

# Broadcasters Terms of Service Agreement

Revised: January 11, 2017

This Terms of Service Agreement (this "Agreement") is a legally binding agreement between you ("Broadcaster") on the one hand, and LEEBRA Enterprise, Inc., a New York corporation ("Service Provider") on the other hand, that governs any or all services obtained from Service Provider or Service Provider's licensors under this Agreement, including, but not limited to: (a) Internet radio station hosting and distribution using Fastcast4u® brand distribution technology ("Streaming Services"); (b) automation services ("Automation"); (g) ad insertion solutions ("Ad Insertion"); (h) website creation and maintenance ("Websites"); (c) inclusion in guides and devices ("Distribution"); (d) mobile marketing list creation, maintenance and monetization ("Mobile Marketing"); (e) email marketing list creation, maintenance and monetization ("Email Marketing"); (f) payment processing ("Payment Processing"), and related services (collectively the "Services"). By accessing or using any of the Services, you agree to all of the terms and conditions of this Agreement as amended by Service Provider from time to time. Some of our Services (e.g., applications, broadcasts, offers, or promotions) have additional terms and conditions ("Additional Terms"). Where Additional Terms apply to specific Services, we will make them available for you to read through your use of the specific Services. By accessing or using the Services, you agree to all of the terms and conditions of the Additional Terms. From time to time, we may change this Agreement or Additional Terms. If we change this Agreement or Additional Terms, we will inform you by posting the revised Agreement or Additional Terms on [www.whlr1.com](http://www.whlr1.com) or within the Services. Those changes will go into effect on the Revision Date shown in the revised Agreement or Additional Terms. By continuing to access or use our Services, you agree to the revised Agreement or Additional Terms.

## 1. Service Fee & Payments.

As consideration for the Services, Broadcaster agrees to pay Service Provider the service fees ("Service Fees") identified in Exhibit A attached hereto and incorporated herein by this reference, according to the terms herein, and as described in Exhibit A. In those situations where Service Provider performs services for Broadcaster resulting in a payment to Broadcaster, Service Provider shall pay Broadcaster on a monthly basis. All other domestic payments or debits shall be made by PAYPAL or other accommodating ways set by company. Broadcaster agrees to keep its PAYPAL information accurate and current. All other international payments or debits shall be made by check or Paypal.

Billing for services commences immediately upon the day that the Broadcaster's service commences; bills for partial periods are prorated. Invoiced amounts not paid by Broadcaster when due shall be subject to late fees equal to the lower of

1.5% per month or the maximum amount allowed by applicable law. In the event that Broadcaster has past due balances, and Service Provider finds it necessary to pursue collections, Broadcaster shall be responsible to pay Service Provider's collection costs including legal fees. Termination of this Agreement and/or payment of late fees shall not prejudice any other rights or remedies that may be available to Service Provider with respect to any nonpayment of applicable Service Fees. In the event that Broadcaster has any complaints about any amounts due, Broadcaster must notify Service Provider within fifteen (15) calendar days from the receipt of the disputed invoice. All fees are in United States dollars and exclude any applicable taxes. Broadcaster shall pay, indemnify and hold Service Provider and its successors and assigns harmless from all sales, use, value-added or other taxes of any nature arising from the Services or from this Agreement (other than taxes on Service Provider's net income), including penalties and interest, and all government permit or license fees assessed upon or with respect to any fees due under this Agreement (except to the extent Broadcaster provides Service Provider with a valid tax exemption certificate).

## 2. Services provided.

Service Provider will provide Broadcaster with the Services as specified in Exhibit A attached hereto and incorporated herein by this reference. If Broadcaster elects to utilize fastcast4u® brand streaming Services, Broadcaster shall, at cost, deliver one stream of each Show at the designated Data Transfer Rate to Service Provider, or such other data center as Service Provider designates. Service Provider will also provide a single and unique Universal Resource Locator (HotlineCloud) address for use by Broadcaster for each media property and stream rate contracted by the Broadcaster.

## 3. Initiation of Services.

Service Provider will supply, at no additional charge, up to two (2) hours of telephonic assistance at Broadcaster's request during the initial installation of the Services, provided such assistance is requested within thirty (30) days of the execution of this Agreement. Over the phone installation assistance and operator training is available at the daily consulting rate as agreed by the parties in writing, plus all out of pocket expenses.

