

WELCOME TO WHISTLE!

A seamless way to sell your unused electronic devices

IMPORTANT ARBITRATION NOTICE: THESE TERMS OF SERVICE (“TERMS”) CONTAIN AN ARBITRATION PROVISION REQUIRING YOU TO RESOLVE ANY DISPUTES WITH US ON AN INDIVIDUAL BASIS THROUGH FINAL AND BINDING ARBITRATION. PLEASE REVIEW THE ARBITRATION PROVISION IN SECTION 18 CAREFULLY. YOUR AGREEMENT TO THESE TERMS INDICATES YOUR EXPRESS ACKNOWLEDGEMENT AND AGREEMENT THAT YOU HAVE READ AND UNDERSTAND HOW THIS ARBITRATION PROVISION WORKS.

- This is a Contract.*** These Terms are a contract governing your access to and use of the Whistle marketplace and its various products, services and technology provided or otherwise made available to you to facilitate your purchase or sale of electronic devices (collectively, the “**Platform**”). These Terms are between you (whether an individual or organization) and LootScoot, Inc. dba “Whistle” (“**Whistle**”, “**we**”, “**our**” or “**us**”). Access to and use of the Platform is available only to individuals who are at least 18 years of age and can form legally binding contracts under applicable law. By using the Platform, including via our mobile app (the “**Whistle App**”), our websites or by creating a user account, you are agreeing to these Terms. Please read them carefully, and if you don’t agree with what they require, you may not use our Platform. We may amend these Terms from time to time, and the revised version will be effective when posted via the Whistle App, on our website or as otherwise made available to you. Any revised Terms will supersede previous versions. While we will use reasonable efforts to provide you advance notice of any important revisions, we recommend that you regularly review these Terms because your continued use of the Platform after we make any changes to them constitutes your agreement to any updated version.
- Additional Whistle Policies.*** In addition to these Terms, additional Whistle policies also govern your use of the Platform. Please review our [Privacy Policy](#) to understand how we collect and use your information, and the Whistle Code of Conduct ([buyers](#), [sellers](#)) for how to use (and not use) the Platform generally. Both our Privacy Policy and Code of Conduct are incorporated into these Terms by reference. Your compliance with the Whistle Code of Conduct is a material requirement of these Terms. Also, as our products and services evolve, different or additional terms and conditions may apply (“**Supplemental Terms**”), which will be posted separately if not included in these Terms. Any Supplemental Terms will control and take precedence if there is a conflict between them and these Terms. These Terms apply to all users of the Platform, whether you are selling an item (a “**Seller**”) or buying an item (whether ultimately for resale or otherwise) (a “**Buyer**”). To be a Buyer, you are first required to complete a [Whistle Reseller Application](#) to be considered for eligibility, and if accepted (in our sole discretion), you are subject to the additional requirements set forth in Section 4 below.
- What is Whistle?*** Getting rid of one’s old electronic devices can be an inefficient, time-consuming process. Most of us intend to sell them but end up just putting them in a drawer only to forget about them. At Whistle, we aim to make this process frictionless and convenient. Sellers can use the Platform to sell their own devices. Buyers can use the Platform for lead generation to find devices to purchase (whether for their own re-selling purposes or otherwise). We of course cannot promise or guarantee success in any transaction. Currently all payments from Buyers to Sellers must be handled outside of the Platform, directly between a Buyer and a Seller. If and when payment functionality is

available through the Platform, we will update these Terms. For Sellers, the Platform will provide a suggested sale price for the device they wish to sell. If that suggested price is accepted by the Seller, the Platform will then surface that request and price to the Platform's Buyer community. Each Buyer makes their own decision whether such price is acceptable. We base this suggested price on comparable pricing in the market for the relevant device. By using the Platform, you understand and agree that Whistle does not buy or sell any items.

4. **Additional Buyer-Specific Terms.** If you are using our Platform as a Buyer, the following additional terms apply to you. You acknowledge and agree that:

a. You validly hold any and all necessary licenses, certifications, permits or otherwise as required by applicable law to be a Buyer. If there aren't any specific legal requirements to do this in your jurisdiction, that's fine, but the obligation is yours and yours alone to ensure this is the case.

b. You are Whistle's customer, and not its employee, partner, agent or joint venturer. You will provide your own equipment and determine your own schedule, and we do not (and have no right to) control any of the foregoing. We charge a fee in exchange for your use of our Platform for lead generation, as set forth in Section 7 below.

c. While the Platform may suggest prices for devices you are seeking to purchase, it is solely your choice whether to accept any particular lead.

d. When you purchase a device from a Seller via our Platform, you are creating a binding contract with that Seller.

e. A background check may be run (and re-run) on you as permitted by law, which you specifically consent to in order to access the Platform as a Buyer. A background check includes history of criminal convictions and/or sex offender registration. We may reject, suspend or terminate your User Account (as defined below) as a Buyer depending on the results of any such background check.

