

Jun 28, 2019

Whistic Terms of Services

These Terms of Service govern your access and use of this website, and any affiliated websites, features, services, mobile applications, products, software and other services, or any portion thereof (collectively, the "**Whistic Technology**"), owned or controlled by Whistic, Inc., a Delaware corporation, and/or its affiliated companies "**Whistic**".

Whistic has three different types of customers depending on the Whistic services purchased, accessed or subscribed for in connection with this Agreement (the "**Services**"):

- "**Free Users**," who are customers who have registered for free accounts (such as vendors or service providers registering in response to an inquiry from a third party or users registering in response to receiving an invitation to review a Security Profile of a company you are evaluating). The scope of Services for Free Users is limited to those services and access rights made available by Whistic to such Free User from time to time.
- "**Subscribers**," who are customers that have subscribed for paid services from Whistic or through an authorized Whistic reseller in one or more order forms, Platform Service Agreements, or other agreements (each, an "**Order Form**"). In the event of any discrepancy between these Terms of Service and the terms of the Order Form, the terms of the Order Form shall govern.
- "**Authorized Users**," who are customers accessing the Services as an authorized user of a Subscriber. The scope of Services for Authorized Users is governed in the same manner and to the same extent as the Customer on whose behalf you are accessing the Services as an Authorized User.

Free Users, Subscribers, and Authorized Users are referred to in these Terms of Service (whether they be an individual, company, business, corporation, or other entity) as "**Customers**". Regardless of what type of Customer you are, these Terms of Service along with any Order Form, create a legal agreement directly between you and Whistic and explain the rules governing your use of the Services (this "**Agreement**"). If you are accepting this Agreement on behalf of a company, business, corporation, or other entity, you and the applicable company, business, corporation, or other entity each represent and warrant that you have the authority to bind such entity to this Agreement, in which case the term "Customer" will refer to such entity. Whistic and Customer are each referred to herein as a "**Party**" and together as the "**Parties**".

PLEASE READ THE TERMS OF SERVICE CAREFULLY BEFORE YOU START TO USE THE SERVICE. BY USING THE SERVICE, OR BY OTHERWISE ACCEPTING THESE TERMS (EITHER BY CLICKING "ACCEPT" OR IN CONNECTION WITH AN ORDER FORM OR OTHER AGREEMENT WITH WHISTIC WHICH INCORPORATES THESE TERMS OF SERVICE BY REFERENCE), YOU ARE AGREEING TO BE BOUND AND

ABIDE BY THESE TERMS OF SERVICE. IF YOU DO NOT WANT TO AGREE TO THESE TERMS OF SERVICE, YOU MUST NOT ACCESS OR USE THE SERVICE.

1. Scope of Service; Term

1. During the Term (as defined below) Whistic grants Customer and its authorized users a limited, non-exclusive, non-transferable (except in accordance with Section 11.4) license to access and use the Services for Customer's own internal business purposes in accordance with the terms of this Agreement. Additionally, Whistic may agree to provide Customer (a) certain implementation services to assist with Customer's usage of the Service (**"Implementation Services"**), or (b) professional services, in each case, as agreed to between the Parties and set forth in an Order Form or other separate agreement or addendum between the Parties, and which shall be governed by these Term of Service.
2. Whistic reserves all rights not expressly granted in and to the Service. If Customer makes any other use of the Service except as otherwise provided herein, Customer may violate copyright and other laws of the United States, other countries, as well as applicable state laws and may be subject to penalties.
3. As a condition of Customer's use of and access to the Service, Customer agrees not to use the Service for any unlawful purpose or in any way that violates this Agreement. Any use of the Service in violation of this Agreement may result in, among other things, termination or suspension of Customer's account and ability to use the Service. Customer may not engage in any of the following prohibited activities: (a) directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to discover or derive the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Service or any software, documentation or data related to the Service **"Software"**); (b) copy, distribute, or disclose any part of the Service in any medium, including without limitation by any automated or non-automated "scraping"; (c) collect or harvest any personally identifiable information, including account names, from the Service; (d) modify, adapt, translate, or create derivative works based on the Service or the Software; (e) transfer, sell, lease, syndicate, sub syndicate, lend, or use the Service or any Software for cobranding, timesharing or service bureau purposes or otherwise for the benefit of a third party; (f) use any automated system, including without limitation "robots," "spiders," "offline readers," etc., to access the Service, or access any content or features of the Service through any technology or means other than those provided or authorized by the Service; (g) transmit spam, chain letters, or other unsolicited email; (h) intentionally or knowingly engage in any activity that interferes with or disrupts the Service or servers or networks connected to the Service; (i) remove, deface, obscure, or alter any proprietary notices or labels; (j) intentionally or knowingly use the Service in any manner in violation of any applicable laws; (k) attempt to interfere with, compromise the system integrity or security, or decipher any transmissions to or from the servers running the Service; upload invalid data, viruses, worms, or other software agents through the Service; bypass the measures Whistic may use to prevent or restrict access to the Service, including without limitation features that prevent or restrict use or copying of any content or features or enforce limitations on use of the

