

Terms of Service

Terms of Service Smartphone Podcast Companion App

1. Your Acceptance of Terms

Welcome to Smartphone App

The following Terms of Service ("TOS") are between you and Libsyn and constitute a legal agreement that governs your use of the Smartphone App product, software, services and websites (collectively referred to as the "Service"). You must agree to these TOS before you can use the Service. You can agree to these TOS by: a) actually using the Service, b) selecting a service plan that includes an app or c) initiating the process to build the app within the Service interface or providing required information. If you do not agree to any of the following terms, please do not use the Service. You should print or otherwise save a copy of these TOS for your records. "Libsyn" as used herein means Webmayhem, Inc. doing business as Liberated Syndication and as Libsyn and its licensors. Webmayhem, Inc. is a wholly owned subsidiary of FAB Universal Corp. and located at 5001 Baum Boulevard, Suite 770, Pittsburgh, Pennsylvania.

Legal Authority

To use and/or register for the Service you must be: a) of legal age to form a binding contract with Libsyn, and b) cannot be a person barred from receiving the Service under the laws of the United States or other applicable jurisdiction, including the country in which you reside or from where you use the Service. By accepting these TOS you represent that you understand and agree to the foregoing including where applicable representing that you are of sufficient legal age to use or participate in such Service or (subject to applicable local law) that the account you are using was created and registered by your parent or legal guardian.

Updates

Libsyn may update or change these TOS from time to time and recommends that you review the TOS on a regular basis. You can review the most current version of the TOS at any time at <http://libsyn.com/legal/tos>. If Libsyn makes a change to the TOS, it will post the revised TOS on our website at the link as herein noted. You understand and agree that your continued use of the Service after the TOS has changed constitutes your acceptance of the TOS as revised. Without limiting the foregoing, if Libsyn makes a change to the TOS that materially impacts your use of the Service, Libsyn may post notice of any such change on our website and/or email you notice of any such change to the contact information provided at sign-up.

2. Description of the Service

Requirements

Unless otherwise agreed to in writing by both parties, use of the Service for the Smartphone App requires but is not limited to the following as outlined in the Smartphone App Product Sheet:

- Upon selection of a level of service that includes an App or by initiating the process to build the app within the Service interface or providing required information, you agree to have a Basic Smartphone App built for any supported or planned App platforms and submitted to corresponding App Stores based on the metadata contained in your feed.
- You must have at least three (3) audio or video episodes available in your active (RSS) feed
- You can, at any time choose to customize your Smartphone App and can chose from various feature upgrades and packages or upgrade your libsyn hosting service level (additional fees may apply)
- The revenue share for the App is 50% of net revenue. (Net revenue is revenue received by Libsyn after the App Store's share: : 30% App Store, 35% You, 35% Libsyn)
- The development, support and maintenance of the Smartphone App and those features outlined in the Smartphone App Product Sheet are provided by Libsyn at no cost to you as part of the Service. Additional Premium features and upgrades may require additional fees.
- Apps will be offered in the App Stores for a fee; in-app purchasing and subscription models can be activated upon App customization and based upon the guidelines and support for such in each App Store.
- The minimum price to be charged is \$ 1.99 for non-ad supported App
- For customized apps and those with in-app purchase options, you agree to provide additional content (PDF's, wallpaper images, bonus show content, etc) in addition to your regular podcast content for the App for a minimum of 6 months.
- You agree to produce and upload the necessary content for the App.
- You maintain ownership of all of the content used for the App
- You maintain all branding rights to the App and images, features and content can be customized and tailored by you
- Libsyn maintains ownership of the actual App
- You agree to market the App to your core audience on a consistent basis on your website, using a banner placed on the homepage and advertising within your podcast. If you are unable or unwilling to create original advertisements for insertion in your podcast generic ads may be inserted to assist with audience awareness.
- Libsyn may utilize existing app features including but not limited to push notification to assist in informing your users regarding important software updates released, new features or other notices important to guaranteeing best end user experience.
- Libsyn will handle the reporting, process and transfer of all payments from App sales on a 30-day cycle.
- You understand that approval process varies depending on the App Store and is not one that Libsyn has control over and that your App can take over two weeks to be approved and appear in the App Store.
- The App will not include any materials subject to trademark or copyright for which you do not own or have permission to use/distribute
- The App will not include any pornographic images or commentary in text, audio or video form.

