

**SERVICE AGREEMENT**  
**AMERICAN PUBLIC MEDIA**  
(Version 2011 07 25)

Parties

This Agreement ("Agreement") is between American Public Media ("APM"), whose address is 480 Cedar Street, Saint Paul, Minnesota 55101 and:

("Affiliate") licensee/operator of the station(s) and website listed on Attachment A to this Agreement.

Introduction

A. APM produces, acquires and distributes noncommercial radio content for broadcast. This content may take the form of individual programs, ongoing series or excerpted content or features (the "Program" or "Programs"); and

B. Affiliate wishes to broadcast certain Programs made available by APM.

The Parties Therefore Agree as Follows:

1. Rights Granted:

1.1 Subject to paragraphs 3.2 and 3.3 of this Agreement, APM grants Affiliate the right to broadcast the Programs listed on the Carriage Agreement(s) described in paragraph 3.2 of this Agreement on the terrestrial radio station(s) listed in Attachment A to this Agreement.

1.2 Subject to paragraph 5 of this Agreement, if Affiliate is granted the rights to broadcast a Program on its terrestrial radio station(s) (including HD channels), APM grants Affiliate the right to simultaneously stream the Program on its Website listed in Attachment A to this Agreement.

2. Duties of APM:

2.1 APM reserves the right to establish and implement exclusivity policies designed to achieve an appropriate balance among the interests of its Affiliates, its producers, and the listening public, and will provide information about the exclusivity policy of any particular Program on the Broadcast Rights section of the Program on the APM Website or on Affiliate's Carriage Agreement for the specific Program.

2.2 APM will defend and indemnify Affiliate against any claim of damages arising out of the broadcast by Affiliate of any Programs provided under this Agreement, including but not limited to libel and slander, invasion of privacy, and copyright infringement.

2.3 APM will acquire or clear the performance and other rights attendant to the production and broadcast of the Programs provided under this Agreement.

2.4 APM will exercise reasonable efforts to promote the Programs provided under this Agreement.

2.5 APM will maintain, on the APM Website, a list of Programs and the terms, conditions, and fees related to each Program, and will update this information from time to time.

### 3. Duties of Affiliate:

3.1 For so long as this Agreement is in effect, Affiliate will pay the Service Fee that shall be established from time to time by APM. The initial Service Fee applicable to this Agreement is listed in Attachment B to this Agreement.

3.1.1 The Service Fee may be adjusted by giving Affiliate at least ninety (90) days notice prior to the first day of the month for which the new fee is effective.

3.1.2 Payment shall be made in monthly installments unless otherwise established in Attachment B to this Agreement.

3.1.3 Affiliate's continued broadcast of any Program distributed to Affiliate pursuant to this Agreement beyond the effective date of any change in fees shall constitute assent to such fees until this Agreement is otherwise terminated.

3.2 Prior to broadcasting any Program offered by APM, Affiliate will enter into a Carriage Agreement specific to that Program and abide by the terms and conditions contained in that specific Carriage Agreement. Affiliate will abide by the rights, limitations and other conditions contained in the Broadcast Rights section of such Program on the APM Website. The Carriage Agreement may define the rights, limitations and other conditions attendant to the Program, may call for additional fees to be paid, and may be in the form of a hard copy or electronic agreement, as determined by APM.

3.3 In order to be protected by the defense and indemnity clause of this Agreement, Affiliate will inform APM without delay of any claim made to which such clause would apply.

3.4 Affiliate will maintain all appropriate performance licenses required to broadcast the Programs on its terrestrial radio station(s) and Website, including but not limited to broadcast licenses with ASCAP, BMI, SESAC and RIAA. Affiliate will indemnify, defend, and hold APM harmless from any liability, costs and expenses (including, without limitation, reasonable attorney's fees) arising from Affiliate's failure to secure such rights.

4. Streaming: If Affiliate broadcasts a Program on its affiliated terrestrial radio station, then Affiliate may stream the Program on Affiliate's Website, so long as the Program is listed on the APM Website as available for simultaneous streaming. If Affiliate is qualified and chooses to stream a Program that is available for streaming, then the following conditions apply to the streaming:

4.1 The audio stream must be made available on Affiliate's Website (as listed on Attachment A to this Agreement) without edits or interruption, in its entirety, including underwriting credits, and simultaneously with Affiliate's terrestrial radio broadcast of the Program. The audio stream cannot be made available as time-shifted or archived audio.