Service or the content or features therein; or (l) impersonate another person or otherwise misrepresenting Customer's affiliation with a person or entity, conducting fraud, hiding or attempting to hide Customer's identity.

4. The **"Term"** of Customer's use of the Services shall be: (a) for Subscribers, for the term, and any renewal term, defined in the Order Form; and (b) for Free Users, for so long as such Free User continues to use or otherwise access the Services or until the Company discontinues Free User's use of the Services for any reason.
5. Upon the termination or expiration of this Agreement, (a) all rights and licenses granted by Whistic to Customer shall immediately cease (except as set forth in this Section) and (b) unless mutually agreed by the parties to do otherwise, Whistic will make all Customer Data (as defined below) available to Customer for electronic retrieval for a period of thirty (30) days, after which Whistic will permanently delete stored Customer Data following a written request from such Customer to do so; provided, however, Whistic may retain copies of Customer Data: (i) in order to comply with applicable law, regulation or professional standards; and/or (ii) on servers or back-up sources if such Customer Data is deleted from local hard drives and no attempt is made to recover such Customer Data from such servers or back-up sources.
6. Customer is entirely responsible for maintaining the confidentiality of its password and account. Furthermore, Customer is entirely responsible for any and all activities that occur under its account. Customer agrees to notify Whistic immediately of any known or suspected unauthorized use of its username and password or any other breach of security. Whistic will not be liable for any loss that Customer may incur as a result of someone else using its username, password, or account, either with or without Customer's knowledge. Customer could be held liable for losses incurred by Whistic or another party due to someone else using Customer's username, password, or account. Customer may not use anyone else's account at any time, without the permission of the account holder. Customer's account is unique to Customer and may not be transferred to any third party.

2. Free Users and Authorized Users

1. Prior to using the Services, Free Users and Authorized Users must complete the account registration process by providing Whistic with current, complete, and accurate information as prompted by the applicable registration form. Free User and Authorized User agree to register only once using a single username and agree it will not (a) register on behalf of another person; (b) register under the name of another person or under a fictional name or alias; (c) choose a username that constitutes or suggests an impersonation of any other person (real or fictitious) or entity or that Free User or Authorized User is a representative of an entity when it is not, or that is offensive; (d) choose a username for the purposes of deceiving or misleading users and/or Whistic as to Free User's or Authorized User's true identity; or (e) choose a username that incorporates a solicitation. Free User and Authorized User agree to maintain and update any account registration information to keep it true, accurate, current and complete. If any information provided by Free User or Authorized User is untrue, inaccurate, not current,

incomplete, or otherwise violates the restrictions as set forth above, Whistic has the right to terminate Free User's or Authorized User's account and refuse any and all current or future use of the Service.