## 4. Third-Party Software and Services.

From time to time, for the convenience of Broadcaster, Service Provider may refer Broadcaster to certain third-party software or services, such as ad replacement software providers. Service Provider's referral to any such third-party software or service does not constitute an endorsement by Service Provider of such third-party software or service; consequently, Service Provider hereby disclaims all liability associated with Broadcaster's use of such third-party software or service.

When Broadcaster plays a broadcast or piece of media using Fastcast4u®, WHLR Hotline Radio™, we may use web beacons to report to us, and/or a third-party

traffic measurement company, that a session has started and stopped.

#### 5. Ownership of Intellectual Property.

Broadcaster acknowledges that the content available on or through the Services, including, but not limited to all software, text, visual, audio, user content, and other media content ("Content") and Service Provider's trademarks and logos, including Fastcast4u®, WHLR Hotline Radio™ ("Marks"), are owned by or licensed to Service Provider and are protected under U.S. and international laws. Broadcaster acknowledges that it does not acquire any ownership rights by using the Services. Broadcaster agrees not to copy, redistribute, publish, change, modify, embed, frame or otherwise exploit material from the Services, except as expressly permitted herein, without the express prior written permission of Service Provider. Service Provider shall own the rights to the data created and collected from use of the Services by Broadcaster and Broadcaster's users. Broadcaster does not obtain any data rights in any information. a) All comments, feedback, suggestions, ideas and other submissions ("Feedback") transmitted to Service Provider in connection with the use of the Services shall be the exclusive property of Service Provider.

#### 6. Use Restrictions.

Broadcaster agrees not to place advertisements into any framed environment or display ads in any way on the Services, unless approved by Service Provider in advance in writing. Broadcaster also agrees to take necessary steps to assure the privacy and the security of any passwords or usernames/logins provided to Broadcaster. Broadcaster must configure its station(s) to colors that present all WHLR Hotline Radio links in the player to be clearly visible including Terms of Use, Privacy Policy and all other links. In the event that Broadcaster does not setup the color scheme clearly, Service Provider may change the colors. Broadcaster agrees that it shall abide by all user terms at all times which are located at: <http://WHLR1.com/broadcasterTOS.pdf>. In the event of a breach of these terms, Broadcaster's account may be terminated.

#### 7. LIMITATION OF LIABILITY.

SERVICE PROVIDER IS PROVIDING THE SERVICES TO BROADCASTER ON AN "AS IS" BASIS. SERVICE PROVIDER AND ITS THIRD-PARTY SOFTWARE PROVIDERS EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. NEITHER SERVICE PROVIDER NOR ITS THIRD-PARTY SOFTWARE PROVIDERS SHALL BE LIABLE FOR ANY LOSS OF BUSINESS, LOST PROFITS, LOST DATA, LOST SAVINGS, FAILURE OF SECURITY OR ANY OR ALL INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, HOWEVER CHARACTERIZED, WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE AND/OR WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE. IN NO EVENT WILL (A) SERVICE PROVIDER, OR (B) WITH REGARD TO THIRD-PARTY

SOFTWARE, THE APPLICABLE LICENSOR, BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF OR INABILITY TO USE THE SERVICES, OR, IF APPLICABLE, THE THIRD-PARTY SOFTWARE, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUE OR LOST PROFITS, OR DAMAGES THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES OR EMAIL, ERRORS, DEFECTS, VIRUSES, DELAYS IN OPERATION OR TRANSMISSION, FAILURE OF PERFORMANCE, THEFT, DESTRUCTION OR UNAUTHORIZED ACCESS TO SERVICE PROVIDER'S RECORDS, PROGRAMS OR SERVICES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN THE EVENT OF ANY BREACH BY SERVICE PROVIDER OF THIS AGREEMENT, SERVICE PROVIDER'S LIABILITY TO BROADCASTER WILL NOT EXCEED THE AMOUNT PAID TO SERVICE PROVIDER BY BROADCASTER DURING THE PREVIOUS SIX MONTHS.

