

## **Shout! Radio Automation Terms Of Service**

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version 1.1  
support@shoutautomation.com

Created 1/1/2010  
Revised 2/26/2012 (Revisions were not made to any portion of the Terms stated within the original Terms of Services Agreement dated 1/1/2010, but merely updating the change in ownership of Shout! Radio Automation and putting this document in more reader friendly format).

Shout! Radio Automation reserves the right to make changes to this agreement whenever it deems necessary and it is the responsibility of the users of Shout! Radio Automation from time to time to review this document for such changes.

Shout! Radio Automation will endeavor to notify its customers when such changes arise, but it remains the sole responsibility of the user to read and follow these terms as they are made available for viewing on the Shout! Radio Automation Website located: <http://shoutautomation.com/tos.pdf>.

Services are provided by Shout! Radio Automation, a Division of 977 Media LLC and this agreement is between the customer(person requesting services, or "user") and Shout! Radio Automation, a Division of 977 Media LLC (company providing requested services by user, or "Shout! Radio Automation"). Shout! Radio Automation will be referred to as "Shout! Radio Automation" from this point on in this agreement. Customer will be referred to as "User" from this point on in this agreement.

### **TERMS AND PAYMENT FOR SERVICES**

This agreement shall be for an "Initial Term" of one month from date of signup by User.

This agreement will be automatically renewed (the "Renewal Term") at the end of the Initial Term for the same period as the Initial Term unless you provide Shout! Radio Automation with your notice of intent to terminate services by emailing support@shoutautomation.com thirty (30) days prior to the end of the Initial Term or the Renewal Term. When creating your notice of intent to terminate services you must provide Shout! Radio Automation with sufficient information so that Shout! Radio Automation may properly identify you (User) and your account. Any notice of termination will be effective following thirty (30) days after Shout! Radio Automation's receipt thereof.

### **TERMINATION POLICY**

If the User terminates their receipt of the Services prior to the end of the Initial Term or the Renewal Term, whichever is then applicable (a) Shout! Radio Automation will not refund to the User any fees paid in advance of such termination and (b) the User shall be required to pay 100% of Shout! Radio Automation's standard monthly charge for each month remaining in the applicable term, unless otherwise expressly provided in this Agreement. Notwithstanding the foregoing, if the user terminates their receipt of the Service prior to the end of the first seventy two (72) hours of the Initial Term, you are entitled to a refund of the fees you paid in advance for the monthly services, not including any set-up fees, if applicable. The User's termination request or notice must be

submitted to Shout! Radio Automation in the manner described above. Shout! Radio Automation may terminate this Agreement at any time and for any reason by providing the User ten (10) days prior to the date of termination.

If Shout! Radio Automation terminates this Agreement, Shout! Radio Automation will refund to you the pro-rated portion of the pre-paid fees attributable to Services (excluding set-up fees) not yet rendered as of the termination date unless otherwise expressly provided in this Agreement.

#### **ENFORCEMENT**

Shout! Radio Automation may investigate any reported or suspected violation of this Agreement, its policies or any complaints and take any action that it deems appropriate and reasonable under the circumstance to protect its systems, facilities, customers and/or third parties. Shout! Radio Automation will not access or review the contents of stored electronic communications except as required or permitted by law or legal process.

Shout! Radio Automation reserves the right to refuse or discontinue service to anyone at Shout! Radio Automation's sole discretion. Shout! Radio Automation may deny you access to all or part of the service without notice if you engage in any conduct or activities that Shout! Radio Automation in its sole discretion believes violates any of the terms and conditions in this Agreement.

Shout! Radio Automation shall have no responsibility to notify any third-party providers of services, merchandise, or information, nor any responsibility for any consequences resulting from such discontinuance or lack of notification. You agree that Shout! Radio Automation has the right to monitor the service electronically at any time and to disclose any information as necessary to satisfy the law, or to protect itself or its subscribers.

Shout! Radio Automation reserves the right to refuse to post or to remove any information or materials, in whole or in part, that, in its sole discretion, are unacceptable, undesirable, illegal or in violation of this agreement. Shout! Radio Automation also reserves the right to refuse refunds in cases where Shout! Radio Automation believes abuse has taken place.