5. **Your Whistle Account.** Whether you are a Seller or a Buyer, you'll need to set up a Whistle user account ("**User Account**") to get the most out of the Platform. While you may have some limited browsing capabilities without one, in order to post any items for sale as a Seller or receive lead generation as a Buyer, a User Account is required. To set up a User Account, we require your first and last name, phone number, physical address, email address and corresponding password. Buyers will also be required to provide additional information required for background checks (as noted above), as well as certain payment details and a photo of themselves. Your account information must be true, accurate and complete, and updated from time to time as needed. Use a strong, unique password and don't share it with anyone. Your account is personal to you, it may not be transferred without our prior written consent and you are responsible for all activity that occurs under it. You are required to let us know immediately if you suspect any unauthorized use of your User Account, and we have the right to temporarily or permanently suspend or deactivate it if it contains incomplete or inaccurate information or if we suspect fraudulent activity.

6. **Key Platform Ground Rules.**

All Platform users, whether Sellers or Buyers, are required to comply with all applicable laws (including tax laws) when using the Platform. In addition to your compliance with these Terms in general as well as

the [Whistle Code of Conduct](#), we've set out critical requirements below that we want you to pay special attention to when using the Platform:

a. **Listing Your Items.** As a Seller, when you list a device for sale on the Platform, you represent and warrant that you have all necessary rights to actually sell that device. Additional requirements may apply on a per-device basis, as communicated to you through the Platform or otherwise by us. You must accurately describe any device you list for sale and include any necessary or required descriptions, photos or similar information for a Buyer so that they are able to make an informed purchasing decision. As a Seller, if any device you post for sale is deemed to not be in the condition you've stated at the time of posting, we and/or the applicable Buyer have the right to terminate the transaction or offer you a reduced purchase price for that device. By permitting the listing of your device for sale on the Platform does not indicate our endorsement of any such device, whether in terms of quality, condition or otherwise. We may in our sole and reasonable discretion reject or remove any particular device listing from the Platform without notice to you.

b. **Refunds or Returns.** Any agreements regarding refunds or returns are solely between the Seller and the Buyer. We have no involvement or liability with respect to the foregoing.

c. **Payments.** All payments are handled directly, outside the Whistle App, from the Buyer to the Seller in an agreed-upon form of payment. Seller is solely responsible for ensuring that proper payment is received, including any necessary taxes and/or other fees. We are not responsible for any losses or damages associated with a Seller's failure to receive funds, a Buyer's failure to pay or for otherwise insufficient funds from a Buyer to a Seller. Other than Whistle's fee collected from a Buyer for use of the Platform for lead generation purposes, we are otherwise not party to any such transaction.

d. **Lawful Conduct; Not Competitive to Whistle.** Whether you are a Seller or a Buyer, you must not use the Platform for unlawful purposes. Just to name a few, this means you cannot use the Platform to engage in fraudulent behavior, misrepresentation of your identity, your intent or the devices you are making available for sale, or to collect, harvest or publish any personally identifiable data from the Platform. You may not use the Platform in any way that is competitive to our business.

7. **Whistle Fees.** If you are a Seller, there is no charge to post a device for sale on the Platform. If you are a Buyer, in exchange for using the Platform for lead generation services, we charge you a fee on a per-device basis (the "**Whistle Fee**"). The Whistle Fee is made visible to you at the same time you receive a lead via the Platform for a particular device, and your acceptance of any particular lead is subject to your acceptance of the corresponding Whistle Fee. Our Whistle Fee may vary from device to device.

8. **WARRANTY DISCLAIMER.** THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." OTHER THAN AS EXPRESSLY SET OUT IN THESE TERMS, WE DO NOT MAKE ANY SPECIFIC PROMISES ABOUT ANY ASPECT OF THE PLATFORM, WHETHER ABOUT ITS SPECIFIC FUNCTIONALITY, RELIABILITY, QUALITY, AVAILABILITY OR ABILITY TO MEET YOUR SPECIFIC NEEDS OR OTHERWISE, OR THAT YOUR USE OF THE PLATFORM WILL BE UNINTERRUPTED OR ERROR-FREE. SOME JURISDICTIONS DO NOT ALLOW CERTAIN WARRANTIES TO BE DISCLAIMED. TO THE MAXIMUM EXTENT PERMITTED BY LAW, WE EXCLUDE ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED.

