

Terms of Service

Version 1.2

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THIS SERVICE.

BY USING THE SERVICE OR CLICKING “AGREE”, CUSTOMER IS AGREEING TO BE BOUND BY THIS AGREEMENT. IF YOU ARE AGREEING TO THIS AGREEMENT ON BEHALF OF OR FOR THE BENEFIT OF YOUR EMPLOYER, THEN YOU REPRESENT AND WARRANT THAT YOU HAVE THE NECESSARY AUTHORITY TO AGREE TO THIS AGREEMENT ON YOUR EMPLOYER’S BEHALF.

This agreement is between Whistle Group, Inc., a Delaware corporation (**Whistle**), and the customer agreeing to these terms (**Customer**).

1. **ONLINE SERVICE.** This agreement provides Customer access to and usage of an Internet based service and/or mobile application as specified on an order and as further outlined on the Scout Finance website (**Service**).
2. **USE OF SERVICE.**
 - a. **Customer Owned Data.** All data uploaded by Customer remains the property of Customer, as between Whistle and Customer (**Customer Data**). Customer grants Whistle the right to use the Customer Data solely for purposes of performing under this agreement.
 - b. **Third Party Information and Whistle Information.** Under this agreement, Customer will be provided access to third party information, such as NASDAQ and Xignite (**Third Party Information**) and Whistle proprietary information (collectively referred to as **Information**).
 - Customer may use the Information only for internal purposes.
 - Customer may copy, paste and distribute internally only an “insubstantial amount” of the data contained in the Information *provided that*:
 - i. the distribution is incidental to or supports user's business purpose,
 - ii. the data is not distributed by Customer in connection with information vending or commercial publishing (in any manner or format whatsoever), not reproduced through the press or mass media or on the Internet, and
 - iii. where practicable, clearly identifies the source of the data (such as the third party providers as the source of the data).

Data will be considered an "insubstantial amount" if such amount has no independent commercial value, and could not be used by the recipient as a substitute for any product or service (including any download service) of the data provider (or a substantial part of it).

 - Additional terms applicable to the Third Party Information are located on **Exhibit A**.
 - c. **Customer Responsibilities.** Customer (i) must keep its passwords secure and confidential; (ii) is solely responsible for Customer Data and all activity in its account in the Service; (iii) must use commercially reasonable efforts to prevent unauthorized access to its account, and notify Whistle promptly of any such unauthorized access; and (iv) may use the Service only in accordance with applicable law.
3. **DISCLAIMERS.**
 - a. **CUSTOMER UNDERSTANDS THAT WHISTLE IS AN AGGREGATOR AND PROVIDER OF INFORMATION (INCLUDING OPINIONS) FOR GENERAL INFORMATION PURPOSES ONLY AND DOES NOT PROVIDE LEGAL, FINANCIAL OR OTHER PROFESSIONAL ADVICE. SOME INFORMATION MAY CONTAIN THE OPINIONS OF THIRD PARTIES, AND WHISTLE IS NOT RESPONSIBLE FOR THESE OPINIONS. LIKEWISE, WHISTLE IS NOT RESPONSIBLE FOR ANY DAMAGES RESULTING FROM ANY DECISIONS OF CUSTOMER OR ITS CUSTOMERS, THAT ARE MADE IN RELIANCE ON THE SERVICES, INCLUDING DECISIONS RELATING TO THE SALE AND PURCHASE OF FINANCIAL INSTRUMENTS OR LEGAL, COMPLIANCE AND/OR RISK MANAGEMENT DECISIONS. CUSTOMER AGREES THAT IT USES THE SERVICES AT ITS OWN RISK IN THESE RESPECTS.**
 - b. **THE SERVICE IS PROVIDED AS IS. WHISTLE DISCLAIMS ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE. WHILE WHISTLE TAKES REASONABLE PHYSICAL, TECHNICAL AND ADMINISTRATIVE MEASURES TO SECURE THE SERVICE, WHISTLE DOES NOT GUARANTEE THAT THE SERVICE CANNOT BE**

COMPROMISED. CUSTOMER UNDERSTANDS THAT THE SERVICE MAY NOT BE ERROR FREE, AND USE MAY BE INTERRUPTED.