Service Offering and Technical Specifications:

Standard and optional features for each of the Smartphone App offerings are detailed on the Product Sheet. Please refer to the Technical Specifications on the Product Sheet or contact support@libsyn.com for best practices information. Use of the Service for the Smartphone App Podcast Companion App requires but is not limited to the following as outlined in the Smartphone App Product Sheet:

- Audio and video episodes in recommended MP3 audio and H.264 video formats
 - If you do not publish in either of these formats, optional Libsyn Hosting Service Level upgrades that include transcoding are available to make copies to the formats that work best with the app; these upgrades may include additional monthly fees.

Changing the Service

Libsyn reserves the right to modify or stop the Service (or any part thereof), either temporarily or permanently, at any time or from time to time, with or without prior notice to you. Without limiting the foregoing, Libsyn may post on our website and/or send email to your Smartphone App account, notice of such changes to the Service. It is your responsibility to review our website

and/or check your Smartphone App email address for any such notices. You agree that Libsyn shall not be liable to you or any third party for any modification or cessation of the Service.

Limitations on Use

You agree to use the Service only for purposes as permitted by these TOS and any applicable law, regulation, or generally accepted practice in the applicable jurisdiction. Smartphone App features are described in the Smartphone App product sheet. You are allocated certain levels of storage capacity and other features for the Service level you have selected as described on the hosting plan page. You are responsible for selecting the Service level for storage and other features to best fit any additional requirements for the use of the Smartphone App Service. Libsyn reserves the right to modify these Service levels and product offerings at any time.

Availability of the Service

The Service, or any feature or part thereof, may not be available in all languages or in all countries and Libsyn makes no representation that the Service, or any feature or part thereof, is appropriate or available for use in any particular location. To the extent you choose to access and use the Service, you do so at your own initiative and are responsible for compliance with any applicable laws, including, but not limited to, any applicable local laws.

3. Content and Your Conduct

Content

"Content" means any information that may be generated or encountered through use of the Service, such as media files, metadata, graphics, images, photographs and other like materials for use in the App. You understand that all Content whether publicly posted or privately transmitted on the Service is the sole responsibility of the person from whom such Content originated. This means that you, and not Libsyn, are solely responsible for any Content you upload, download, post, email, transmit, store or otherwise make available through your use of the Service. Libsyn does not control the Content posted via the Service, nor does it guarantee the accuracy, integrity or quality of such Content. You understand and agree that your use of the Service and any Content is solely at your own risk.

Your Conduct

You agree that you will NOT use the Service to:

- upload, download, post, email, transmit, store or otherwise make available any Content that is unlawful, harassing, threatening, harmful, tortuous, defamatory, libelous, abusive, violent, obscene, vulgar, invasive of another's privacy, hateful, racially or ethnically offensive, or otherwise objectionable;
- stalk, harass, threaten or harm another;
- if you are an adult, request personal or other information from a minor (any person under the age of 18 or such other age as local law defines as a minor) who is not personally known to you, including but not limited to any of the following: full name or last name, home address, zip/postal code, telephone number, picture, or the names of the minor's school, church, athletic team or friends;
- pretend to be anyone, or any entity, you are not — you may not impersonate or misrepresent yourself as another person (including celebrities), entity, another Service subscriber, a Libsyn employee, or a civic or government leader, or otherwise misrepresent your affiliation with a person or entity, (Libsyn reserves the right to reject or block any Smartphone App which could be deemed to be an impersonation or misrepresentation of your identity, or a misappropriation of another person's name or identity);
- engage in any copyright infringement or other intellectual property infringement, or disclose any trade secret or confidential information in violation of a confidentiality, employment, or nondisclosure agreement (Libsyn reserves the right to reject or block any Smartphone App which could be deemed to be in violation of copyright or intellectual property infringement);
- plan or engage in any illegal activity; and/or
- gather and store personal information on any other users of the Service to be used in connection with any of the foregoing prohibited activities.