#### **PUBLIC NATURE OF THE INTERNET**

You are hereby given notice that all information submitted to your account shall be considered publicly accessible. Important and private information should be protected / backed up by the User. For example, Shout! Radio Automation is not liable for protection or privacy of any information transferred through the Internet, or any other network provider that the User may use.

#### **NO SERVICE WARRANTIES**

Shout! Radio Automation makes no warranties or representations of any kind for the services being offered. The Service is provided on an "as is" and "as available" basis without warranties of any kind, either express or implied, including, but not limited to, warranties of title, non-infringement, or implied warranties of merchantability or fitness for a particular purpose. No advice or information given by Shout! Radio Automation or its agents or employees shall create a warranty.

Shout! Radio Automation provides no warranty that the service will be uninterrupted or error free unless otherwise stated in this agreement, or that

any information, software or other material accessible on the service is free from viruses or other harmful components. Under no circumstances shall Shout! Radio Automation be liable for any direct, indirect, special, punitive, or consequential damages that result in any way from your use of or inability to use the service, or for third parties' use of the service to access your Services, or to access the Internet or any part thereof, or your or any third parties' reliance on or use of information, services, or merchandise provided on or through the Service, or that result from mistakes, omissions, interruptions, deletion of files, errors, defects, delays in operation or transmission, or any failure of performance. If you the User is dissatisfied with Shout! Radio Automation service or any of its terms, conditions, rules, policies, guidelines, or practices, the User's sole and exclusive remedy is to discontinue using the service provided by Shout! Radio Automation.

#### **REPRESENTATION**

In addition to any other representations and warranties contained in this document, you represent and warrant that:

You, the User, have full right and power to enter into and perform this Agreement, and have secured all third-party consents necessary to enter this Agreement;

You, the User, are a natural person and are acting either in your capacity as an individual or have the authority to act on the behalf of any group, organization, association, company or other entity in creating and broadcasting any Internet Radio Programs.

All factual assertions that you, the User, have made and will make to Shout! Radio Automation are true and complete;

You, the User, are the age of majority and have the full and complete right to agree to the terms contained in the Agreement;

Neither any Internet Radio Programs that you, the User, create, or upload to any server or computer operated by Shout! Radio Automation nor any parts thereof defame any third parties, constitute impermissible hate speech or otherwise violate any rights of free speech of any third parties;

The Users Internet Radio Programs comply fully with all relevant provisions of the Digital Millennium Copyright Act (DCMA) and any and all other applicable laws and regulations;

With respect to each sound recording uploaded by the User to a Shout! Radio Automation controlled server or computer, either:

- a. The User owns, or controls, all rights in any such sound recording including all rights in the underlying musical composition; or
- b. The User has obtained proper licensing with BMI, ASCAP or SESAC and the User has obtained proper licensing under the rules and regulations set forth under the DMCA for any such sound recording.

## **INTELLECTUAL PROPERTY RIGHTS**

The Users Grant a License to Shout! Radio Automation.

You hereby grant to Shout! Radio Automation a non-exclusive, worldwide, and royalty-free license for the Initial Term and any Renewal Term to use your content as necessary for the purposes of rendering and operating the Services to you under this Agreement.

You expressly:

(a) grant to Shout! Radio Automation a license to cache materials distributed or made available for distribution via the Services, including content supplied by third parties, and (b) agree that such caching is not an infringement of any of your property rights or any third party's intellectual property rights.

## **SHOUT! RADIO AUTOMATION MATERIALS AND INTELLECTUAL PROPERTY**

All materials, including but not limited to any computer software (in object code and source code form), data or information developed or provided by Shout! Radio Automation or its suppliers or agents pursuant to this Agreement, and any know how, methodologies, equipment, or processes used by Shout! Radio Automation to provide the Services to you, including, without limitation, all copyrights, trademarks, patents, trade secrets and other proprietary rights are and will remain the sole and exclusive property of Shout! Radio Automation or its suppliers, including but not limited to any software programs, inventions, products and/or technology innovations and methodologies utilized, developed, or disclosed by Shout! Radio Automation during the term of this Agreement.