3. Subscriber Fees

1. Unless Customer is using the Service as a Free User or has purchased the Service via an authorized partner or reseller, Customer will pay Whistic the Service Fee and the Implementation Service Fee (as described in the Order Form) and any other fees for the Service and Implementation Services as set forth herein in accordance with the terms of this Agreement and the Order Form (the "**Fees**"). Except as otherwise specified herein or in an Order Form, payment obligations to Whistic are non-cancelable and fees paid are non-refundable. Any refunds provided hereunder will be made to the entity that paid the applicable Fees to Whistic and, if applicable, Customer will look solely to the authorized partner or reseller to recover the same.
2. Service Fees and any Implementation Service Fee shall be paid within thirty (30) days of the execution of the Order Form. Whistic will commence the Implementation Services, if any, promptly following the execution of the Order Form. If the Order Form provides for renewal terms, Whistic will automatically bill Customer for the Service Fee at its then-current rate upon the effective date of each such renewal term (as defined, if applicable, in the Order Form).
3. Whistic may periodically review each Subscriber's usage of the Service to ensure such Subscriber is not exceeding their permitted usage, as applicable (the "**Service Capacity**"). If a Subscriber is found to be exceeding the Service Capacity, then Whistic will notify Subscriber of the same and provide Subscriber a thirty (30) day period to comply with the Service Capacity. Subscribers may be responsible for additional fees if, following such thirty (30) day notice period, usage of the Service continues to exceed the Service Capacity. In such event, Subscriber shall be billed for such usage and Subscriber agrees to pay the additional fees in the manner provided herein.
4. If a Subscriber believes that Whistic (or an authorized partner or reseller, as applicable) has billed Subscriber incorrectly, Subscriber must contact Whistic (or the authorized partner or reseller, as applicable) no later than 60 days after the closing date on the first billing statement in which the error or problem appeared in order to receive an adjustment or credit. Except as otherwise specified in an Order Form between Whistic or the applicable authorized partner or reseller, unpaid amounts may be subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection and may result in immediate termination of Service. All Fees and other amounts payable under this Agreement are exclusive of taxes and similar assessments.

4. Content; Feedback; Equipment

1. Customer is responsible for all materials ("**Content**") uploaded, posted or stored through Customer's use of the Service. Whistic is not responsible for any lost or unrecoverable Content other than as a result of Whistic's negligence or willful misconduct. Although Whistic has no obligation to monitor the Content or Customer's use of the Service, Whistic may, in its sole discretion, remove any

Content, in whole or in part, or prohibit any use of the Service alleged to be unacceptable, undesirable, inappropriate, or in violation of this Agreement.

2. From time to time, Whistic may provide opportunities for users to submit feedback and ideas for improvements related to the Service. Customer agrees that (a) its feedback and expression of its ideas and/or improvements will automatically become the property of and owned by Whistic; (b) Whistic may use or redistribute Customer's feedback and its contents for any purpose and in any way and without any restrictions, except that Whistic agrees to keep the name of the Customer associated with such feedback confidential; (c) there is no obligation for Whistic to review any feedback; (d) there is no obligation to keep any feedback confidential; and (e) Whistic shall have no obligation to Customer or contract with Customer, implied or otherwise. By providing feedback or ideas, Customer acknowledges and agrees that Whistic and its designees may create on its own or obtain many submissions that may be similar or identical to the feedback or ideas that Customer submits through the Service or other channels and means. Customer hereby waives any and all claims it may have had, may have, and/or may have in the future, that the submissions accepted, reviewed and/or used by Whistic and its designees may be similar to Customer's feedback or ideas.
3. Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Service, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like.

5. Confidentiality; Proprietary Rights

1. Each Party (the "**Receiving Party**") understands that the other Party (the "**Disclosing Party**") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "**Proprietary Information**" of the Disclosing Party). Proprietary Information of Whistic includes non-public information regarding features, functionality and performance of the Service. Proprietary Information of Customer includes non-public data about Customer provided by Customer to Whistic ("**Customer Data**"), Content, and any data or information derived from Customer's use of the Service. For the avoidance of doubt, Customer Data does not include Aggregate Data (as defined below) or any data, information or content uploaded by third parties. The Receiving Party agrees to take reasonable precautions to protect such Proprietary Information, and not to use (except in performance of the Service or as otherwise permitted herein) or divulge to any third person any such Proprietary Information; provided, however, the Receiving Party may disclose Proprietary Information to its contractors and/or agents who have a legitimate need to know the Proprietary Information and who are bound by obligations of confidentiality at least as stringent as those contained herein. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public through no action of the Receiving Party in violation of this Agreement, (b) was in its possession or known by it prior to receipt from the

Disclosing Party, (c) was rightfully disclosed to it without restriction by a third party, (d) was independently developed without use of any Proprietary Information of the Disclosing Party, or (e) is required to be disclosed by law.