Removal of Content

You acknowledge that Libsyn is not responsible or liable in any way for any Content provided by others and has no duty to pre-screen such Content. However, Libsyn reserves the right at all times to determine whether Content is appropriate and in compliance with these TOS, and may pre-screen, move, refuse, modify and/or remove Content at any time, without prior notice and in its sole discretion, if such Content is found to be in violation of these TOS or is otherwise objectionable.

Access to Your Account and Content

You acknowledge and agree that Libsyn may access, use, preserve and/or disclose your account information and Content if legally required to do so or if we have a good faith belief that such access, use, disclosure, or preservation is reasonably necessary to: (a) comply with legal process or request; (b) enforce these TOS, including investigation of any potential violation thereof; (c) detect, prevent or otherwise address security, fraud or technical issues; or (d) protect the rights, property or safety of Libsyn, its users or the public as required or permitted by law.

4. Your Use of the Service

Account Obligations

You agree that all account information including but not limited to contact information, payment and billing information you provide to Libsyn during the sign up process and use of the Service will be true, accurate, complete and current information, and that you shall maintain and update your account information as needed throughout your use of the Service to keep it accurate and current. Failure to provide accurate, current and complete account information may result in the suspension and/or termination of your account.

Additional Obligations or Terms of Use

Particular components or features of the Service, provided by Libsyn and/or its licensors, may be subject to separate software or other license agreements or terms of use. You must read, accept, and agree to be bound by any such separate agreement as a condition of using these particular components or features of the Service. Except as otherwise agreed to in writing, you have control over the distribution of Your Content through the Service that you use, including but not limited to the Libsyn Site, iTunes, Google Marketplace, third-party web sites, devices and platforms. By use of the Service for distribution, you agree that Libsyn may make Your Content available and agree to abide to third-party conditions when opting in to a Service that involves a third-party, including but not limited to Apple and iTunes and Google Marketplace. Libsyn makes no warranties with regard to the submission of Your Content for distribution and has no direct control or influence over the third party process. Submission and approval is governed solely by the third-party and Libsyn will make every reasonable effort to follow guidelines for the process.

No Conveyance

Nothing in these TOS shall be construed to convey to you any interest, title, or license in the App or similar resource used by you in connection with the Service.

Use of Location-based Services

Libsyn and its partners and licensors may provide certain features or services through the Service that rely upon device-based location information. To provide such features or services, where available, Libsyn and its partners and licensors may collect, use, transmit, process and maintain your location data, including the real-time geographic location of your device, and you hereby agree and consent to Libsyn's and its partners' and licensors' collection, use, transmission, processing and maintenance of such location data to provide such services. **In addition, by enabling and/or using any location-based services or features within the Service (e.g. allow the app to use your location), you agree and consent to Libsyn collecting, using, processing and maintaining information related to your account, and any devices registered there under, for purposes of providing such location-based service or feature to you.** Such information may include, but is not limited to, App ID, device ID and name, device type and real-time geographic location of your device at time of your request. **You may withdraw this consent at any time by not using the location-based features or by turning off the Location Services settings (as applicable) on your device.** When using third party services that use or provide location data as part of the Service, you are subject to and should review such third party's terms and privacy policy on use of location data by such third party services. Any location data provided by the Service is not intended to be relied upon in situations where precise location information is needed or where erroneous, inaccurate, time-delayed or incomplete location data may lead to death, personal injury, property or environmental damage. Neither Libsyn nor any of its content providers guarantees the availability, accuracy, completeness, reliability, or timeliness of location data or any other data displayed by the Service.

5. Libsyn Privacy Policy

You understand that by using the Service, you consent and agree to the collection and use of certain information about you and your use of the Service in accordance with Libsyn's Privacy

Policy. You further consent and agree that Libsyn may collect, use, transmit, process and maintain information related to your account, and any devices utilizing the Smartphone App, for purposes of providing the Service, and any features therein, to you. Information collected by Libsyn when you use the Service may also include technical or diagnostic information related to your use that may be used by Libsyn to maintain, improve and enhance the Service. Furthermore, you agree to be bound by the Libsyn Privacy Policy.