Unauthorized copying, reverse engineering, decompiling, and creating derivative works based on the any such software is expressly forbidden except as permitted in this Agreement. You may be held legally responsible/liable for violation of any patent rights, copyright or trade secret rights that is caused or encourages by failure to abide by the terms of this Agreement.

You, the User, hereby grant to Shout! Radio Automation a limited right to use your trademarks, if any, for the limited purpose of permitting Shout! Radio Automation to fulfill its duties under this Agreement. This is not a trademark license and no other rights relating to the trademarks are granted by this Agreement. Specifically, but without limitation, the rights granted by this Agreement do not include the right to sub-license use of your trademarks or to use your trademarks with any other products or services outside the scope of the Services provided under this Agreement. The limited trademark use rights granted under this section terminate upon termination of this Agreement.

## **IDEMNIFICATION AND EXCLUSION OF LIABILITY**

The user agrees to indemnify, defend, and hold harmless Shout! Radio Automation from any and all liability, penalties, losses, damages, costs, expenses, attorneys' fees, causes of action or claims caused by or resulting indirectly from your use of the services which damages either the User, Shout! Radio Automation, or any other party or parties without limitation or exception. This indemnification and hold harmless agreement extends to all issues associated with your account, including but not limited to Users Domain Name Selection, if applicable, and web site content, either provided by User or Shout! Radio Automation.

## **INTERRUPTION OF SERVICE**

The User hereby acknowledges and agrees that Shout! Radio Automation will not be liable for any temporary delay, outages or interruptions of the Services. Further, Shout! Radio Automation shall not be liable for any delay or failure to perform its obligations under this Agreement, where such delay or failure results from any act of God or other cause beyond its reasonable control, including, without limitation, any mechanical, electronic, communications or third-party supplier failure.

## **CONTENT GUIDELINES AND PROHIBITED USES**

You agree not to post, upload or transmit to the Site or to Shout! Radio Automation's servers any sound recordings, communications, text, graphics or other information that is obscene, fraudulent, indecent, discourteous, racially offensive, or abusive; defames, abuses, harasses or threatens others; contains any viruses, Trojan horses, worms, time bombs, cancelbots, or other disabling devices or other harmful component intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information; advocates or encourages any illegal activity; infringes upon the copyright, patent, trademark, trade secret, publicity right or other intellectual property or proprietary right of any third party; violates the privacy of individuals, including other users of the site; or violates any applicable local, state, national or international law.

Shout! Radio Automation in its sole discretion shall determine your compliance with any guidelines set forth in this Agreement and reserves the right to delete without prior notice any material that it deems to be non-complying or otherwise objectionable for any reason.

The User shall comply with all laws and regulations applicable to the Users use of the Services. You may not make available or list any Internet radio program generated by or offered through Shout! Radio Automation's servers or computers to any other servers or computers or in any other medium without prior written permission of Shout! Radio Automation, provided, however, that you may make an Internet radio program that you have created available on a server or computer that is wholly owned or controlled by the User.

You may not download, upload or store any sound recordings or Internet radio programs made available by other Users on any server operated by Shout! Radio Automation. Shout! Radio Automation may take any action with respect to the material if Shout! Radio Automation believes, in its sole discretion that the material may create liability for itself or any third parties or may cause Shout! Radio Automation to lose (in whole or in part) the services of its suppliers, vendors or advertisers.

The User is not permitted to use Shout! Radio Automation's name, Internet URL, trademarks or other material in any manner, including without limitation, in connection with "spam" email messages or newsgroup postings. For the purposes of this agreement, "spam" has the meaning generally understood among Internet users, and includes without limitation "unsolicited electronic mail advertisements".

The user may not impose an unreasonable or disproportionately large load, as determined by Shout! Radio Automation in light of the load imposed by other Users generally on the Shout! Radio Automation infrastructure. You may not use

any "bot" or other automated repetitive or interactive mechanism or the like to gain any sort of benefit from Shout! Radio Automation or any of its suppliers or affiliates.

