

# **WJXR 92.1 FM NOTIFICATION SERVICE TERMS OF SERVICE & SERVICE AGREEMENT**

## **ACCEPTANCE OF TERMS OF SERVICE**

These Terms of Service govern your use of the WJXR, Inc. and its affiliates ("WJXR") notification service ("the Service"). By subscribing to, using, or viewing the Service, you accept and agree to be bound by these Terms of Service. If you do not agree to these Terms of Service, you should not use the Service. These Terms of Service are an ongoing contract between you and WJXR and apply to your use of the Service. These Terms of Service affect your rights and you should read them carefully.

## **ABILITY TO ACCEPT TERMS OF SERVICE**

You affirm that you are 18 years of age or older and are fully able and competent to enter into the terms, conditions, obligations, affirmations, representations, and warranties set forth in these Terms of Service, and to abide by and comply with these Terms of Service.

## **CHANGES TO TERMS OF SERVICE**

WJXR reserves the right, from time to time, with or without notice to you, to change these Terms of Service in our sole and absolute discretion. The most current version of these Terms of Service can be reviewed by clicking on the "Notification Service - Terms of Service" located in the Site Map of the WJXR Web site. The most current version of the Terms of Service will supersede all previous versions. This copy was issued February 2009 (Revised).

## **SUBSCRIPTION**

By subscribing to the Service, you accept and agree to be bound by the following conditions:

1. The Service is based on a monthly subscription to receive notifications provided by WJXR when available. Subscribing to or using the Service goes not warrant or guarantee that you will receive all information that is broadcast, advertised, or published by WJXR. The Service starts on the date that payment is received and is valid for one month to the day from the date of payment.
2. WJXR will not be liable for any delays or failures in your receipt of any notifications as delivery is subject to effective transmission from your network conditions and other factors beyond WJXR's control. The Service's notification services are provided on an AS IS, AS AVAILABLE basis.
3. You are responsible for obtaining and maintaining all computer software, hardware and communications and other equipment required to use the Service.
4. You are responsible for paying all third-party access charges incurred, such as ISP, SMS, or telecommunications fees. Such fees include messaging fees charged by your mobile phone carrier.
5. Accepted subscription payment methods are cash, check, or major credit card and all payments must be made at one of WJXR's store locations. In the event of a returned check, a NSF fee will be charged in addition to the amount of the check and legal action may be taken as required.
6. Renewals will extend the subscription date for one month to the day from the date of payment, or if payment is received prior to subscription expiration, the expiration date will be extended one month to the day from the date of expiration prior to the renewal.

## **TERMINATION**

This Service Agreement is a monthly agreement, which is not automatically renewable.

Either party may terminate this Service Agreement by notifying the other party in writing at least ten (10) days before the termination date.

WJXR, in its sole discretion, may terminate your use of the Service if you fail to comply with this Agreement.

You will pay in full for the Service up to and including the last day of the current billing cycle. To cancel the Service or change the type of service, you must contact us in writing. All such requests received prior to ten (10) days of the end of the customer billing cycle will incur no additional charges. Requests for cancelled or changed service received within ten (10) days of the end of the customer billing cycle may incur one additional month of charges.

Upon expiration or termination, you will immediately cease all use of the Service, including any WJXR software and any documentation. Termination is not an exclusive remedy. All other remedies will be available. Your payment obligation will survive termination.

If you are dissatisfied with the Service or with any of our terms and conditions, your sole and exclusive remedy is to discontinue the Service. There will be no refunds of any fees paid.

### **REFUND POLICY**

By subscribing to the service you agree to the following refund policy. All sales are final and there will be no refund of any fees paid. In case of a bank chargeback from you, you agree that WJXR may charge you \$10.00 to compensate for the chargeback fees. If you received a free subscription as a result of a special promotion, you will not receive any refunds for a subscription regardless of usage or remaining time.

### **ASSIGNMENT**

These Terms of Service, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by WJXR without restriction.

### **COMMUNICATIONS**

1. Your mobile phone carrier's standard messaging rates apply to your entry or submission message, our confirmation and all subsequent SMS correspondence. WJXR does not charge additional fees for SMS messages beyond the subscription price, however, any downloadable content may incur additional charges from your cell phone provider. Please contact your wireless carrier for information about your messaging plan. Your carrier may impose message or charge limitations on your account that are outside our control. All charges are billed by and payable to your mobile service provider.

2. By subscribing, you consent to receiving up to 60 SMS and/or email messages per month, and further text and/or email messages from us which may include offers from us, our affiliates and partners. You can unsubscribe or change your notification preferences for the Service by calling WJXR at (904) 358-2265 or (904) 259-2292 during our operating hours.

3. If electing to be notified using SMS, you represent that you are the owner or authorized user of the wireless device you use to subscribe for the service, and that you are authorized to approve the applicable charges.

4. If electing to be notified using email, you represent that you are the owner or authorized user of the email account you use to subscribe for the service, and that you are authorized to approve any applicable charges.

