

Whisper Audio AUDIO HOSTING SERVICES AGREEMENT

Version 1.1 effective Mrch 1, 2004

This Services Agreement (the "Agreement") sets out the full terms between you (an individual, or authorized representative of a group, business or corporation) and Whisper Audio ("Whisper Audio," "we" or "us") - of 9 Somerset Road, Bristol, BS4 2HT, United Kingdom - owner and manager of <http://www.whisperaudio.com> (the "Website") regarding the use of Whisper Audio's Services (defined in Section 1 below).

1. Service Features. The service features of Whisper Audio's audio hosting are described at http://www.whisperaudio.com/services/audio_hosting_rates.htm (the "Service"). There are several different Service plans. Please review their descriptions to ensure that your plan provides the features you need.

2. Monthly/Annual Subscription Fee. By supplying your credit card information on the order form you agree to pay Whisper Audio either the monthly Service fees ("Monthly Service Fees"), or the annual Service fees, for the Service plan that you select. You authorize Whisper Audio to charge your registered credit card periodically for the Service Fees. You also authorize Whisper Audio to charge your registered credit card any fees resultant from your exceeding the previous month's streaming quota of your Service plan (the "Monthly Traffic Fees"). We have the right to immediately discontinue the Service if we do not receive payment of the Monthly Service Fees, the Annual Service Fees or Monthly Traffic Fees, if any, when due. In the event that your credit card is invalidated, you must immediately provide us with a new, valid credit card number. In the event that you do not provide us with a current valid credit card number with sufficient credit, you will be in violation of this Agreement, and we may terminate this Agreement. You have a period of ninety (90) days in which to advise us of any billing problems or discrepancies after you receive your statement or bill, or else we may, but will not be required, to resolve any such billing problems.

3. Content License. By delivering audio files to us ("Content"), you grant to Whisper Audio a non-exclusive, royalty-free, worldwide license to store, encode, duplicate, publicly perform, transmit and otherwise distribute the Content as audio streams or downloads over the Internet in order to serve that Content to you through the Service. Subject to this Agreement, you can terminate your license to us, at any time.

You may be using this Service in conjunction with Content licensed from Whisper Audio. All samples, reproductions and files optimized for the delivery of the service ("Productions") created by Whisper Audio, whether they contain either your own Content or Content licensed from Whisper Audio, are the property of Whisper Audio and are Copyright © Whisper Audio and All Rights are Reserved. They are protected by international treaty and by law. You shall not store, encode, publicly perform, transmit, or otherwise distribute, sell, rent, lease, share, sample, download, or in any way remove or duplicate these Productions.

4. Termination. This Agreement will commence when you click the "AGREE" button and pay the Monthly Service Fee. It will continue for a period of one month which, unless terminated by either party as provided in this Section, automatically shall renew for successive monthly periods (the "Term"). You may terminate this Agreement by notifying us at any time by email to: audiohosting@whisperaudio.com, or by letter addressed to: Whisper Audio, 9 Somerset Road, Bristol, BS4 2HT. Termination shall be effective as of the end of the monthly period in which we receive such notice. Your Service will continue until the end of that monthly period. The Monthly Service Fee for that monthly period in which we receive your termination notice is non-refundable. You shall remain liable for all fees incurred or accrued by you up to the date of termination. We may terminate this Agreement at any time, for our convenience, without liability to you or any third

party. Such termination will be effective on the date of your actual receipt of such notice or three (3) days after sending termination notice to the email address you supply to us, whichever is sooner. Upon expiration or termination for any reason, you are no longer authorized to use the Service and you will no longer have access to the Content on the Website. Whisper Audio may delete any such Content in its sole discretion. Sections 7, 8, 11, and 12 shall survive termination.

5. Passwords and Security Whisper Audio is authorized to carry out directions received under your username and password. You are responsible for keeping your passwords and account information provided by Whisper Audio private and confidential, and are solely responsible for all acts that occur under your password and account. Those attempting to access password-protected areas of the Website without authorization may be subject to prosecution. You agree: (i) not to make your password or account information available to any third party; (ii) to prevent any third party to access your account; and (iii) to notify Whisper Audio straight away of unauthorized use of either password or account.

6. Content Storage. Although Whisper Audio will use reasonable efforts to store your Content, Whisper Audio ASSUMES NO RESPONSIBILITY FOR LOSS OR DAMAGE TO THAT CONTENT.

7. Confidentiality. In the course of your use of the Service, you may become aware of information which we consider confidential. This information may include, but not be limited to, information pertaining to audio compression methods, pricing information, or work methods of Whisper Audio. You agree to keep all such information confidential and not to discuss it with any third party. You agree that in the event of a breach of this Agreement damages may be difficult to ascertain or prove. The parties therefore agree that if you breach this Agreement, Whisper Audio shall be entitled to seek relief from a court of competent jurisdiction, including injunctive relief, and shall be entitled to an award of liquidated damages.

