



CustomChannels.net, LLC • 7464 Arapahoe Rd. Ste B4. • Boulder, CO 80303 • TEL: 303.444.7700 • FAX: 303.444-3555

## 2011 Holiday Music Channel Agreement Section 1 Specifications

### A. CLIENT INFORMATION ("Client")

Company/Ownership ("Client"):				
Station Call Letters:				
Arbitron Market: ("Market")				
Business Contact Name:		Email:		
Other Contact Name:		Email:		
Website URL ("Station Website")				
Billing Address 1				
Billing Address 2				
City:		State:		Zip:
Contact Phone Number:				

### B. AGREEMENT TERM AND FEES

Agreement Date:	
Agreement Term:	Date of this Agreement through December 31, 2011
Webcast Start Date:	Saturday, November 18, 2011 or later as requested by client
Webcast End Date:	Thursday, December 31, 2011
Fee for Services:	\$
Payment Terms:	Net 30 - Invoices will be sent November 1, 2011
Cancellation Fee:	50% of Fee for Services amount
Additional Comments:	

### C. HOLIDAY CHANNEL SPECIFICATIONS

Music Library:	100-115 songs minimum (Client Selected from our database)
Format:	Music, ads, promos, IDs per client spec
Music / Commercial Updates:	Initial plus two updates after Webcast start
Streaming:	48kbs Stereo; 24/7; listeners join program "in progress"
Encoding Format:	AAC+
Bandwidth Limit:	None; unlimited simultaneous streams
Market Exclusivity:	Format Exclusivity

**D. BASIC SERVICES INCLUDED**

- ❑ Coordination of all programming and music for Channel to Client specification
- ❑ Coordination and trafficking of client-supplied production, commercials and voice tracks
- ❑ Production and encoding of all channel updates
- ❑ Insertion of client supplied commercials or sponsor mentions with each scheduled channel update
- ❑ Holiday themed custom media player and basic graphics (examples at [www.customchannels.net](http://www.customchannels.net))
  - Station logo with website link
  - 300 X 250 pixel Advertising Tile (Linkable)
  - Audio or Video (Flash) Pre-roll (optional)
  - Song Title, Artist & Album Art
- ❑ 24/7 Audio Streaming (unlimited concurrent listeners)
- ❑ Monthly usage report including number of listener sessions and time-spent-listening for each Channel
- ❑ Payment of all Webcast License fees – Sound Exchange, ASCAP, BMI, SESAC

**D. CLIENT TO PROVIDE**

<b>Programming:</b>	<ul style="list-style-type: none"> <li>• Format specifications and advertising schedule instructions</li> <li>• Music list provided by client <b>OR</b> timely approval of Channel updates/logs provided by Custom Channels per client format specifications.</li> </ul>
<b>Music:</b>	<ul style="list-style-type: none"> <li>• Online music selections from our extensive music library</li> </ul>
<b>Production:</b>	<ul style="list-style-type: none"> <li>• Initial Channel/Station ID’s, sweepers and image production</li> <li>• Audio ads, Gateway audio, promos and other production</li> </ul>
<b>Visual Images:</b>	<ul style="list-style-type: none"> <li>• Station Logo in digital format (see Station Checklist for specifications)</li> <li>• Advertiser banner ads or flash video at least 3 business days prior to each scheduled update</li> </ul>

**E. OPTIONAL SERVICES AVAILABLE AT ADDITIONAL COST**

- Additional weeks of service (earlier start date)
- Creation or modification of Advertiser Ad Tiles, images or website buttons
- Custom Web pages (e.g. advertiser or contest pages linked from player)
- Custom player design
- Image or commercial audio production or voice talent

## **Section 2 - Agreement For Holiday Music Channel Services**

Thank you for choosing CustomChannels.net, LLC (“Company”) for custom Holiday Music Channel services. This letter will outline the terms and conditions of the Agreement between Client and Company for the undertaking of this service.

### **1) Definitions**

As used in this Agreement, the following terms shall have the following respective meanings:

- (a) “Channel” shall mean one or more customized streaming Internet radio channels webcast over the Internet created for Client by Company. The number and type of channels shall be listed in the Specifications.
- (b) “Web Site” shall mean the Internet computer service currently registered with Internic that is transmitted via a URL over the Internet by means of a personal computer or other device capable of receiving Internet transmissions.
- (c) “Webcast” shall mean the act of transmitting or causing to be transmitted a musical work or other audio over the Internet through streaming technologies.
- (d) “Webcast Licenses” shall mean the standard webcast licenses issued in the United States by ASCAP, BMI, SESAC and the RIAA pursuant to United States Copyright Law as amended by the Digital Millennium Copyright Act of 1998 (“DMCA”). These licenses allow the webcast of all the works in the licensor’s catalog subject to the limitations set forth in the DMCA.
- (e) “Specifications” shall be set forth in Section 1 Specifications, and include descriptive information about the channel, and other material submitted by Client such as playlists.
- (f) “Terms and Fees” shall be set forth in Section 1 Specifications part B. “Agreement Term and Fees.”

