

# Whistle Info

**FCC Compliance Statement:** This device complies with Part 15 of the FCC Rules.

Operation is subject to the following two conditions:

1. This device may not cause harmful interference, and
2. This device must accept any interference received, including interference that may cause undesired operation.

**Warning:** Changes or modifications not expressly approved by the party responsible for compliance could void the user's authority to operate the equipment.

**Note:** This equipment has been tested and found to comply with the limits for a Class B digital device, pursuant to Part 15 of the FCC Rules. These limits are designed to provide reasonable protection against harmful interference in a residential installation. This equipment generates uses and can radiate radio frequency energy and, if not installed and used in accordance with the instructions, may cause harmful interference to radio communications.

However, there is no guarantee that interference will not occur in a particular installation. If this equipment does cause harmful interference to radio or television reception, which can be determined by turning the equipment off and on, the user is encouraged to try to correct the interference by one of the following measures:

- Reorient or relocate the receiving antenna.
- Increase the separation between the equipment and receiver.
- Connect the equipment into an outlet on a circuit different from that to which the receiver is connected.
- Consult the dealer or an experienced radio/TV technician for help.

This portable transmitter with its antenna has shown compliance with FCC's SAR limits for general population / uncontrolled exposure.

The maximum listed SAR level is:

- 0.61 W/kg (body).

The antenna used for this device must not be co-located or operating in conjunction with any other antenna or transmitter.

**Canadian Compliance Statement:** This Device complies with Industry Canada License-exempt RSS standard(s).

Operation is subject to the following two conditions:

1. This device may not cause harmful interference, and
2. This device must accept any interference, including interference that may cause undesired operation of the device.

Ce dispositif est conforme aux normes CNR exemptées de licence d'industrie Canada. Le fonctionnement de ce dispositif est autorisé sous réserve des deux conditions suivantes:

1. Ce dispositif ne doit pas produire de brouillage et
2. L'utilisateur du dispositif doit être prêt à accepter tout brouillage radioélectrique reçu même si ce brouillage est susceptible de compromettre le fonctionnement du dispositif.

# Whistle Product Terms of Sale

**IMPORTANT: YOU MUST READ AND AGREE TO THESE WHISTLE PRODUCT TERMS OF SALE ("AGREEMENT") BEFORE OPENING OR USING THE WHISTLE ACTIVITY MONITOR (THE "PRODUCT") IN ANY WAY. IF YOU DO NOT AGREE TO ALL OF THESE TERMS, YOU HAVE NO RIGHT TO USE THE PRODUCT, AND YOU MUST, WITHIN THIRTY (30) DAYS OF YOUR RECEIPT OF THE PRODUCT, (A) CONTACT WHISTLE LABS, INC. ("WHISTLE," "WE," "US," "OUR") AT SUPPORT@WHISTLE.COM AND (B) ARRANGE FOR THE RETURN OF AND REFUND FOR THIS PRODUCT DIRECTLY FROM THE SOURCE FROM WHICH YOU PURCHASED IT. WHISTLE WILL REASONABLY ASSIST YOU WITH RETURNS AND REFUNDS. IF YOU WISH TO RETURN THIS PRODUCT BECAUSE YOU DO NOT AGREE WITH ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, SUCH RETURNS WILL ONLY BE ACCEPTED BY THE PURCHASE SOURCE IF THE PRODUCT IS IN ITS ORIGINAL PACKAGING.**

This Agreement shall govern the sale and license to you ("User," "you," "your") of the Product by Whistle. The Product is designed to be used in connection with the Service(s) (as that term is defined in the Terms of Use, available at <http://www.whistle.com/terms-of-service>) offered by Whistle. This Agreement shall apply only to the Product itself, and not the Services. Your use of the Services shall be governed by the Terms of Use.

You understand and agree that references herein to the "Product" shall mean all parts and components of the Product (including without limitation the Software and any documentation provided by Whistle in connection with the Product).

## Product Use

You may only use the Product for User's own personal, non-commercial use.

As a condition to using the Product, User must sign up for an account with Whistle by downloading the Application and, if applicable, pay any fees associated with such account (as further explained in the Terms of Use). User understands and acknowledges that the Product may not function properly if User does not keep his or her Whistle account current and up-to-date, and pay any fees due, if applicable. Except as expressly set forth herein, all fees paid hereunder and/or with respect to the Product are nonrefundable.

## License

Subject to the terms and conditions of this Agreement and the Terms of Use, Whistle hereby grants a non-exclusive, non-sublicenseable, non-transferable license to User to use the object code version of any software incorporated or embedded into the Product ("Software"), only for User's personal, non-commercial purposes in conjunction with User's use of the Product and only in and as part of the specific hardware into which it is incorporated or designated by Whistle. Except for the license granted under this Section, Whistle and its licensors shall retain all rights, title, and interest in and to the Software and all copies thereof. Notwithstanding anything herein or in the Terms of Use to the contrary, Software provided as part of the Product is licensed, not sold.

This license shall commence on the date a User first uses the Product and will remain in effect in perpetuity, unless earlier terminated in accordance with the provisions of this Section. Whistle may terminate this license immediately upon notice to User, for any reason or for no reason. Upon such termination, User shall have no further right to use the Software for any reason and shall cease use of the Software immediately. The following sections of this Agreement will survive any termination of User's license to the Software: Warranty Disclaimer, Use Restrictions, Liability Limitation, Dispute Resolution, and General.