4. MUTUAL CONFIDENTIALITY.

- a. **Definition of Confidential Information.** Confidential Information means all non-public information disclosed by a party (**Discloser**) to the other party (**Recipient**), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (**Confidential Information**). Whistle's Confidential Information includes without limitation the Service, its user interface design and layout, and pricing information, and the Software and Documentation (defined below).
- b. **Protection of Confidential Information.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with this agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this agreement.
- c. **Exclusions.** Confidential Information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser, (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser, (iii) is received from a third party without breach of any obligation owed to Discloser, or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order, but will provide Discloser with advance notice to seek a protective order.

6. WHISTLE PROPERTY.

- a. **Reservation of Rights.** The software, workflow processes, user interface, designs, know-how, Software and Documentation, and other technologies provided by Whistle as part of the Service are the proprietary property of Whistle and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with Whistle. The Third Party Information is proprietary to the applicable third party provider. Customer may not remove or modify any proprietary marking or restrictive legends in the Service or Software and Documentation. Whistle and the Third Party Providers reserve all rights unless expressly granted in this agreement.
- b. **Restrictions.** Customer *may not* (i) sell, resell, rent or lease the Service or use it in a service provider capacity; (ii) use the Service to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise objectionable, unlawful or tortious material, or to store or transmit material in violation of third-party rights; (iii) interfere with or disrupt the integrity or performance of the Service; (iv) attempt to gain unauthorized access to the Service or their related systems or networks; (v) reverse engineer the Service or the Software and Documentation; or (vi) access the Service or use the Software and Documentation to build a competitive service or product, or copy any feature, function or graphic for competitive purposes.
- c. **Software and Documentation.** All software and apps provided by Whistle as part of the Service, and the Service documentation, marketing materials, and training material provided through the Service or by Whistle (**Software and Documentation**) are licensed to Customer as follows: Whistle grants Customer a non-exclusive, non-transferable license during the term of this agreement, to operate such Software and Documentation, solely in connection with the Service.
- d. **Aggregate Data.** During and after the term of this agreement, Whistle may use non-personally identifiable Customer Data for purposes of enhancing the Service, aggregated statistical analysis, technical support and other business purposes.

7. TERM AND TERMINATION.

- a. **Term.** This agreement continues until all orders have terminated and/or customer's account is terminated.
- b. **Mutual Termination for Material Breach.** If either party is in material breach of this agreement, the other party may terminate this agreement at the end of a written 30-day notice/cure period, if the breach has not been cured. However, if Customer violates Section 2(b) or any terms of **Exhibit A**, then Whistle may terminate this agreement and their account upon notice to Customer.
- c. **Return of Customer Data.**
 - *Within 60-days after termination*, upon request Whistle will make the Service available for Customer to export Customer Data as provided in Section 2(a). This assumes Customer Data exists in the Service that can be exported.

