

Custom Channels General Terms & Conditions

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1. Introduction

Thank you for choosing Custom Channels as your business music service!

These are our General Terms and Conditions (“GTC”) governing the use of Custom Channels’ website and service. In this document,

- **“Company”, “We”, or “Us”** refers to CustomChannels.net, LLC, located at 2569 Park Ln., Suite 104, Lafayette, CO 80026, and
- **“Client” or “You”** refers to you, the subscriber and/or user of the Service (defined below).

By accessing or using the Custom Channels service, you signify that you have the authority and capacity to enter into this agreement, and that you agree to abide and be bound by the terms and conditions that follow.

Please take the time to read these terms, so you can properly understand the policies and procedures governing your use of Custom Channels. If you have any questions, please contact Custom Channels via the contact information at the bottom of this document.

2. Definitions

You will see a handful of specific terms used throughout this document, defined as follows:

- **“Supplemental Terms”** refers to any additional terms and conditions contained in materials mutually agreed upon by Custom Channels and you, your parent company, franchisor, franchisees, or other affiliates. Such materials may include, but are not limited to, any online order form, statement of work, services agreement, or separate master services agreement.
- **“Agreement”** refers to the terms and conditions of this GTC and any Sales Order (defined below) or Supplemental Terms. These materials collectively constitute a legally binding Agreement that governs the terms and conditions by which our services are provided to you. In the event of any conflict between these GTC and your Supplemental Terms, the provisions in your Supplemental Terms shall prevail.
- **“Channel”** refers to one discrete collection of audio programming, created for you by us, that is transmitted over the internet by streaming technologies as part of a subscription to, or demo or free trial of, the Service, as defined below.
- **“Business Streaming Service” or “Service”** refers to custom, semi-custom, or stock audio programming intended for use as on-premise background music in your place(s) of business. The Services are designed for delivery to a subscribing business establishment

over the internet by means of streaming technologies for playback over the client's audio system via authorized hardware and/or software. The term "Service" also includes the client portal at client.customchannels.net and any other technology, platform, API, and third-party content licenses which may be included as part of the Service.

- **"Subscription"** refers to your ongoing monthly or annual subscription to and payment for the Services, as defined by your Agreement.
- **"Subscribing Location"** refers to one of any number of physical commercial establishments belonging to you that are approved by us for use of the Service.
- **"Sales Order"** refers to your verbal, written, or "click through" acceptance of a service order, subscription plan, one-time purchase of equipment, or any other Supplemental Terms providing for the purchase of services or equipment.
- **"Hardware Player"** refers to a physical streaming decoder device provided to a Client by Custom Channels and configured for use of our Service.
- **"Third-Party Player"** refers to any pre-approved physical or digital platform, provided by anyone other than Company, that is used to decode the Channel to an audio signal that can then be delivered to an analog audio system.

3. Use of the Service

Requirements for Use

In order to utilize the service, you—at your own expense and independent of this agreement—will need to provide at your Subscribing Location(s) all necessary equipment to meet the minimum network and audio requirements for Business Streaming Service, including:

- Internet service with a full-time connection and sufficient bandwidth to facilitate a minimum of 128 Kbps of continuous data throughput and periodic peak data throughput of at least 1.5 Mbps;
- An audio system capable of routing a standard RCA signal from a Hardware Player to connected loudspeakers, or an analogous audio system suited to the needs of a Third-Party Player;
- A pre-approved player, in the form of either a Hardware Player purchased directly from Company or a Third-Party Player furnished by you, as specified in your Supplemental Terms (collectively, "Music Players");

- Any additional routers, switches, patch cables, or power strips needed to provide a wired internet connection over Ethernet to the Music Player within 5 feet of the audio system; and
- Any configurations to firewalls, switches, routers, or other network devices necessary to provide a consistent local network connection and Internet service to the Music Player.

Online Client Dashboard

While you do not need a computer to play the Service at your Subscribing Location, some of our offerings require the use of an internet-connected computer in order to manage your account and Service through a web browser. Please see the requirements for each Service on our website or in your Supplemental Terms.