4.2 The audio stream must be provided free of charge to all users of Affiliate's Website. The audio stream may not be included in any part of a subscription or premium service for which a user fee or subscription is charged without specific prior written notification to APM, approval by APM, and consideration paid to APM.

4.3 Affiliate may have a third party "serve" or "host" the stream for Affiliate, but the Program must be accessed from the Website owned or controlled by the Affiliate Station and listed on Attachment A to this Agreement. Access to the Program by or through third parties is not permitted. This prohibition includes radio audio aggregators and other portal providers.

4.4 Affiliate must provide at least one Internet link to the Website of the Program on the Web page where the simultaneous stream is accessed by Affiliate's Website users. This link must be approved by APM. APM will provide Affiliate with information on the appropriate linking protocol.

4.5 Affiliate must provide all information requested by APM, including data related to Web users accessing any streamed Program. APM may release this information to licensing organizations and other Websites that stream the Program.

4.6 Affiliate will notify APM in writing if it chooses to stream a Program, and if it deletes any Program that it streams.

4.7 APM may terminate or amend the terms of this Paragraph 4 at any time.

## 5. Additional Recitals, Terms and Conditions:

5.1 APM is the program production and distribution division of Minnesota Public Radio. Minnesota Public Radio is part of a group of organizations whose nonprofit parent support organization is American Public Media Group.

5.2 This Agreement is effective immediately upon signature by both parties.

5.3 This Agreement may be cancelled without cause by either party upon ninety (90) days notice.

5.4 This Agreement may be cancelled for cause by either party at any time, so long as notice of breach has been provided to the other party, and the breach has not been cured within a reasonable time, which shall not exceed fifteen (15) days.

5.5 Cancellation or termination of this Agreement shall have the effect of canceling all Carriage Agreements signed pursuant to this Agreement, but shall not have the effect of removing obligations or responsibilities which have matured prior to cancellation or termination.

5.5.1 Cancellation or termination shall not deprive either party of any rights to legal or equitable relief for breaches of the terms hereof.

5.5.2 If this Agreement is cancelled by either party, any unused fees paid hereunder shall be returned pro-rata to the Affiliate, as of the end of the month of the effective date of cancellation. Any unpaid fees due from Affiliate to APM will be paid to APM.

5.6 Affiliate and APM will cooperate in the provision of mutually useful information concerning matters contemplated by this Agreement, including but not limited to promotional information, contact persons within each organization, and other matters which may arise.

5.7 APM shall incur no liability for failure to provide any Program contemplated by this Agreement, for any reason whatsoever.

5.8 Affiliate may not give permission to any other radio station or other delivery system (except translators) not named in this Agreement, to broadcast, transmit, or reproduce any program or series contemplated by this Agreement.

5.9 Attachments A and B to this Agreement and any separate Carriage Agreements are incorporated by reference into this Agreement, and each may be changed from time to time by agreement of the parties without amending any other portions of the Agreement.

5.10 This Agreement constitutes the entire understanding of the parties and does not create a joint venture or partnership. Any changes to this Agreement must be in writing signed by both parties.

5.11 In the event of breach, in addition to whatever remedies the non-breaching party may have in law, the non-breaching party may cancel this Agreement.

For Affiliate:

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

For American Public Media

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

## **ATTACHMENT A TO SERVICE AGREEMENT**

Please list Affiliate's station or stations, including translators and HD channels. If Affiliate is a network, please list the Primary Affiliate station. List call sign, frequency, and community of license for each station, HD channel and/or translator.

URL of Affiliate's website: \_\_\_\_\_

(This Attachment A may be changed from time to time by agreement of the parties without changing any other terms or conditions of this Agreement.)

## **ATTACHMENT B TO SERVICE AGREEMENT**

Initial Service Fee:

(This Attachment B may be changed from time to time by agreement of the parties without changing any other terms or conditions of this Agreement.)