6. Billing and Payment Information

Service Fees

You agree to pay all fees and charges specified when you signed up for the Service and any part thereof. You are responsible for providing Libsyn with current accurate contact and payment information for billing purposes and keeping it up to date at all times. Libsyn is not responsible for any service interruptions that may result from your contact or payment information being out of date, in error or otherwise invalid. Additionally, you agree to pay for all charges for Service accrued due to invalid or out of date contact or payment information.

Unless otherwise agreed to in writing during the Service activation, you agree to pay for Service, and that Libsyn will charge your credit card or PayPal account for any products purchased and for any additional amounts (including any taxes) in conjunction with your account. Libsyn will charge the credit card or PayPal account you designate during Service activation on a monthly basis for the amount due pursuant to the Service you purchased. You understand that your credit card or PayPal account will be billed and charged automatically, and that Libsyn has the right to charge your credit card for the full amount of any outstanding balance you may have with Libsyn. You agree to maintain your PayPal account in an active status to allow for the monthly subscription payments to Libsyn. Any account status, other than active will be rectified by you to bring your PayPal status back to active. You acknowledge that the invoice and billing process will be in accordance with The Libsyn Standard Billing Policy and Requirements which is subject to change with 30 days written notice by Libsyn.

If you fail to make a payment or if Libsyn is not able to collect payment on the due date, your account will be considered "past due". Libsyn may suspend or lock access to your account until payment for all outstanding balance is received and additional late fees may be incurred. Libsyn reserves the right to terminate your account and delete Your Content from the Site at its sole discretion if your account is "past due".

Revenue Share and Payment Method

Libsyn revenue share for monetization through the Service (including but not limited to advertising and apps) is 50% of net revenue. You are responsible for providing Libsyn with current accurate contact information and appropriate tax reporting and payment information for revenue share purposes and keeping it up to date at all times. Libsyn is not responsible for any delays in revenue share payments that may result from your contact information, tax reporting or revenue share payment information being out of date, in error or otherwise invalid. You further acknowledge and agree that Libsyn is not responsible nor can be held liable for delays in payments from third-parties. You acknowledge that the revenue share payment process will be in accordance with The Libsyn Standard Payment Policy and Requirements which is subject to change with 30 days written notice by Libsyn.

Account Information and Billing Inquiries

All billing inquiries for the Service should be directed to support@libsyn.com. Any reporting or revenue share payment inquiries should be directed to appops@libsyn.com.

Changes in Price

Libsyn may at any time, upon notice required by applicable law, change the price of the Service or any part thereof, or institute new charges or fees. Price changes and institution of new charges implemented during your subscription term will apply to subsequent subscription terms and to all new subscribers after the effective date of the change. If you do not agree to any such price changes, then you must cancel your account and stop using the Service. Your continued use of the Service after the effective date of any such change shall constitute your acceptance of such change.

7. Content Submitted or Made Available by You on the Service

License from You

Except for material we may license to you, Libsyn does not claim ownership of the materials and/or content you submit or make available on the Service. However, by submitting or posting such Content on areas of the Service that are accessible by the public, you grant Libsyn a worldwide, royalty-free, non-exclusive license to use, distribute, reproduce, modify, adapt, publish, translate, publicly perform and publicly display such Content on the Service solely for the purpose for which such Content was submitted or made available. Said license will terminate within a commercially reasonable time after you or Libsyn remove such Content from the public area. By submitting or posting such Content on areas of the Service that are accessible by the public, you are representing that you are the owner of such material and/or have authorization to distribute it.

Changes to Content

You understand that in order to provide the Service and make your Content available thereon, Libsyn may transmit your Content across various public networks, in various media, and modify or change your Content to comply with technical requirements of connecting networks or devices. You agree that the license herein permits Libsyn to take any such actions.

8. Trademark Information

Libsyn, the Libsyn logo, libsyn, the libsyn logo, Smartphone App, the Smartphone App logo and other Libsyn trademarks, service marks, graphics, and logos used in connection with the Service are trademarks or registered trademarks of Libsyn Inc. in the US and/or other countries. Other trademarks, service marks, graphics, and logos used in connection with the Service may be the trademarks of their respective owners. You are granted no right or license in any of the aforesaid trademarks, and further agree that you shall not remove, obscure, or alter any proprietary notices (including trademark and copyright notices) that may be affixed to or contained within the Service.