#### **RESPONSIBILITIES REGARDING ROYALTY FEES AND ROYALTY REPORTING AND STATISTICS**

It is and will be at all times the responsibility of the User to pay any and all fees, expenses, fines and any other charges due to any and all applicable musical composition and sound recording licensing agencies, companies or government agencies responsible for collecting royalties of copyrighted material or materials. Copyrighted material includes, but is not limited to, songs, sports programs, talk show programs, religious programs and concerts.

Shout! Radio Automation accepts no responsibility nor any liability for any and all unpaid fees, expenses, fines and any other charges due to any and all applicable musical composition and sound recording licensing agencies, companies or government agencies responsible for collecting royalties of copyrighted material or materials.

The User agrees to indemnify, defend, and hold harmless Shout! Radio Automation from any and all liability, penalties, losses, damages, costs, expenses, attorneys' fees, causes of action or claims caused by or resulting indirectly from the User either by: (A) the User not acquiring proper broadcasting licensing, or (B) the User not keeping up to date broadcasting licensing from any and all applicable musical composition and sound recording licensing agencies, companies or government agencies responsible for collecting royalties of copyrighted material or materials.

It is also the Users responsibility to provide any and all applicable listener and song history statistics, along with any other requirement or requirements that any and all applicable musical composition and sound recording licensing agencies, companies or government agencies responsible for collecting royalties of copyrighted material or materials may require for the purpose of calculating fees, expenses, fines and any other charges due for broadcasting copyrighted material or materials over the Internet.

The statistics provided by Shout! Radio Automation are not guaranteed to be accurate, and should not be used for any legal or reporting purpose. The statistics that are provided include but are not limited to, song history and listener history. It is the User's responsibility to either obtain this information from either (A) the User's stream hosting provider, or (B) the User's self-hosted streaming server software.

#### **LEGALLY OBTAINING MP3 AUDIO OR MUSIC FILES**

Shout! Radio Automation allows for the User to upload MP3 audio or music files to the servers and computers operated by Shout! Radio Automation for the purposes of creating and sending Internet Radio Programs for transmission to the Internet via a ShoutCAST or IceCast server. It is the Users responsibility to legally acquire any and all MP3 audio or music files which contain, in any manner or length of time, copyrighted material or materials. This includes, but not limited to, songs sports programs, talk programs and religious programs.

The User agrees to indemnify, defend, and hold harmless Shout! Radio Automation from any and all liability, penalties, losses, damages, costs, expenses, attorneys' fees, causes of action or claims caused by or resulting indirectly from the User illegally obtaining MP3 audio or music files.

## **RULES RELATING TO THE TRANSMISSION OF INTERNET RADIO PROGRAMS**

At present, Shout! Radio Automation permits the User to create Internet Radio Programs for transmission to the Internet via an affiliated or non-affiliated ShoutCAST or IceCast server, by means of utilizing Shout! Radio Automation servers and computers, by means of uploading MP3 audio or music files from your computer to a secure portion of the servers or computers controlled by Shout! Radio Automation from which you may designate particular selections for inclusion in your Internet Radio Programs, using Shout! Radio Automation's servers or computers and Shout! Radio Automation's proprietary broadcasting software. From time to time, Shout! Radio Automation may introduce other methods by which the user may create Internet Radio Programs for transmission via Shout! Radio Automation's servers or computers. The User agrees to comply with all rules and policies set forth in this agreement.

The User agrees to comply with the terms and rules of this agreement in addition to all other legal requirements and rules, including those identified by this agreement, with respect to all Internet Radio Programs created by the User for transmission via Shout! Radio Automation's servers or computers, including those transmitted in the form of Shout! Radio Automation's proprietary broadcasting software and any other methods currently used or introduced by Shout! Radio Automation in the future.