#### 8. BROADCASTER'S REPRESENTATIONS.

BROADCASTER REPRESENTS AND WARRANTS TO SERVICE PROVIDER THAT IT SHALL PERFORM ITS OBLIGATIONS HEREUNDER IN A TIMELY AND PROFESSIONAL MANNER WITH DUE CARE; (ii) IT HAS SUFFICIENT EXPERTISE AND EXPERIENCE TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT; (iii) IT HAS FULL RIGHT, POWER AND AUTHORITY TO ENTER INTO THIS AGREEMENT, GRANT THE RIGHTS AND LICENSES HERIN AND TO PERFORM THE ACTS REQUIRED OF IT IN THIS AGREEMENT; (iv) AND THE EXECUTION OF THIS AGREEMENT AND THE PERFORMANCE OF ITS OBLIGATIONS HEREUNDER, DO NOT AND WILL NOT VIOLATE ANY AGREEMENT TO WHICH IT IS A PARTY OR BY WHICH IT IS BOUND. BROADCASTER HEREBY REPRESENTS AND WARRANTS THAT IT HOLDS AND SHALL MAINTAIN DURING THE TERM OF THIS AGREEMENT THE REQUISITE COPYRIGHT, TRADEMARK AND/OR OTHER INTELLECTUAL PROPERTY RIGHTS TO BROADCAST BROADCASTER'S SHOW(S) AND OTHER CONTENT THROUGH SERVICE PROVIDER'S NETWORKS. FURTHER, BROADCASTER REPRESENTS AND WARRANTS THAT THE RIGHTS DELEGATED TO SERVICE PROVIDER UNDER THIS AGREEMENT, INCLUDING THE PUBLIC DISPLAY, PUBLIC PERFORMANCE, DISTRIBUTION, AND REPRODUCTION OF BROADCASTER'S STATION AND OTHER CONTENT THROUGH SERVICE PROVIDER'S NETWORKS, WILL NOT VIOLATE OR INFRINGE UPON THE COPYRIGHT, LITERARY, PRIVACY, PUBLICITY, TRADEMARK, SERVICE MARK OR ANY OTHER PERSONAL OR PROPERTY RIGHT OF ANY PERSON OR ENTITY AND THAT BROADCASTER'S STATION AND OTHER CONTENT WILL NOT CONSTITUTE A LIBEL OR DEFAMATION OF ANY THIRD-PARTY. BROADCASTER REPRESENTS AND WARRANTS THAT IT HAS MET ANY AND ALL OBLIGATIONS TO ARTISTS, GUILDS, AUTHORS, COMPOSERS AND/OR ANY OTHER PARTICIPANTS IN THE PRODUCTION OF THE MEDIA CONTAINED IN THE SHOW. BROADCASTER REPRESENTS THAT IT SHALL BE SOLELY LIABLE FOR PAYMENT OF ALL COPYRIGHT ROYALTY BOARD ("CRB") IMPOSED FEES AND ALL OTHER FEES ASSOCIATED WITH THE BROADCASTING THE SHOW OUTSIDE OF STATIONS LICENSE COVERAGE. BROADCASTER REPRESENTS AND WARRANTS THAT IT WILL PROVIDE A PRIVACY POLICY AND SHALL ALL TIMES COMPLY WITH ITS PRIVACY

POLICY AND ALL APPLICABLE LAWS, RULES AND REGULATIONS AT ALL TIMES. BROADCASTER HEREBY AGREES TO INDEMNIFY AND HOLD SERVICE PROVIDER AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS HARMLESS FROM ANY BREACH OF THESE REPRESENTATIONS AND WARRANTIES BY BROADCASTER. BROADCASTER ASSUMES FULL RESPONSIBILITY FOR ALL INTELLECTUAL PROPERTIES AND CONTENT POSTED TO SERVICE PROVIDER'S SERVERS ON BROADCASTER'S BEHALF, INCLUDING ANY TRADEMARK, COPYRIGHT, PATENT OR OTHER INTELLECTUAL PROPERTY SUBMITTED TO SERVICE PROVIDER FOR EITHER ENCODING SERVICES AND/OR STRAIGHT POSTING TO OUR SERVERS FOR BROADCAST. SERVICE PROVIDER RESERVES THE RIGHT TO REMOVE WITHOUT NOTICE ANY MATERIAL WHICH, IN ITS SOLE OPINION, MAY RESULT IN A VIOLATION OF INTELLECTUAL PROPERTY RIGHTS OF OTHERS OR ANY OTHER APPLICABLE FEDERAL, STATE, COMMON, OR INTERNATIONAL LAWS OR REGULATIONS. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY, THE INDEMNITY SET FORTH IN THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

#### 9. License Grant.

By using Service Provider's services, Broadcaster grants Service Provider a nationwide, exclusive right and license to promote, perform and display Broadcaster's Show as necessary (and only as necessary) for Service Provider to provide the underlying Services.