9. **LIMITATION OF LIABILITY.** WE WILL NOT BE RESPONSIBLE FOR LOST PROFITS, LOST REVENUES, LOSS OR CORRUPTION OF DATA, FINANCIAL LOSSES, OR INDIRECT, SPECIAL, CONSEQUENTIAL,

EXEMPLARY OR PUNITIVE DAMAGES BY YOU OR ANY THIRD PARTY. OUR TOTAL LIABILITY FOR ANY CLAIMS UNDER THESE TERMS OR IN RELATION TO OUR PLATFORM GENERALLY, INCLUDING FOR ANY IMPLIED WARRANTIES THAT CANNOT BE DISCLAIMED, IS LIMITED TO THE GREATER OF US\$100.00 AND THE AMOUNT YOU'VE PAID TO US IN THE PAST 12 MONTHS. IN ALL CASES, WE WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE THAT IS NOT REASONABLY FORESEEABLE. YOU HEREBY WAIVE ANY AND ALL CLAIMS FOR DAMAGES OR LIABILITY BEYOND THE LIMITATIONS AND EXCLUSIONS SET FORTH ABOVE, INCLUDING THOSE IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTORY AND/OR ANY OTHER GROUNDS, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIMS. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, OR FOR CERTAIN BEHAVIORS (SUCH AS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT), SO SOME OF THE ABOVE PROVISIONS MAY NOT APPLY TO YOU IN ANY GIVEN SITUATION. THE PROVISIONS IN THIS SECTION 9 APPLY TO THE MAXIMUM EXTENT ALLOWED BY LAW.

10. **Assumption of Risk.** You acknowledge and agree that there are certain inherent risks associated with using an Internet-based marketplace like the Platform. While Buyers may be subject to certain background checks as permitted by law prior to being accepted to the Platform, it is your responsibility to take any necessary precautions when interacting with Sellers and/or Buyers that you are connected with through the Platform (including any interactions offline outside of the Platform during or following any particular transaction or attempted transaction). This means taking all precautions you would reasonably be expected to take when interacting with a person you are just meeting for the first time. Be thoughtful about when and where to set up an in-person meeting to consummate a transaction (such as choosing a public place and appropriate time of day). Please review the Whistle Code of Conduct ([buyers](#), [sellers](#)) for more on this.

11. **Indemnity.** You agree to indemnify and hold us harmless from any and all claims, actions, costs, damages, penalties, fines, demands, losses, liabilities and expenses (including attorneys' fees and court costs) arising out of or in connection with (i) your use of the Platform, (ii) your breach or violation of these Terms, (iii) any content you provide (pursuant to Section 14), or (iv) your violation of the rights of any third party. We reserve the right to assume the exclusive defense of any of the foregoing, and you agree not to settle any claim without our prior written consent. You agree that the obligations in this Section 11 will survive any termination of these Terms, your User Account or your access to the Platform generally.

12. **Text Messages and Telephone Calls.** Unless you opt out, you agree that we may contact you (through the Platform or otherwise) by telephone, SMS or text message (including through use of an automatic telephone dialing system) at the phone number(s) you have provided to us. You understand that you are not required to provide this consent as a condition of purchasing any experiences, goods or services. You may opt out of receiving telephone calls, SMS or text messages from us at any time by emailing us at support@whis.tl.

13. **Intellectual Property**

a. **Our Limited License to You.** Subject to these Terms, we grant you a limited, non-exclusive, non-sublicensable, revocable, non-commercial, non-transferable license to access and use the Whistle App (and any related software and services we provide to you in connection with it) on your personal device solely for your use of the Platform for its intended purpose. Any rights not expressly granted herein are reserved by us and our licensors. The rights we are granting you are subject to the following restrictions: (i) you are not permitted to copy, modify, distribute, sell or lease any part of the Platform or

associated software, nor may you reverse engineer or attempt to extract the source code of the Platform or associated software, except to the extent that any local laws prohibit these restrictions or you have our written permission to do so; (ii) you may not do anything that places an unreasonably large load on the Platform's infrastructure, nor may you spam or flood our systems or use robots, spiders, scrapers or other automated means to access the Platform; and (iii) you may not attempt to interfere with the proper working of the Platform or attempt to bypass any of our security measures to access the Platform.

b. **Ownership.** Using the Platform does not give you ownership of any intellectual property rights in it or to the content you access, and except for the limited license granted to you above, all rights therein (including all intellectual property) belong exclusively to us, our affiliates or our licensors. You may not use content from the Platform without our express prior written consent or as otherwise permitted by law. These Terms do not grant you the right to use any trademarks, branding or logos used in the Platform or otherwise, including in any advertising or publicity or to imply our endorsement in any way. You may not obscure or alter any legal notices displayed in, along with or in connection with the Platform.