## Support

Whistle offers email-based support. You may contact our support desk at [support@whistle.com](mailto:support@whistle.com). Whistle does not make any promises regarding how

quickly we will respond to your request for support, or that we will be able to fix any problems you may be having. Any suggestions by Whistle regarding use of the Product shall not be construed as a warranty.

#### **Warranty Disclaimer**

EXCEPT AS SPECIFICALLY PROVIDED HEREUNDER, AND TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, THE PRODUCT IS PROVIDED "AS IS" AND "AS AVAILABLE" AND IS WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. WHISTLE AND ITS DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS, AND PARTNERS DO NOT WARRANT THAT: (A) ANY DEFECTS OR ERRORS IN THE PRODUCT WILL BE CORRECTED; (B) THE PRODUCT IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; OR (C) THE RESULTS OF USING THE PRODUCT WILL MEET YOUR REQUIREMENTS. YOUR USE OF THE PRODUCT IS SOLELY AT YOUR OWN RISK. USER UNDERSTANDS AND ACKNOWLEDGES THAT THE PRODUCT MAY BE USED IN CONNECTION WITH PRODUCTS PROVIDED BY A THIRD PARTY, AND WHISTLE MAKES NO WARRANTY REGARDING THIRD PARTY PRODUCTS OR SERVICES. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO ALL USERS.

#### **Use Restrictions**

User shall not: (a) distribute, market, resell, transfer, or allow any other individual to use the Product; (b) use the Product in connection with any products or services not supplied or provided by Whistle or otherwise approved by Whistle-supplied documentation; (c) remove any proprietary notices, labels, or marks on or in the Product; or (d) decipher, decompile, disassemble, reverse engineer, or otherwise attempt to derive any source code or underlying ideas or algorithms of any part of the Product (including without limitation the Software), except to the limited extent applicable laws specifically prohibit such restriction.

#### **Third Party Products or Services**

The Product may be used in connection with a product or service provided by a third party. Whistle is not responsible for and does not endorse any third-party product or service. ANY USE OF THIRD PARTY PRODUCTS OR SERVICES IS SOLELY AT YOUR OWN RISK.

#### **Liability Limitation**

TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT SHALL WHISTLE, NOR ITS DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, SUPPLIERS, CONTENT PROVIDERS, LICENSORS OR RESELLERS BE LIABLE UNDER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER LEGAL OR EQUITABLE THEORY WITH RESPECT TO THE SERVICE (I) FOR ANY LOSS OF PROFITS, DATA LOSS, LOSS OF GOODWILL OR OPPORTUNITY, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, OR SUBSTITUTE GOODS OR SERVICES, (II) FOR YOUR RELIANCE ON THE PRODUCT (III) FOR ANY DIRECT DAMAGES IN EXCESS (IN THE AGGREGATE) OF THE PRICE PAID BY USER FOR THE PRODUCT (IV) FOR ANY MATTER BEYOND ITS OR THEIR REASONABLE CONTROL. EVEN IF WHISTLE HAS BEEN ADVISED OF THE POSSIBILITY OF ANY OF THE FOREMENTIONED DAMAGES, SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO USER.

#### **Export**

Notwithstanding anything else, User may not provide to any person or export or re-export or allow the export or re-export of the Product, Services or any software or anything related thereto or any direct product thereof (collectively

"Controlled Subject Matter"), in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. Without limiting the foregoing, User acknowledges and agrees that the Controlled Subject Matter will not be used or transferred or otherwise exported or re-exported to countries as to which the United States maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. Use of the Product is representation and warranty that the user is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. The Controlled Subject Matter may use or include encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations.

#### **Dispute Resolution**

User agrees that any cause of action arising out of or related to the Product must commence within one (1) year after the cause of action arose; otherwise, such cause of action is permanently barred. The Terms of Use shall be governed by and construed in accordance with the laws of the State of California, excluding its conflicts of law rules. Any dispute arising from or relating to the subject matter of this Agreement shall be finally settled by arbitration in Santa Clara County, California, using the English language in accordance with the Arbitration Rules and Procedures of Judicial Arbitration and Mediation Services, Inc. ("JAMS") then in effect, by one commercial arbitrator with substantial experience in resolving commercial contract disputes. The prevailing party in the arbitration (or permissible court action described below) shall be entitled to receive reimbursement of its reasonable expenses incurred in connection therewith. Judgment upon the award so rendered may be entered in a court having jurisdiction. Notwithstanding the foregoing, each party shall have the right to institute an action in a court of proper jurisdiction for injunctive or other equitable relief pending a final decision by the arbitrator. For all purposes of this Agreement, the parties consent to exclusive jurisdiction and venue in the state and federal courts located in the Northern District of California.

#### **General**

This Agreement is the entire agreement between User and Whistle with respect to the Product, and supersedes all prior or contemporaneous communications and proposals (whether oral, written or electronic) between User and Whistle with respect to the Product. Notwithstanding the foregoing, the parties acknowledge the existence and validity of the Terms of Use. In the event of any conflict between this Agreement and the Terms of Use, this Agreement shall control with respect to the subject matter of this Agreement only. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. The failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further rights hereunder. This Agreement is personal to User, and is not assignable or transferable by User except with Whistle's prior written consent. Whistle may assign, transfer or delegate any of its rights and obligations hereunder without consent. No agency, partnership, joint venture, or employment relationship is created as a result of this Agreement and neither party has any authority of any kind to bind the other in any respect. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered or sent by certified or registered mail, return receipt requested; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; or two days after it is sent, if sent for next day delivery by recognized overnight delivery service.