8. Representations and Warranties.

You warrant that: (a) you will comply with all applicable laws, statutes, ordinances and regulations regarding your use of the Services, the Productions and the Content; (b) you have the full right and authority to license any Content to Whisper Audio as provided herein and agree to indemnify and hold harmless Whisper Audio from any and all expenses, suits, judgments, damages and related costs and fees arising out of your actions, omissions, negligence or otherwise under this Agreement.; (c) all factual assertions that you have made and will make to us are true and complete; (d) you are of legal age and have every right to contract in your own name in this matter.; (e) the Content does not and will not infringe on any third party's copyright, patent, trademark, trade secret or other proprietary rights, rights of publicity or privacy or moral rights; (f); the Content does not and will not contain any viruses or other programming routines that detrimentally interfere with computer systems or data; and (g) you shall be responsible for paying all third parties, if any, due any compensation in respect of the exploitation of the Content by means of the Service.

9. Notifications of Infringement. Upon receipt of notice, we will remove or disable access to any Content claimed to be infringing or claimed to be the subject of infringing activity. Notwithstanding anything contained in this Agreement or in our "Privacy Policy", you expressly consent to our disclosure of your personally identifiable and all other personal information in the event that your Content is the subject matter of any such infringement claim.

10. Modification or Amendment. Whisper Audio reserves the right, in our sole discretion, to modify, amend, delete or change the Service, the Monthly Service Fees or Streaming Fees (including payment methods), and/or this Agreement, at any time during the Term by email to you at least three (3) days prior to their effective date or by announcing the same on the Web

Site; any increase of the Monthly Service Fees or Streaming Fees shall not take effect until the end of the then current monthly period. In the event that you do not consent to any such amendments and/or modifications, we may terminate this Agreement, as provided above. A copy of the most current version of this Agreement is located at:

http://www.whisperaudio.com/order/audio_hosting_agreement.pdf

11. Disclaimer of Certain Warranties and Limitation of Certain Damages. You acknowledge that availability of the Service is subject to many factors outside of Whisper Audio's control, including the availability of connection services to and within the Internet and to other network functions within and around the Internet, and to equipment that, by its nature, is not fault-free. As a result, Whisper Audio cannot warrant that the Services will be secure or be continuously available.

The Service is provided on an "as is" and "as and when available" basis to users. You use the Service at your own risk. Whisper Audio makes considerable efforts to make the Service as reliable as possible but no warranty or fitness is implied.

Neither Whisper Audio nor any of its officers, directors, shareholders, employees, affiliates, agents, third party content providers, sponsors, licensors, or the like, makes any representation or warranty or condition, either express or implied, to you:

- that the Service will be uninterrupted or error-free;
- that the Service or the computer server from which the Service is made available, are free of viruses or other harmful components;
- regarding the timeliness, completeness, legality, reliability, or quality of any Production provided through the Service.

Whisper Audio makes and you receive, no representations, warranties or conditions, express or implied, statutory or otherwise with respect to the Service, its content, merchandise, services, documents, information, items or materials provided by Whisper Audio in connection with the use of the Service, including without limitation no representations, warranties or conditions of merchantability, suitability, fitness for a particular purpose, non-infringement of proprietary rights or otherwise.

No oral advice or written information given by Whisper Audio or its affiliates, or any of its officers, directors, employees, agents, providers, merchants, sponsors, licensors, or the like, will create a representation, a warranty or condition nor should you rely on any such information or advice.

We will not be liable for any indirect, exemplary, special, consequential, or incidental damages, arising from or relating to this agreement. Notwithstanding anything to the contrary, our maximum liability to you or any third party pursuant to this agreement will not exceed the amounts paid by you to Whisper Audio hereunder.

In jurisdictions that do not allow the exclusion or disclaimer of certain warranties, the above exclusion may not apply to you.

12. General Provisions. The invalidity of any provision of this license agreement as determined by a court of competent jurisdiction shall in no way invalidate any other provision hereof. This agreement will be governed and interpreted in accordance with the laws of England. Disputes arising here from shall be exclusively subject to the jurisdiction of the courts of England. Nothing herein shall be construed to create an employer-employee relationship between the parties. You will have no authority to make or accept any offers or representations on our behalf. You will not make any statement that reasonably would contradict anything in this Section. You may not assign this Agreement, by operation of law or otherwise, without our prior written consent.

This Agreement constitutes the entire agreement of the parties with regard to the subject matter hereof, and replaces and supersedes all other agreements or understanding, whether written or oral. Except as set forth in Section 10, no amendment, extension, or change of the Agreement shall be binding unless it is in writing and signed by all of the parties hereto.

Failure of Whisper Audio to enforce its rights pursuant to this Agreement shall not constitute a waiver of such rights, and shall not prejudice Whisper Audio in any later enforcement of its rights or rights to seek damages therefrom.