9. Application and Software

Libsyn's Proprietary Rights

You acknowledge and agree that Libsyn and/or its licensors own all legal right, title and interest in and to the Service, and any software provided to you as a part of and/or in connection with the Service (the "Software"), including any and all intellectual property rights that exist therein, whether registered or not, and wherever in the world they may exist. You further agree that the Service (including the Software or any other part thereof) contains proprietary and confidential information that is protected by applicable intellectual property and other laws.

License From Libsyn

Libsyn grants you a non-exclusive, non-transferable, limited license for use of the Smartphone App as provided to you by Libsyn as a part of the Service and in accordance with these TOS; provided that you do not (and do not permit anyone else to) copy, modify, create a derivative work of, reverse engineer, decompile, or otherwise attempt to discover the source code (unless expressly permitted or required by law), sell, lease, sublicense, assign, grant a security interest in or otherwise transfer any right in the Smartphone App.

Export Control

Use of the Service, including transferring, posting, or uploading data, software or other Content via the Service, may be subject to the export and import laws of the United States and other countries. You agree to comply with all applicable export and import laws and regulations. In particular, but without limitation, the Software may not be exported or re-exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By using the Software or Service, you represent and warrant that you are not located in any such country or on any such list. You also agree that you will not use the Service for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of missiles, nuclear, chemical or biological weapons. You further agree not to upload to your Smartphone App any data or software that cannot be exported without prior written government authorization, including, but not limited to, certain types of encryption software. This assurance and commitment shall survive termination of this Agreement.

Updates

As part of the Service, Libsyn may elect to update the Smartphone App Podcast Companion App. These updates may be automatically downloaded and installed to third party devices or platforms. These updates may include bug fixes, feature enhancements or improvements, or entirely new versions of the App. You agree that Libsyn may automatically deliver such updates to you as part of the Service and you shall receive and install them as required.

10. Links and Other Third Party Materials

Links

Certain Content, components or features of the Service may include materials from third parties and/or hyperlinks to other web sites, resources or Content. Because Libsyn may

have no control over such third party sites and/or materials, you acknowledge and agree that Libsyn is not responsible for the availability of such sites or resources, and does not endorse or warrant the accuracy of any such sites or resources, and shall in no way be liable or responsible for any Content, advertising, products or materials on or available from such sites or resources. You further acknowledge and agree that Libsyn shall not be responsible or liable in any way for any damages you incur or allege to have incurred, either directly or indirectly, as a result of your use and/or reliance upon any such Content, advertising, products or materials on or available from such sites or resources.

11. Disclaimer

LIBSYN DOES NOT PROMISE THAT THE SERVICE OR FEATURE OF THE SERVICE WILL BE ERROR-FREE OR UNINTERRUPTED, OR THAT ANY DEFECTS WILL BE CORRECTED, OR THAT YOUR USE OF THE SITE WILL PROVIDE SPECIFIC RESULTS. THE SITE, SERVICE AND LIBSYN'S CONTENT ARE DELIVERED ON AN "AS-IS" AND "AS-AVAILABLE" BASIS. ALL INFORMATION PROVIDED ON THE SITE IS SUBJECT TO CHANGE WITHOUT NOTICE. LIBSYN CANNOT ENSURE THAT ANY FILES OR OTHER DATA YOU DOWNLOAD FROM OR UPLOAD TO THE SERVICE WILL BE FREE OF VIRUSES OR CONTAMINATION OR DESTRUCTIVE FEATURES. LIBSYN DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF ACCURACY, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. LIBSYN DISCLAIMS ANY AND ALL LIABILITY FOR THE ACTS, OMISSIONS AND CONDUCT OF ANY THIRD PARTIES IN CONNECTION WITH OR RELATED TO YOUR USE OF THE SITE. YOU ASSUME TOTAL RESPONSIBILITY FOR YOUR USE OF THE SITE, YOUR CONTENT AND ANY LINKED SITES. YOUR SOLE REMEDY AGAINST LIBSYN FOR DISSATISFACTION WITH THE SITE OR ANY CONTENT IS TO STOP USING THE SITE OR ANY SUCH CONTENT. THIS LIMITATION OF RELIEF IS A PART OF THE BARGAIN BETWEEN THE PARTIES.