2. The Parties hereby acknowledge and agree that any breach of or default of a Party's obligations of confidentiality under this Agreement shall cause damage to the other Party in an amount difficult to ascertain. Accordingly, in addition to any other relief to which a Party may be entitled, the non-defaulting Party shall be entitled, without proof of actual damages, to seek any injunctive relief ordered by any court of competent jurisdiction including, but not limited to, an injunction restraining any violation of the defaulting Party's obligations of confidentiality hereunder.
3. If the Receiving Party or any of its representatives is compelled by applicable law to disclose any Proprietary Information then, to the extent permitted by applicable law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy, or waive its right to confidentiality pursuant to the terms of this Agreement; and (b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section, the Receiving Party remains required by law to disclose any Proprietary Information, the Receiving Party shall disclose only that portion of the Proprietary Information that, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose and, upon the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Proprietary Information will be afforded confidential treatment. No such compelled disclosure by the Receiving Party will otherwise affect the Receiving Party's obligations hereunder with respect to the Proprietary Information so disclosed.
4. Customer shall own and retain all right, title and interest in and to its Proprietary Information, including the designs, trademarks, service marks, and logos of Customer. Whistic shall own and retain all right, title and interest in and to its Proprietary Information, including (a) the Service and Software, and all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with the Implementation Services or support, (c) all intellectual property rights related to any of the foregoing, and (d) the designs, trademarks, service marks, and logos of Whistic and the Service, whether owned or licensed to Whistic.
5. Notwithstanding anything to the contrary in this Agreement, Whistic shall have the right (during and after the Term hereof) to use data and information related to Customer's use of the Service in an aggregate and anonymized manner ("**Aggregate Data**") for its internal business purposes to improve and enhance the Service, to compile statistical and performance information, and for other development, diagnostic and corrective purposes in connection with the Service

and Whistic's other offerings. Any rights not expressly granted herein are deemed withheld.

6. Warranty and Disclaimer

1. Each Party hereby represents, covenants, and warrants that: (a) it shall be in compliance with all applicable laws and regulations during the Term in the performance of this Agreement; (b) it has the full right, power, and authority to enter into this Agreement; (c) the performance of its obligations under this Agreement do not and will not violate any other agreement to which it is a party; and (d) this Agreement constitutes a legal, valid and binding obligation when agreed to. Customer further represents and warrants that it owns or has the necessary licenses, rights, consents, and permissions to publish and submit the Content and Customer Data. Customer further agrees that the Content and Customer Data it submits to the Service will not contain third party copyrighted material, or material that is subject to other third party proprietary rights, unless Customer has permission from the rightful owner of the material or Customer is otherwise legally entitled to post the material and to grant Whistic all of the license rights granted herein.
2. Customer acknowledges that the Service is controlled and operated by Whistic from the United States. If Customer or any of its authorized users are located outside of the United States and choose to provide information to Whistic via the Service, Whistic will transfer the information, including personal information, to the United States and process it there. Whistic does not represent or warrant that the Service, or any part thereof, is appropriate or available for use in any particular jurisdiction. Customer and its authorized users are subject to United States export controls in connection with the use of the Service and/or services related thereto and are responsible for any violations of such controls, including, without limitation, any United States embargoes or other federal rules and regulations restricting exports.
3. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 6.1, THE SERVICE IS PROVIDED AS IS. WHISTIC SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND TITLE. WITHOUT LIMITING THE FOREGOING, WHISTIC MAKES NO WARRANTY OF ANY KIND THAT THE SERVICE, THE SELF-ASSESSMENT AND SECURITY SCORE, ANY THIRD-PARTY PRODUCT, THIRD-PARTY CONTENT, OR ANY RESULTS OF THE USE OF THE SERVICE, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR-FREE.

7. Subscriber Indemnification

1. Whistic shall indemnify, defend and hold harmless each Subscriber and each Subscriber's officers, directors, employees, agents, permitted successors and assigns (each, a **Subscriber Indemnitee**) from and against any and all liabilities, claims, damages, losses and expenses (including reasonable attorneys' fees) (

