject to the right to appeal any limitation or invalidation of the Class Action Waiver. If this entire agreement to arbitrate is determined to be null and void, then the parties agree that any actions shall be brought in the State or Federal courts of New York, New York.

**8. 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.

**M. MISCELLANEOUS:**

**1. Notices:** Notices to you will be deemed given when deposited in the mail, when sent to the email address on file with us, in-app or radio receiver display notification, by posting on Site, or by telephone, which will be deemed given when a message is left with you, someone answering the telephone at your residence or a voice mail system at your phone number on record with us. Notices may be included in statements or other communications to you. You agree that any notices or other communications that we provide to you electronically or by telephone will satisfy any legal communication requirements, including that such communications be in writing. You are responsible for maintaining the accuracy of your account information. Your notices to us will be deemed given when we receive them at the telephone number or, in writing at the address, in Section B above. All bankruptcy notices are to be sent in writing to the mailing address in Section B.

**2. California Residents:** Under California Civil Code Section 1789.3, California users are entitled to the following consumer rights notice: If you have a question or complaint regarding this Site or our Services, please contact us as provided in Section B above. California residents may reach the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by mail at 1625 North Market Blvd., Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210.

**3. Full Agreement:** This Agreement constitutes the entire agreement between us concerning your access to and use of the Service, our apps, or the Site and may be modified by the unilateral amendment of this Agreement and the posting by us of such amended version. This Agreement supersedes any previous agreements or representations. 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.

**4. Applicable Law:** The interpretation and enforcement of this Agreement shall be governed by the laws of the State of New York.

**THANK YOU FOR CHOOSING SIRIUSXM.**

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