### **2) Development and Webcast**

Company shall create a Channel for Webcast based on the Specifications provided by Client. The Channel shall be first Webcast not sooner than the Webcast Start Date outlined in the Specifications provided that Company has received from client all playlists, audio and visual production elements and other necessary client-provided material at least 7 days prior to the Webcast Start Date.

### **3) Format Exclusivity**

Company shall not provide similar or competing services for any other radio station of the same format as the Client within the Market (as defined by the Arbitron Metro) without the prior written consent of the Client. Unless otherwise outlined in the Specifications, Company shall retain the right to provide similar services to other radio stations in the Market, provided that the other stations’ formats do not compete directly with the Client.

### **4) Testing and Acceptance Procedure**

Company will thoroughly test the Channel prior to the first webcast and all updates. After Company sends Client an email, fax, or otherwise notifies client in writing that the Channel is being first webcast or an update has been made, Client shall have a period of 48 business week hours (“Acceptance Period”) within which to test the Channel and notify Company in writing of its acceptance or rejection.

If Client does not give notice of rejection within the Acceptance period, the Channel will be deemed accepted.

**5) Correction**

If Client requests that Company correct the Channel, Company shall within 48 hours submit a revised Channel, and Client shall have an additional 48 hour Acceptance Period to accept it or request further changes and repeat the procedures set forth in Section 4 and Section 5.

**6) Ownership**

Title to all intellectual property rights outlined in the Specifications, or other material submitted to Company by Client in the development of the Channel, including but not limited to copyrights, trademarks, playlists, logos, graphic designs and trade secrets shall remain with Client. Upon termination of the agreement, Company shall not be obligated to return materials submitted by Client in the Specifications or otherwise, but Company shall be obligated to maintain the confidentiality of such. Title to all intellectual property rights in work product created by Company in the development of the Channel, including, but not limited to playlists, images, program files, player designs, graphic user interface, source code, object code, and production processes shall remain with Company.

**7) License to Specifications and Other Client Content**

For purposes of Company's fulfillment of its obligations hereunder, Client grants to Company a non-exclusive, worldwide license to reproduce and modify the Specifications, the Channel, and any other content submitted to Company by Client in the process of developing the Channel, and to develop, update and maintain the content of the Channel during the term of this Agreement provided, however, that Company will not modify the content of the Channel without Client's approval.

**8) Internet Access**

Company shall be responsible for obtaining the media servers from which to webcast the Channel through an Internet Service Provider ("ISP"). The ISP will not be a party to this Agreement nor will it be a third party beneficiary of this Agreement.

**9) Transmitting Entity**

Company warrants and represents that for purposes with regard to the Channel that is the subject of this Agreement, Company is the transmitting entity of the Channel Webcast. Accordingly, the Channel will be launched from Company's Web Site at [http:// www.customchannels.net](http://www.customchannels.net) by way of a "jump page" from the Client's Web Site.

**10) Licenses to Third-Party Content**

Company is solely responsible for obtaining and complying with all Webcast Licenses, including payment of all royalties or license fees associated therewith for any Channel launched from Company's Web Site, <http://www.customchannels.net>.

**11) Channel Access**

Client shall provide links to Company's Web Site at [www.customchannels.net](http://www.customchannels.net) only from Client Web Site(s) outlined in Specifications. Client shall not permit any "third party" linking from any other Web Site to Company's Web Site or Channel URL without Company's prior written permission.

**12) Payment Schedule and Expenses**

The fees set forth in Agreement Terms and Fees shall be paid as provided in such the Specifications. Except as expressly stated in this Agreement or in a later writing signed by Client, Company shall bear all expenses arising from the performance of its obligations under this Agreement.

**13) Channel Warranty**

Company represents and warrants that the Channel (1) will be of high quality and free of defects in material and workmanship in all material respects; and (2) will conform in all respects to the functional and other descriptions contained in the Specifications. In the event of an interruption of a Channel's service, Company shall use its best efforts upon discovery of or notification of the interruption to restore service. Company disclaims all implied warranties.