"Claims") incurred by Subscriber Indemnitee resulting from an action by a third party (other than an affiliate of Subscriber Indemnitee) which alleges that Subscriber's use of the Service in accordance with this Agreement infringes or misappropriates such third party's intellectual property rights. The foregoing obligation does not apply to the extent that the alleged infringement arises from (a) access to or use of the Service in a modified form or in combination with any hardware, system, software, network, or other materials or service not provided by Whistic (to the extent that the combination is the cause of the Claims); (b) any Content, Customer Data, or other information or data provided by Customer, any Authorized User or any other third party where such is the proximate cause of the Claim; (c) any Claims related to Subscriber's infringement of any third party intellectual property; (d) where Subscriber continues allegedly infringing activity after being notified thereof or after being informed of modifications, upgrades, replacements or enhancements made available to Subscriber by or on behalf of Whistic; or (e) where Subscriber's use of the Service is not strictly in accordance with this Agreement. If, due to a claim of infringement, the Service is held by a court of competent jurisdiction to be, or is believed by Whistic to be, infringing, Whistic may, at its option and expense: (a) replace or modify the Service to be non-infringing, provided that such modification or replacement contains substantially similar features and functionality, (b) obtain for Subscriber a license to continue using the Service, or (c) if neither of the foregoing is commercially practicable, terminate this Agreement and Subscriber's rights hereunder and provide Subscriber a refund of any prepaid, unused fees for the Service.

2. Subscriber shall indemnify, defend, and hold harmless Whistic and Whistic's officers, directors, employees, agents, permitted successors and assigns (each, a **"Whistic Indemnitee"**) from and against any Claims incurred by Whistic Indemnitee resulting from an action by a third party (other than an affiliate of Whistic Indemnitee) arising out of or related to: (a) Customer Data, or (b) Subscriber's violation of any terms of use or similar terms with respect to any Third-Party Sites, Third-Party Links, or Third-Party Content.
3. Each of the Company and Subscriber (as applicable, the **"Indemnifying Party"**), at its own expense, will at all times indemnify, defend and hold harmless the other party and its affiliates, and their employees, officers, directors, representatives and agents and the respective successors and assigns of each of the foregoing (the **"Indemnified Party"**) from and against any and all claims, demands, liabilities, costs and expenses, including reasonable expenses of investigation and reasonable legal fees and costs, resulting from, arising out of, or in connection with or otherwise with respect to, any third-party claim, suit, action or other proceeding brought against the Indemnified Party based on, arising from or relating to the Indemnifying Party's breach of any of its representations, warranties or obligations under this Agreement. In connection with any indemnity claim, the Indemnifying Party, at its option, will have sole control of the defense of the claim and all negotiations for any settlement or compromise, provided that Indemnified Party is entitled to participate in its own defense at its sole expense. Any settlement or compromise cannot obligate Indemnified Party in any manner

without Indemnified Party's prior written consent, which consent will not be unreasonably withheld.

4. This Section 7 sets forth Subscriber's sole remedies and Whistic's sole liability and obligation for any actual, threatened, or alleged Claims that the Service or any subject matter of this Agreement infringes, misappropriates, or otherwise violates any intellectual property rights of any third party.

8. Limitation of Liability

1. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, REVENUES, ANTICIPATED SALES OR SAVINGS, OR ANY OTHER PECUNIARY LOSS), ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, THE SERVICES, THIRD-PARTY PRODUCTS, THIRD-PARTY SITES, OR THIRD-PARTY CONTENT MADE AVAILABLE THROUGH THE SERVICE, WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE) CONTRACT OR ANY OTHER LEGAL THEORY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
2. EXCEPT AS TO CLAIMS RELATING TO EACH PARTY'S CONFIDENTIALITY AND INDEMNIFICATION OBLIGATIONS AS SET FORTH HEREIN, IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF EITHER PARTY ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, THE SERVICES, THIRD-PARTY PRODUCTS, THIRD-PARTY SITES, OR THIRD-PARTY CONTENT MADE AVAILABLE THROUGH THE SERVICE, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL AMOUNTS PAID (AND ANY AMOUNTS ACCRUED BUT NOT YET PAID) TO WHISTIC IN THE 12-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

9. Miscellaneous

1. **Survival.** The following Sections of this Agreement will survive the termination or expiration of this Agreement: Section 1.3, 1.5, 5, 6, 7, 8, and 9.
2. **Severability.** 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.
3. **Assignment.** This Agreement is not assignable, transferable or sublicensable by either Party except with the other's prior written consent; provided, however, that either Party may assign this Agreement in the event of a merger, sale of substantially all of the stock, assets or business, or other reorganization involving the assigning party in which the assigning party is not the surviving entity, and the

non-assigning party's prior written consent shall not be required in such instance with the express understanding that this Agreement will bind the successor in interest to the assigning party with respect to all obligations hereunder. Any other attempt to transfer or assign is void.