- *After such 60-day period*, Whistle has no obligation to maintain the Customer Data and may destroy it.
- d. **Return Whistle Property Upon Termination.** Upon termination of this agreement for any reason, Customer must pay Whistle for any unpaid amounts, and destroy or return all property of Whistle. Upon Whistle's request, Customer will confirm in writing its compliance with this destruction or return requirement.
 - e. **Suspension for Violations of Law.** Whistle may temporarily suspend the Service or remove the applicable Customer Data, or both, if it in good faith believes that, as part of using the Service, Customer has violated a law. Whistle will attempt to contact Customer in advance.
 - f. **Third Party Information.** CUSTOMER UNDERSTANDS THAT ACCESS TO ANY THRID PARTY INFORMATION MAY BE UNAVAILABLE TEMPORARILY OR PERMANENTLY, AND WHISTLE IS NOT RESPONSIBLE FOR ANY SUCH UNAVAILABILITY. HOWEVER CUSTOMER MAY TERMINATE THE ORDER AT THE END OF THAT MONTH (FOR ITS CONVENIENCE) UPON ANY SUCH UNAVAILABILITY ON A PERMANENT BASIS. IN THE EVENT OF SUCH TERMINATION, WHISTLE WILL REFUND ANY PREPAID AND UNUSED MONTHLY FEES FOR THE SERVICE.
8. **LIABILITY LIMIT.**
- a. **EXCLUSION OF INDIRECT DAMAGES.** Neither Whistle nor its Third Party Providers are liable for any indirect, special, incidental or consequential damages arising out of or related to this agreement (including, without limitation, costs of delay; loss of data, records or information; and lost profits, revenue or anticipated cost savings), even if it knows of the possibility of such damage or loss.
 - b. **TOTAL LIMIT ON LIABILITY.** Whistle's total liability arising out of or related to this agreement (whether in contract, tort or otherwise) does not exceed the amount paid by Customer within the 6-month period prior to the event that gave rise to the liability.
9. **INDEMNITY.**
- a. **Infringement.** Whistle will defend or settle any third party claim against Customer to the extent that such claim alleges that Whistle technology used to provide the Service violates a copyright, patent, trademark or other intellectual property right, if Customer, promptly notifies Whistle of the claim in writing, cooperates with Whistle in the defense, and allows Whistle to solely control the defense or settlement of the claim. **Costs.** Whistle will pay infringement claim defense costs incurred as part of its obligations above, and Whistle negotiated settlement amounts, and court awarded damages. **Process.** If such a claim appears likely, then Whistle may modify the Service, procure the necessary rights, or replace it with the functional equivalent. If Whistle determines that none of these are reasonably available, then Whistle may terminate the Service and refund any prepaid and unused fees. **Exclusions.** Whistle has no obligation for any claim arising from: Whistle's compliance with Customer's specifications; A combination of the Service with other technology where the infringement would not occur but for the combination; Use of Customer Data; or Technology not provided by Whistle. THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES AND WHISTLE'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.
 - b. **General Customer Indemnity.** If any third-party brings a claim against Whistle or any of its Third Party Providers related to Customer's acts, omissions, data or information within the Service, Customer must defend, indemnify and hold Whistle and such Third Party Provider harmless from and against all damages, losses, and expenses of any kind (including reasonable legal fees and costs) related to such claim.
10. **GOVERNING LAW AND FORUM.** This agreement is governed by the laws of the State of New York (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of this agreement. Any suit or legal proceeding must be exclusively brought in the federal or state courts for New York, NY and Customer submits to this personal jurisdiction and venue. Nothing in this agreement prevents either party from seeking injunctive relief in a court of competent jurisdiction. The prevailing party in any litigation is entitled to recover its attorneys' fees and costs from the other party.
11. **OTHER TERMS.**
- a. **Entire Agreement and Changes.** This agreement and the order constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. Customer is not relying on any representation concerning this subject matter, oral or written, not included in this agreement. No representation, promise or inducement not included in this agreement is binding. No modification of this agreement is effective unless both parties sign it, and no waiver is effective unless the party waiving the right signs a waiver in writing.
 - b. **No Assignment.** Neither party may assign or transfer this agreement or an order to a third party, except that this agreement with all orders may be assigned, without the consent of Customer, as part of a merger, or sale of substantially all the assets, of Whistle.

- c. **Independent Contractors.** The parties are independent contractors with respect to each other.
- d. **Enforceability and Force Majeure.** If any term of this agreement is invalid or unenforceable, the other terms remain in effect. Except for the payment of monies, neither party is liable for events beyond its reasonable control, including, without limitation force majeure events.
- e. **Money Damages Insufficient.** Any breach by a party of this agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach.
- f. **No Additional Terms.** Whistle rejects additional or conflicting terms of any Customer form-purchasing document.
- g. **Order of Precedence.** If there is an inconsistency between this agreement, an order or exhibit, the following order of precedent will apply: the exhibit, the agreement and then the order.
- h. **Survival of Terms.** Any terms that by their nature survive termination of this agreement for a party to assert its rights and receive the protections of this agreement, will survive. The UN Convention on Contracts for the International Sale of Goods does not apply.
- i. **Feedback.** By submitting ideas, suggestions or feedback to Whistle regarding the Service, Customer agrees that such items submitted do not contain confidential or proprietary information; and Customer hereby grants Whistle an irrevocable, unlimited, royalty-free and fully-paid perpetual license to use such items for any business purpose.

Exhibit A

NASDAQ Terms

- Customer may not provide any information provided from the NASDAQ or transfer this agreement to others. NASDAQ is not liable for trading losses, lost profits, or incidental, consequential or other indirect damages, even if the information is untimely or incorrect.