5. WJXR will not be liable for any delays or failures in your receipt of any SMS or email messages as delivery is subject to effective transmission from your network operator and processing by your mobile device or computer. The Service's SMS and email message notification services are provided on an AS IS, AS AVAILABLE basis.

6. Data obtained from you in connection with this SMS service may include your cell phone number, your carrier's name, and the date, time and content of your messages and other information that you may provide. We may use this information to contact you and to provide the services you request from us, and to otherwise operate, develop and improve the service. Your wireless carrier and other service providers may also collect data about your SMS usage, and their practices are governed by their own policies. We will only use information you provide to the Service to transmit your text message or as otherwise described in this document. Nonetheless, we reserve the right at all times to disclose any information as necessary to satisfy any law, regulation or governmental request, to avoid liability, or to protect our rights or property. When you complete forms online or otherwise provide us information in connection with the Service, you agree to provide accurate, complete, and true information.

7. The service and the content and materials received through the service are proprietary to us or our licensors, and is for your personal, non-commercial use only. You shall not damage, impair, interfere with or disrupt the service or its functionality.

8. The service is available only in the United States.

9. We reserve the right to alter charges and/or these terms and conditions from time to time. We may suspend or terminate the service to you if we believe you are in breach of our terms and conditions. Your service is also subject to termination in the event that your wireless service terminates or lapses. We may discontinue the service at any time.

### **GENERAL**

You agree that: (i) the Service shall be deemed solely based in Florida; and (ii) the Service shall be deemed a passive service that does not give rise to personal jurisdiction over WJXR, either specific or general, in jurisdictions other than Florida. These Terms of Service shall be governed by the internal substantive laws of the State of Florida, without respect to its conflict of laws principles. Any claim or dispute between you and WJXR that arises in whole or in part from the Service shall be decided exclusively by a court of competent jurisdiction located in Baker County, Florida. These Terms of Service,

and any other legal notices published by WJXR, shall constitute the entire agreement between you and WJXR concerning the Service. If any provision of these Terms of Service is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of these Terms of Service, which shall remain in full force and effect. No waiver of any term of these Terms of Service shall be deemed a further or continuing waiver of such term or any other term, and the failure by WJXR to assert any right or provision under these Terms of Service shall not constitute a waiver of such right or provision. WJXR reserves the right to amend these Terms of Service at any time and without notice, and it is your responsibility to review these Terms of Service for any changes. Your use of the Service following any amendment of these Terms of Service will signify your assent to and acceptance of its revised terms. YOU AND WJXR AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE SERVICE MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

#### **INDEMNITY**

You agree to defend, indemnify and hold harmless WJXR, its parent corporations, affiliates officers, directors, employees, agents, and sponsors from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) your use of and access to the Service; (ii) your violation of any term of these Terms of Service; (iii) your violation of any third party right, including without limitation any copyright, property, or privacy right; or (iv) any claim that one of your User Submissions caused damage to a third party. This defense and indemnification obligation will survive these Terms of Service and your use of the Service.

#### **WARRANTY DISCLAIMER**

YOU AGREE THAT YOUR USE OF THE SERVICE SHALL BE AT YOUR SOLE RISK. TO THE FULLEST EXTENT PERMITTED BY LAW, WJXR, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THE SERVICE AND YOUR USE THEREOF. WJXR MAKES NO WARRANTIES OR REPRESENTATIONS ABOUT THE ACCURACY OR COMPLETENESS OF THIS SERVICE'S CONTENT AND ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT, (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF THE SERVICE, (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN, (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SERVICE, (V) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE WHICH MAY BE TRANSMITTED TO OR THROUGH THE SERVICE BY ANY THIRD PARTY, (VI) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE SERVICE, AND/OR (VII) THE AVAILABILITY OR LACK THEREOF OF PRODUCTS OR SERVICES TRANSMITTED THROUGH THE SERVICE OR OF THE SERVICE ITSELF. WJXR DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY OR AVAILABILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE SERVICE, AND WJXR WILL NOT BE A PARTY TO OR IN ANY WAY BE RESPONSIBLE FOR MONITORING ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES.

WJXR DOES NOT REPRESENT OR WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE WEB SITE OR THE SERVER THAT MAKES IT AVAILABLE, ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

#### **LIMITATION OF LIABILITY**

IN NO EVENT SHALL WJXR, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS, BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER RESULTING FROM ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT, (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF THE SERVICE, (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN, (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SERVICE, (V) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE, WHICH MAY BE TRANSMITTED TO OR THROUGH THE SERVICE BY ANY THIRD PARTY, AND/OR (VI) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF YOUR USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT THE COMPANY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

YOU SPECIFICALLY ACKNOWLEDGE THAT WJXR SHALL NOT BE LIABLE FOR USER SUBMISSIONS OR THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY THIRD PARTY AND THAT THE RISK OF HARM OR DAMAGE FROM THE FOREGOING RESTS ENTIRELY WITH YOU.