Player Installation

The Hardware Player and our Service is designed to be self-installed with basic setup instructions and, if needed, telephone and email support provided by Custom Channels. Any additional or alternative equipment needs your Subscribing Location may have should be discussed with a reputable Information Technology or Audio/Visual services provider.

4. Term, Fees, Payment, and Billing

Initiating a Subscription

By submitting a Sales Order for Service, you are agreeing to begin an ongoing Subscription to the Services, and to set into motion the following, pursuant to the terms of your Sales Order:

- The establishment of an account with Custom Channels, including a valid credit card or other agreed-upon payment method;
- Authorization of payment for the Service via your payment method of any amounts due on your account; and
- Delivery by Custom Channels of the Service at your Subscribing Location(s).

Agreement Term and Automatic Renewal

Unless otherwise agreed to as part of your Supplemental Terms, we provide Monthly and Annual Subscription terms (each a "Subscription Term"). Monthly Subscriptions are invoices or charged in advance on a calendar monthly basis or, where specified, on a three-month-at-a-time quarterly

basis. Annual Subscriptions are invoiced or charged in advance every twelve (12) months in exchange for a discounted rate.

The “Effective Date” of your Subscription is whichever first day of a calendar month is closest to the activation of Services at the Subscribing Location. By default, your Subscription will renew automatically on the first day of each calendar month thereafter or, in the case of Annual Subscriptions, on the first day of the 12th calendar month after your Effective Date (“Subscription Renewal Date”).

All Subscriptions renew automatically at the end of the current Subscription Term unless and until terminated by you or Custom Channels according to the cancellation policy below. We will issue an invoice or charge your authorized credit card account on or about your Subscription Renewal Date.

Standard Fees and Payment

One-time fees for equipment will be invoiced and payable prior to shipment of equipment. Recurring monthly, quarterly or annual fees will be invoiced or charged according to your Subscription plan and payments are due 30 days from invoice date. You are responsible, at all times during the term of your Subscription, for maintaining a valid credit card or other mutually-agreed-upon payment method associated with your account. Custom Channels reserves the right to suspend or terminate Service at any time as a result of non-payment. Our suspension or termination of service for non-payment does not release you from any obligations specified in this Agreement including payment of all fees owed as of the suspension or termination date. Fees for Subscriptions are always charged by the full rate of your Subscription Term and will not be prorated. Custom Channels reserves the right to change rates for month-to-month Subscriptions upon written notice to you.

Free Trial

You have the option before starting a Subscription to register for a Free Trial of the Service. Custom Channels reserves the right to determine which Service(s) will be made available for your Free Trial, as well as the length of your Free Trial period. The full terms of your Free Trial, should you register for one, will be detailed in a corresponding Supplemental Terms, and shall supersede any conflicting provisions in the GTC.

45-Day Money Back Guarantee

For a period of 45 days from the Effective Date of your Subscription—or 30 days from a shipper’s delivery confirmation of your Music Player to your shipping address, whichever is later (“Guarantee Period”)—you may cancel this agreement for a full refund of all service and equipment fees charged by Custom Channels, subject to the provisions that follow.

Guarantee Period Refund Policy

To receive a refund for a cancellation within the Guarantee Period, you must first contact us by phone or email before the end of the Guarantee Period to confirm the service cancellation. If you have purchased a Hardware Player, you must return the device to us, in its original packaging, in like-new, working condition with all cables and power supply to receive a refund. We will provide a pre-paid shipping label valid for all equipment to be returned to us under the terms of your cancellation. Your refund will not be disbursed to you until we receive the equipment at our office and verify that it is in acceptable condition, at which time we will refund any pre-paid Service and equipment charges and discontinue delivery of the Service to your cancelled Subscribing Location(s). Restocking or other fees may apply to equipment returned with damage, missing parts or cables or without original packaging.