14. **Your Content.** From time to time you may be able to submit content to us (for example, we may invite you to participate in a user forum, provide tips to the Platform's user community or comment on a blog post). You retain ownership of this content, but you represent and warrant that you have the right to provide it to us. When you do so, you are granting us and our partners a worldwide license to use, host, store, reproduce, modify, create derivative works based on, communicate, publish, publicly perform, publicly display and distribute it as well as your name, voice and/or likeness if also submitted by you. This license continues even if you stop using the Platform. If you submit feedback or suggestions about the Platform, we may use your feedback or suggestions without obligation to you, and any content you submit in such instance is deemed non-confidential. You may not submit any defamatory, libelous, hateful, violent, obscene, pornographic, unlawful or otherwise offensive content, or content that constitutes "spam" or unsolicited advertising. We have the right, but not the obligation, to review, monitor or remove your content at any time for any reason without notice to you.

15. **Third Party Services and Content.** The Platform may be made available or accessed in connection with services and content (including advertising) controlled by third parties with different terms of service and privacy policies. We do not endorse these third party services and content and we are not responsible or liable for any of their products or services. Additionally, Apple Inc., Google, Inc., Microsoft Corporation and/or BlackBerry Limited will be a third party beneficiary to these Terms if you access the Platform using applications developed for Apple iOS, Android, Microsoft Windows or Blackberry-powered mobile devices, respectively. These third party beneficiaries are not parties to these Terms and are not responsible for the provision or support of the Platform in any manner. Your access to the Platform using these applications or devices is subject to their respective terms of service and privacy policies.

16. **Accessing our Services.** Using the Platform (whether from a mobile device or computer) will require various levels of data network access. It is your responsibility to obtain this access, subject to your mobile network's data and messaging rates and fees. You may need to acquire and update compatible hardware or devices to use and update the Platform. We do not guarantee that the Platform, or any portion of it, will function on any particular hardware or device. The Platform may be

subject to malfunctions and delays inherent in the use of the Internet and electronic communications in general.

17. **Miscellaneous.** These Terms will be governed by and construed in accordance with the laws of the State of California, without regard to its conflicts of law provisions. You may not assign these Terms or any of your rights or obligations hereunder, whether in whole or in part, without our prior written approval. We may assign these Terms without your consent to a related or affiliated entity or in the event of a sale of all or substantially all of our assets, stock or business, or to a successor by merger, reorganization or other corporate transaction. Any purported assignment in violation of the immediately preceding sentence is void. No joint venture, partnership, employment or agency relationship exists between you and us as a result of these Terms or your use of the Platform. If any provision of these Terms is held to be invalid or unenforceable, that provision shall be enforced to the maximum extent permissible and the remaining provisions shall remain in full force and effect. Our failure to enforce any right or provision in these Terms shall not constitute a waiver of such right or provision unless we acknowledge and agree to it in writing, and it is not a waiver of our right to do so later. Force majeure events may prevent us from providing various products or services or use of the Platform generally, and we will have no liability under those circumstances. Please note that when we use the words “include” or “including” throughout these Terms, we mean “including, but not limited to” but do this for ease of reading. Provisions that by their nature are intended to survive the termination of these Terms or your use of the Platform will survive. These Terms expressly supersede any prior agreements or arrangements we may have with you. We may terminate these Terms or your use of any Platform, or generally cease offering or deny access to any portion of the Platform, at any time in our sole discretion. You may stop using our Platform at any time, or terminate your User Account at any time on written notice to us. If we believe there has been a violation of these Terms, we have the right to investigate and notify law enforcement if we deem necessary. As part of any investigation, we cooperate with law enforcement and will take legal whatever action we deem appropriate under the circumstances.