The above disclaimer applies to any damages, liability or injuries caused by any failure of performance, error, omission, interruption, deletion, defect, delay in operation or transmission, computer virus, communication line failure, theft or destruction of or unauthorized access to, alteration of, or use, whether for breach of contract, tort, negligence or any other cause of action.

Libsyn reserves the right to do any of the following, at any time, without notice: (1) to modify, suspend or terminate operation of or access to the Site, or any portion of the Site, including, but not limited to, the Service, for any reason; (2) to modify or change the Site, or any portion of the Site, including, but not limited to, the Service, and any applicable policies or terms; and (3) to interrupt the operation of the Site, or any portion of the Site, including, but not limited to, the Service, as necessary to perform routine or non-routine maintenance, error correction, or other changes.

12. Limitation of Liability

Except where prohibited by law, in no event will Libsyn be liable to you for any indirect, consequential, exemplary, incidental, statutory or punitive damages, including lost profits, even if Libsyn has been advised of the possibility of such damages.

If, notwithstanding the other provisions of these Terms of Service, Libsyn is found to be liable to you for any damage or loss which arises out of or is in any way connected with your use of the Service, Libsyn's liability shall in no event exceed the lesser of (1) the total of any subscription or similar fees with respect to the Service or feature of or on the Site paid in the six months prior to the date of the initial claim made against Libsyn; or (2) US\$100.00. Some jurisdictions do not allow limitations of liability, so the foregoing limitation may not apply to you.

13. Indemnity

You agree to defend, indemnify and hold Libsyn, its affiliates, subsidiaries, directors, officers, employees, agents, partners and licensors harmless from any claim or demand, including reasonable attorneys' fees, made by a third party, relating to or arising from: (a) any Content you submit, post, transmit, or otherwise make available through the Service; (b) your use of the Service; (c) any violation by you of these TOS; or (d) your violation of any rights of another. This obligation shall survive the termination or expiration of these TOS and/or your use of the Service. You acknowledge that you are responsible for all use of the Service using your account, including any use by Sub-accounts, and that these TOS apply to any and all usage of your account, including any use by Sub-accounts. You agree to comply with these TOS and to defend, indemnify and hold harmless Libsyn from and against any and all claims and demands arising from usage of your account or any Sub-account, whether or not such usage is expressly authorized by you.

14. Notices

Libsyn may provide you with notices regarding the Service, including changes to these TOS, by email to the address you provided with your contact information upon Service activation, (and/or other alternate email address if provided), by regular mail, or by postings on our website and/or the Service.

15. Governing Law

You agree that all matters relating to your access to or use of the Site or any of its Content, including all disputes, will be governed by the laws of the United States and by the laws of the State of Pennsylvania without regard to its conflicts of laws provisions. You agree to the personal jurisdiction by and venue in the state and federal courts in the Western District of Pennsylvania, and waive any objection to such jurisdiction or venue. Any claim under these Terms of Service must be brought within one (1) year after the cause of action arises, or such claim or cause of action is barred. No recovery may be sought or received for damages other than out-of-pocket expenses, except that the prevailing party will be entitled to costs and attorneys' fees. In the event of any controversy or dispute between Libsyn and you arising out of or in connection with your use of the Site or any of its Content, the parties shall attempt, promptly and in good faith, to resolve any such dispute. If we are unable to resolve any such dispute within a reasonable time (not to exceed thirty (30) days), then either party may submit such controversy or dispute to mediation. If the dispute cannot be resolved through mediation, then the parties shall be free to pursue any right or remedy available to them under applicable law.

16. General

These TOS constitute the entire agreement between you and Libsyn, govern your use of the Smartphone App Service and completely replace any prior agreements between you and Libsyn in relation to the Smartphone App Service. You may also be subject to additional terms and conditions that may apply when you use affiliate services, third-party content, or third-party software. If any part of these TOS is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect. The failure of Libsyn to exercise or enforce any right or provision of these TOS shall not constitute a waiver of such right or provision.

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