#### 10. Press Release.

Service Provider may release a press release regarding this Agreement. Broadcaster shall not release a press release regarding this Agreement without the prior written approval of Service Provider.

#### 11. Maintenance.

Subject to the terms and conditions of this Agreement, Broadcaster understands and agrees that Service Provider will attempt to keep its network of servers running continuously. Service Provider's servers will, from time-to-time, be disconnected due to routine maintenance windows, upgrades and other required events. Broadcaster understands and agrees that Service Provider's servers may be unavailable for a variety of reasons, including, without limitation, (i) equipment malfunctions, (ii) periodic maintenance or repairs, or (iii) other causes beyond the control of Service Provider. In the event that Service Provider's servers will need to be disconnected due to routine maintenance windows, upgrades or required events, Service Provider will attempt to notify the Broadcaster via electronic mail to the e-mail address or e-mail addresses which Service Provider has on file for the Broadcaster. Broadcaster assumes responsibility for making a separate backup copy of any information posted to our servers. Service Provider is not responsible for lost materials, data or information. Additionally, Broadcaster is responsible for testing any changes that Service Provider makes to Broadcaster's Station at Broadcaster's request to make sure

that such changes are in accordance with such Broadcaster request.

12. Inclusion of Station(s) on all Service Provider Websites, Guides and Third-Party Guides.

During the term of this Agreement, Broadcaster agrees to allow the Show(s) to be listed in all of the Service Providers websites, program guides, APIs and other third party properties as determined by Service Provider designed to increase distribution. Service Provider shall have the right to control which third-party companies, websites and devices the Broadcaster provided stream is allowed to be used on as agreed to in writing by Service Provider, and in the event that the stream is placed unauthorized, Broadcaster shall be liable for any fees incurred by Service Provider for the unauthorized use, as well as removing such unauthorized stream placements with 24 hours of notice from Broadcaster.

13. Inclusion of Service Provider Hyperlink on Show(s) Websites.

During the Term of this Agreement, Broadcaster agrees to add a hyperlink in the footer of its website(s) that links to Service Provider website as directed by Service Provider. In the event that Broadcaster uses a Service Provider mobile App, Broadcaster must also link to Service Provider's Player from its website.

14. Confidentiality.

"Confidential Information" shall mean any term of this Agreement, and any proprietary information or data, either oral or written, received from and designated as confidential by the disclosing party. This shall include pricing information for the Services and all of the information on Exhibit A hereto. It does not, however, include information that (i) is already known by the recipient, (ii) become publicly known through no wrongful act of the recipient, or (iii) is received by the recipient from a third-party without similar restriction and without breach of this section. In addition, under no circumstances shall Broadcaster's Confidential Information include any Broadcaster Content or any other content, software, materials or other information delivered by Broadcaster to Service Provider to be posted on Service Provider's servers. Each party agrees that it will use the same care to protect against the unauthorized duplication, use, publication, or disclosure of such Confidential Information of the other party as it uses to protect its own proprietary and Confidential Information, and will not use or disclose such Confidential Information except in connection with the purposes of this Agreement, unless authorized in writing by the other party. All materials, including copies and summaries, containing the other party's Confidential Information shall be destroyed or returned to such party, as instructed by such party, by the recipient promptly upon request.

15. Term and Cancellation.

The initial service term shall commence on the date this Agreement is submitted by Broadcaster and accepted by Service Provider. The initial term shall be ninety (90) days. After the 90 days, this Agreement shall automatically renew for subsequent one (1) year terms. Prior to the expiration of the initial term or any



renewal term of this Agreement, Broadcaster may cancel this Agreement effective at the end of the then-current term with written notice given at least 30 days prior to the end of such term. All account cancellations and billing changes must be submitted to info@whlr1.com ; no verbal cancellation requests will be accepted. In the event Broadcaster breaches any of the representations and warranties as determined by Service Provider in its sole and absolute discretion, Service Provider shall be entitled to terminate Broadcasters' access and use of the Services. Broadcaster agrees to have an exclusive, prominent link to the WHLR Hotline Radio from its website during the entire term of this Agreement.