18. **Mutual Arbitration Provision.** Before bringing a formal legal case, we encourage you to first try contacting us directly. Most disputes can be resolved through discussion. Otherwise, the following applies:

a. We and you mutually agree to resolve any justiciable disputes between us exclusively through final and binding arbitration instead of filing a lawsuit in court; provided, however, that we each retain the right (i) to bring an individual action in small claims court and (ii) to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of copyrights, trademarks, trade secrets, patents or other intellectual property rights. This arbitration agreement is governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16) (“**FAA**”) and (except as expressly provided in the preceding sentence) will apply to any and all claims arising out of or relating to your access or use of the Platform, any communications, advertising or marketing by or regarding us or the Platform, any products or services sold or distributed through the Platform that you received as a consumer of the Platform, any aspect of your relationship or transactions with us, any of our or your actual or alleged intellectual property rights, and all other aspects of your relationship with us, past, present or future, whether arising under federal, state or local statutory and/or common law (collectively, “**Disputes**”). We and you also expressly agree that these Terms will be governed by the FAA even in the event you and/or we and/or these Terms are otherwise exempted from the FAA. Any disputes in this regard shall be resolved exclusively by an arbitrator. If, but only if, the arbitrator determines the FAA does not apply, California law governing arbitration

agreements will apply.

b. If either you or we wish to initiate arbitration, the initiating party must notify the other party in writing via certified mail, return receipt requested, or hand delivery within the applicable statute of limitations period. This demand for arbitration must include (i) the name and address of the party seeking arbitration, (ii) a statement of the legal and factual basis of the claim and (iii) a description of the remedy sought. Any demand for arbitration by you must be delivered to us at Whistle, 8605 Santa Monica Blvd #54303 West Hollywood, California 90069-4109 US. (Attn: Arbitration Claims).

c. **Class Action Waiver.** We and you mutually agree that by entering into this agreement to arbitrate, we and you both waive our right to have any Dispute brought, heard or arbitrated as, or to participate (whether as a plaintiff or class member) in, a class action, collective action and/or representative action, and an arbitrator shall not have any authority to hear or arbitrate any class, collective or representative action ("**Class Action Waiver**"). In any case in which (i) the dispute is filed as a class, collective, or representative action and (ii) there is a final judicial determination that all or part of the Class Action Waiver is unenforceable, the class, collective and/or representative action to that extent must be litigated in a civil court of competent jurisdiction, but the portion of the Class Action Waiver that is enforceable shall be enforced in arbitration. Notwithstanding any other clause contained in this Section 18 or the JAMS Rules, as defined below, any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. All other disputes with respect to whether this Mutual Arbitration Provision is unenforceable, unconscionable, applicable, valid, void or voidable shall be determined exclusively by an arbitrator, and not by any court.

d. Any arbitration shall be governed by the then-current JAMS Commercial Arbitration Rules using JAMS' streamlined Arbitration Rules and Procedures, or by any other arbitration administration service that you and our officer or legal representative consent to in writing. If an in-person arbitration hearing is required, then it will be conducted in the "metropolitan statistical area" (as defined by the U.S. Census Bureau) where you are a resident at the time the Dispute is submitted to arbitration. You and we will pay the administrative and arbitrator's fees and other costs in accordance with the applicable arbitration rules. If you are unable to pay such costs, we will pay all arbitration fees and expenses. The arbitrator or arbitration panel, as the case may be, will apply and be bound by this Section 18 and any additional terms, and will determine any Dispute according to applicable law and facts based upon the record and no other basis, and will issue a reasoned award. All issues are for the arbitrator to decide, including arbitrability. This arbitration provision shall survive termination of this Section 18 or the Services. You can obtain JAMS procedures, rules, and fee information as follows: JAMS: 800.352.5267 and <http://www.jamsadr.com>.

e. Except as provided in the Class Action Waiver, the arbitrator may award all remedies to which a party is entitled under applicable law and which would otherwise be available in a court of law, but shall not be empowered to award any remedies that would not have been available in a court of law for the claims presented in arbitration. The arbitrator shall apply the state or federal substantive law, or both, as is applicable, subject to these Term's provisions on governing law.

f. Except where arbitration is required above or with respect to the enforcement of any arbitration decision or award, any action or proceeding relating to any Dispute may only be instituted in a state or federal court in San Francisco, California. Accordingly, we and you each mutually consent to the exclusive personal jurisdiction and venue of such courts for such matters. The award issued by the

arbitrator may be entered in any court of competent jurisdiction.

g. This Mutual Arbitration Provision will survive any termination of your relationship with us. It is the full and complete agreement relating to the formal resolution of disputes covered by this Mutual Arbitration Provision. This Section 18 can be amended only by mutual written agreement between us and you. In the event any portion of this Mutual Arbitration Provision is deemed unenforceable, the remainder of this Mutual Arbitration Provision will be enforceable.

19. **Contacting Us.** If you have any questions about these Terms or the Platform generally, please contact us at support@whis.tl.