### **DIGITAL MILLENIUM COPYRIGHT ACT (DMCA)**

The DCMA can be found at the following Internet URL:  
<http://lcweb.loc.gov/copyright/legislation/hr2281.pdf>

The User agrees to abide by all applicable local, state, national or international law, including, without limitation, the DMCA. The User agrees to comply with all laws and regulations applicable to the Users use of the servers and computers operated by Shout! Radio Automation and any materials the User uploads, imports onto or transmit via the servers or computers operated by Shout! Radio Automation.

The DMCA imposes certain requirements and rules with which persons subject to U.S. law who are transmitting Internet Radio Programs must comply. Without limiting the applicability of other laws, rules and contractual provisions that may govern the Users activities, the User agrees to comply with the following specific DMCA rules in connection with the Users Internet Radio Programs, including but not limited to the following:

The User may not include in any Internet Radio Programs specific sound recordings within one hour of a request by a listener or at a time designated by the listener.

In any three-hour period, the User should not intentionally program more than three songs (and not more than two songs in a row) from the same recording artist; the User should not intentionally program more than four songs (and not more than three songs in a row) from the same recording artist or anthology / box set.

Continuous looped Internet Radio Programs may not be less than three hours long.

Retransmissions of Internet Radio Programs may be performed at scheduled times as follows:

- a. Internet Radio Programs of less than one hour: no more than three times in a two-week period;
- b. Internet Radio Programs longer than one hour: no more than four times in any two-week period.

The user should not public advance program guides or use other means to pre-announce when any particular sound recording will be played or the order in which they will be played.

The user should only include in Internet Radio Programs sound records that are authorized for performance in the United States.

The user should pass through (and not disable or remove) identification or technological protection information included in the sound recording (if any).

#### **LINKS TO THIRD-PARTY WEBSITES**

Any third-party sites to which the Services provided by Shout! Radio Automation may link are not under Shout! Radio Automation's control, and Shout! Radio Automation does not assume any responsibility or liability for any information, content, communications or materials available on such third-party websites. Absent express language to the contrary, Shout! Radio Automation does not intend links contained in anything distributed by the servers or computers to which Shout! Radio Automation controls to be referrals to, or endorsements of, the linked third-party websites or the entities that operate them, and such links are provided for convenience purposes only.

#### **UNLAWFUL CONDUCT**

Notifications of any unlawful conduct by any User of Shout! Radio Automation services, including, without limitation, copyright or other intellectual property infringement should be sent to Shout! Radio Automation's designated agent at [abuse@shoutradioautomation.com](mailto:abuse@shoutradioautomation.com)

#### **SOFTWARE LICENSE**

Shout! Radio Automation grants the User a non-exclusive and non-transferable license to use the Software on servers and computers controlled by Shout! Radio Automation for the sole purpose of enabling the User to use the Services. The User shall not decompile, reverse engineer, disassemble, tamper or otherwise reduce the Software to human readable form nor permit any third party to do so, and agrees that all rights in the Software remain with Shout! Radio Automation.

#### **MISCELLANEOUS**

In the event that any portion of this Agreement is held to be unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties and the remainder of the provisions shall remain in full force and effect.

Shout! Radio Automation's failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any



provision or right. Neither the course of conduct between parties nor trade practice shall act to modify any provision of this Agreement.

Shout! Radio Automation may modify this Agreement at any time, your continued use of the Service shall be deemed to be your acceptance. If you do not agree to this Agreement, **you must immediately stop using the Service.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Montana, United States of America, without regard to its conflicts of law provisions. Any cause of action you may have with respect to the Service must be commenced within thirty (30) days after the claim or cause of action arises or such claim or cause of action is barred.

Shout! Radio Automation reserves the right to change or modify any of the terms and conditions contained in this Agreement, any Addendums and any policy or guideline incorporated by reference at any time and at any time in its sole discretion, and to determine whether and when any such changes apply to both existing or future customers. Any changes or modification will be effective upon posting of the revisions on the Shout! Radio Automation web site. Shout! Radio Automation may post changes or modifications to this document without notice to you. Your continued use of Services following Shout! Radio Automation's posting of any changes or modifications will constitute your acceptance of such changes or modifications.