Broadcaster also agrees that WHLR Hotline Radio shall have exclusive Guide rights for all Broadcasters' shows. For purposes of this Agreement, Guide(s) shall mean any other place than WHLR1.com where the stream can be accessed and/or listened to including mobile devices, other online websites, and any other devices. Broadcaster may publish its shows in other online Guide(s) so long as WHLR Hotline Radio is the exclusive link to the station from the third-party guide. In the event that Broadcaster does not have an exclusive, prominent link to the WHLR Hotline Radio from its website during the entire Term of this Agreement (other than for a technical issue that is resolved promptly) and/or Broadcaster includes its show(s) in an unauthorized Guide, Broadcaster shall forfeit any Service Fees previously due to Broadcaster for any months remaining under the term, plus any other revenues made through any other broadcasting platform during the term of this Agreement.

#### 16. General.

Each party represents and warrants that it has the right and authority to enter into this Agreement and bind the Broadcaster to the terms of this Agreement, and that by entering into this Agreement, it will not violate, conflict with or cause a material default under any other contract, agreement, indenture, decree, judgment, undertaking, conveyance, lien or encumbrance to which it is a party or by which it or any of its property is or may become subject or bound. Each party shall, at its own expense, make, obtain, and maintain in force at all times during the term of this Agreement, all applicable filings, registrations, reports, licenses, permits and authorizations necessary to perform its obligations under this Agreement. Broadcaster acknowledges and agrees that it is an independent contractor and not an employee, partner or joint venturer of Service Provider for any purposes. Broadcaster further acknowledges and agrees that it has no authority to enter into any commitments on Service Provider's behalf or to negotiate the terms of any agreements with any third-party user of the Services or to hold any funds payable to or belonging to Service Provider. This Agreement will be governed by and construed in accordance with the laws of the State of New York, without giving effect to any conflict of laws rules or provisions.

Broadcaster agrees that any action of whatever nature arising from or relating to this Agreement or the Services will be filed only in the state or federal courts located in Hudson, New York. Broadcaster hereby consents and submits to the personal jurisdiction of such courts for the purposes of any such action. If any provision of this Agreement is found to be unlawful, void, or unenforceable, then that provision will be deemed severable from this Agreement and will not affect

the validity or enforceability of any remaining provisions. In any legal proceeding, Service Provider shall be entitled to receive from Broadcaster its legal and court fees incurred to enforce this Agreement.

This Agreement shall constitute the entire agreement between the parties regarding the Services and shall supersede any and all understandings, whether written or oral. This Agreement shall be binding upon Broadcaster's successors and assigns. This Agreement may not be assigned by Broadcaster without Service Provider's written permission except by succession. Service Provider may assign this Agreement. Any waiver of any provision of this Agreement shall not constitute a modification to this Agreement or a permanent waiver of such provision unless it is in writing and signed by an officer of Service Provider.

#### 17. Force Majeure.

Service Provider shall not be liable to Broadcaster under this Agreement for any delay or failure to perform its obligations under this Agreement if such delay or failures arise from any cause(s) beyond such party's reasonable control, including by way of example labor disputes, strikes, acts of nature, floods, fire, lightning, utility or communications failures, earthquakes, vandalism, war, acts of terrorism, riots, insurrections, embargos, or laws, regulations or orders of any governmental entity. Notwithstanding the foregoing, Service Provider shall exercise reasonable due diligence to resume performance hereunder as soon as commercially possible.

#### 18. Management of Services.

Service Provider has the absolute right to manage, regulate, control, modify, and/or eliminate any of the Services including, but not limited to the Program and any Virtual Currency and/or Virtual Goods, as it sees fit in its sole discretion, and Service Provider shall have no liability to Broadcaster or anyone else for the exercise of such rights. Service Provider reserves the right at its sole discretion to terminate the Program at any time, for any reason, with or without notice. In the event that a Program User (as that term is defined in the User Terms of Service, then in effect) has no activity for a period of three (3) consecutive shows, then - Service Provider reserves the right to close the User's account. All limitations of liability and other provisions of this Agreement shall survive any such termination.

#### Exhibit A

Agree to our standard Broadcaster Terms of Service Agreement.