**14) Term and Termination**

The Term of this Agreement shall be the dates outlined in the Specifications. Any early termination of this Agreement by Client prior to the end of the Term shall be subject to a cancellation fee as outlined in the Specifications.

**15) Confidentiality**

Company will maintain confidential all information that is received or made available by Company or any of its agents or employees during the Term. Client agrees to keep as confidential all information provided by Company and to not disclose information or work product of Company to third parties.

**16) Billing Statements**

We will send you an invoice for the basic fees and services on or about November 1, 2011 or earlier upon Client request. Payment will be due in 30 days from the invoice date. If Company does not receive payment of your bill by the thirtieth (30<sup>th</sup>) day after the invoice date, Company reserves the right to add a finance charge to your next bill. The amount subject to the finance charge will be that part of the previous balance not paid or otherwise credited before the statement date. The finance charge will be determined by applying a monthly percentage rate of 1.0% (corresponding to an annual percentage rate of 12%) to the unpaid previous balance. You may avoid any additional finance charge by paying the entire current balance on or before the due date. By this arrangement, we do not intend to encourage a credit arrangement or to provide for deferred payments. Rather, the finance charge is assessed to compensate the firm for the cost of carrying past-due accounts.

**17) Dispute Resolution**

The terms of this Agreement shall be interpreted in accordance with the laws of the State of Colorado, and disputes to the validity, enforceability, or interpretation of this Agreement or the intent of the parties shall be submitted to binding arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association in Boulder, Colorado. The parties agree that the prevailing party in the event of such arbitration shall be entitled, in addition to any remedy awarded by the arbitrator, to recover its reasonable attorney fees and the cost and expenses of such arbitration.

**Notices**

For purposes of all notices and other communications required or permitted to be given hereunder, the addresses of the parties hereto shall be as indicated below. All notices shall be in writing and shall be deemed to have been duly given if sent by facsimile, the receipt of which is confirmed by return facsimile, or sent by first class registered or certified mail or equivalent, return receipt requested, addressed to the parties at their addresses set forth below:

**If to CustomChannels.net, LLC:**

7464 Arapahoe Road Suite B-4  
Boulder, Colorado 80303  
Facsimile: 303 444 3555  
Attn: Dave Rahn

**If To Client:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn:

**18) Designated Person**

The parties agree that all materials exchanged between the parties for formal approval shall be communicated between single designated persons, or a single alternate designated person for each party ("Designated Person"). Neither party shall have any obligation to consider for approval or respond to materials submitted other than through the Designated Persons. Each party shall have the right to change its Designated Persons from time to time and to so notify the other in writing of such change.

**19) Entire Agreement**

This Agreement, including the attached Section 1 Specifications which are incorporated herein by reference as though fully set out, contains the entire understanding and agreement of the parties with respect to the subject matter contained herein, supersedes all prior oral or written understandings and agreements relating thereto except as expressly otherwise provided, and may not be altered, modified or waived in whole or in part, except in writing, signed by duly authorized representatives of the parties.

**20) Force Majeure**

Neither party shall be held responsible for damages caused by any delay or default due to any contingency beyond its control preventing or interfering with performance hereunder.

**21) Severability**

If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to any law, the remaining provisions shall remain in full force and effect as if said provision never existed.

**22) Waiver and Amendments**

No waiver, amendment, or modification of any provision of this Agreement shall be effective unless consented to by both parties in writing. No failure or delay by either party in exercising any rights, power, or remedy under this Agreement shall operate as a waiver of any such right, power, or remedy.

**23) Agency**

The parties are separate and independent legal entities. Company is performing services for Client as an independent contractor. Nothing contained in this Agreement shall be deemed to constitute either Company or Client an agent, representative, partner, joint venturer or employee of the other party for any purpose. Neither party has the authority to bind the other or to incur any liability on behalf of the other, nor to direct the employees of the other. Company is an independent contractor, not an employee of Client. No employment relationship is created by this Agreement. Company shall retain independent professional status throughout this Agreement and shall use his/her own discretion in performing the tasks assigned.

**24) Limitation on Liability; Remedies**

Neither party shall be liable to the other party for any incidental, consequential, special, or punitive damages of any kind or nature, including, without limitation, the breach of this Agreement or any termination of this Agreement, whether such liability is asserted on the basis of contract, tort (including negligence or strict liability), or otherwise, even if either party has warned or been warned of the possibility of any such loss or damage.

If this letter accurately reflects our understanding, please so indicate by signing at the line below.  
Sincerely,

**CustomChannels.net, LLC**

By: \_\_\_\_\_

David Rahn, Co President

DATE: \_\_\_\_\_

**CLIENT:**

By: \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_