4. **Force Majeure.** In the event that either Party hereto shall be delayed or hindered or prevented from the performance of any act required hereunder, other than a payment obligation, by reason of strikes, lock-outs, labor troubles, inability to procure materials or services, failure of power, riots, insurrections, war or other reasons of a like nature not the fault of the Party delayed in performing work or doing acts required under the terms of this Agreement, such Party shall immediately provide notice to the other Party of such delay, and performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.
5. **Entire Agreement.** This Agreement is the complete and exclusive statement of the mutual understanding of the Parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both Parties, except as otherwise provided herein.
6. **Modification.** Whistic may revise and update these Terms of Service from time to time in its sole discretion. All changes are effective immediately when made available on this website and will apply to all access to and use of the Services thereafter. Customer's continued use of the Services following the posting of revised Terms of Service means that Customer accepts and agrees to the changes.
7. **Relationship of the Parties.** No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Whistic in any respect whatsoever.
8. **Third-Party Sites.** The Service may contain links to third-party advertisers, websites or services ("**Third-Party Sites**"). Customer acknowledges and agrees that Whistic is not responsible or liable for: (i) the availability or accuracy of such Third-Party Sites, or (ii) the content, products, or resources on or available from such Third-Party Sites. Any Third-Party Sites do not imply any endorsement by Whistic of those websites or services. If Customer decides to access any of the Third-Party Sites linked to the Services, Customer does so entirely at its own risk and subject to the terms and conditions of use for such Third-Party Sites and acknowledges sole responsibility for and assumes all risk arising from its use of any such Third-Party Sites.
9. **Third-Party Products and Third-Party Content.** Customer may have access to or use applications, integrations, software, services, systems, or other products not developed by Whistic ("**Third-Party Products**"), or data/content derived from such Third-Party Products or arising out of an agreement between Whistic and such third-party (collectively, **Third-Party Content**) in connection with the Services. Whistic does not warrant or support Third-Party Products or Third-Party Content (whether or not these items are designated by Whistic as verified or integrated with the Services) and disclaims all responsibility and liability for these items and their access to or integration with the Services, including their

modification, deletion, or disclosure. Customer acknowledges and agrees that such Third-Party Products and Third-Party Content constitute the confidential information of the owner of such Third-Party Products and Third-Party Content, and as such, Customer agrees to take reasonable precautions to protect such Third-Party Products and Third-Party Content, and not to use (except in connection with the Service or as otherwise permitted by owner in writing) or divulge to any third person any such Third-Party Products or Third-Party Content except to its contractors and/or agents who have a legitimate need to know and who are bound by obligations of confidentiality at least as stringent as those contained herein.

10. **Notices.** All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. Any notices to Whistic may be sent to info@whistic.com or by mail addressed to 1982 W. Pleasant Grove Blvd, Suite H, Pleasant Grove, UT 84062.
11. **Governing Law.** This Agreement shall be governed by the laws of the State of Utah without reference to conflict of law principles. Any dispute between the Parties arising out of or related to this Agreement shall be resolved exclusively by JAMS arbitration, which shall be held in Utah or another location mutually agreed upon, and conducted in accordance with the JAMS then in effect. Judgment upon the award rendered shall be final and non-appealable and may be entered in any court having jurisdiction. The prevailing Party shall be entitled to recovery of all its reasonable attorneys fees from the other Party in addition to any other award of damages. Both Parties waive any right to participate in any class action involving disputes between the Parties, and the Parties are each waiving the right to a trial by jury. All claims must be brought in the Parties individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding, and, unless agreed otherwise by Whistic, the arbitrator may not consolidate more than one person's claims. This class action waiver is an essential part of this arbitration agreement and may not be severed. If for any reason this class action waiver is found unenforceable, then the entire arbitration agreement will not apply. However, the waiver of the right to trial by jury set forth in this Section will remain in full force and effect. CUSTOMER AND WHISTIC AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE SERVICE OR THIS AGREEMENT MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.
12. **Copyright Policy.** Whistic respects the intellectual property rights of others and expects users of the Service to do the same. Whistic will respond to notices of alleged copyright infringement that comply with applicable law and are properly provided to Whistic's designated copyright agent ("**Copyright Agent**"). Whistic's designated Copyright Agent to receive notifications of claimed infringement is:

Whistic, Inc.
1982 W. Pleasant Grove Blvd, Suite H
Pleasant Grove, UT 84062
Attn: Whistic Legal