Cancellation Policy

Unless otherwise specified in your Supplemental Terms, you may cancel your Subscription at any time. Your cancellation will be effective at the end of the last calendar month of your Subscription Term. You are responsible for all fees due through this effective cancellation date. If you cancel outside of the Guarantee Period, no credit or refund will be due from Custom Channels for costs related to switching vendors, purchasing Players or other equipment, or prepayment of unused days of Service, except, however, that refunds may be given for unused, pre-paid calendar months on Monthly Subscriptions that pay on a quarterly basis. Pre-paid Annual Subscriptions are not refundable.

Taxes

Fees for Services exclude any applicable taxes. You are responsible for the reporting and payment of any sales or use tax that may be imposed on the sale of services or equipment, by any jurisdiction, in respect to the provision or use of the Service(s) at any of your Subscribing Locations. We reserve the right to add such amounts to invoices for Services when required by law.

5. Client Services

Customer and Technical Support

Custom Channels will provide written instructions and telephone or email assistance regarding installation, operation, and troubleshooting of our Hardware Players and Services, including such information, tips, and advice that we may reasonably provide regarding equipment setup given our knowledge of your audio system and network infrastructure. In-office technical support hours are Monday through Friday, 9am to 5pm Mountain Time. For assistance outside of these hours, you may contact our technical support team at support@customchannels.net or leave a message at [303.444.7700 x7](tel:303.444.7700).

Player Warranty

Each Hardware Player you purchase shall carry a warranty against malfunction due to a product defect for as long as you are a subscribing client of Custom Channels (the “Player Warranty”). Replacement or repair of your Hardware Player under warranty is subject to prior approval by our technical support personnel after appropriate troubleshooting by phone or email.

In the event a Hardware Player must be replaced under the Player Warranty, we will pay for expedited, 2-day delivery of the replacement equipment (“Replacement Equipment”). If you need the Replacement Equipment shipped to you with next-day or AM delivery, you will be pay any marginal increase in cost for expedited shipping beyond our included 2-day option.

Music Players replaced under these terms (“Return Equipment”) must be given by you to the shipping provider within 10 days of receipt of the Replacement Equipment—defined and confirmed by the tracking information available through the shipping provider. Beyond this deadline, we reserve the right, at our discretion, to invoice or immediately charge your account for the cost of the replacement device at then-current rates.

At Custom Channels’ sole discretion, Replacement Equipment provided under the Player Warranty may be furnished from our refurbished or repaired stock. Regardless of whether new, refurbished, or repaired equipment is sent, the replacement player will continue to be covered by your Player Warranty until you cancel or transfer service. Player Warranties are not transferable and are only valid for the client responsible for the original purchase of the equipment in question.

Custom Channels is not responsible for any damage to Music Player due to loss, theft, accidents, misuse, Acts of God, or any other factor out of our reasonable control.

6. Licenses

The sound recordings and musical compositions provided as part of the Service (“Third-Party Content”) are the property of third-party rights holders and are made available for use by you and us by special licensing arrangements. The term “Licenses” includes, but is not limited to, licenses issued by Performing Rights Organizations (“PROs”) such as ASCAP, BMI and others in the U.S. and SOCAN and Resound in Canada, authorizing the non-dramatic public performance of musical works within each PROs repertoire in your Subscribing Locations by means of the Service in the U.S. and Canada.

Company-Provided Third-Party Content: Custom Channels will be responsible for obtaining, complying with and maintaining in full force and effect during the Agreement Term all Licenses necessary for the Services, including payment of all royalties and license fees associated therewith, provided your use of the Service complies with the following acceptable use terms, conditions and limitations as imposed by the PROs:

- You will only access the Service using a Company authorized player and the audio from the Service will only be publicly performed via loudspeakers in approved Subscribing Locations within the jurisdiction of the Licenses (U.S., Canada, and their respective territories) and used as an accompaniment to routine activities, including, but not limited to work, shopping, conversation, dining and relaxation.
- The Service may not be used by a VJ/DJ, or as an integral part of an event, activity or venue where admission is charged, or as an accompaniment to any dramatic performance, dance, musicians, skate, cycle, aerobic, fitness or other similar activity.
- You may not record, reproduce, edit, adapt, repurpose, retransmit, broadcast or otherwise exploit the Third-Party Content other than expressly permitted herein.
- The service may not be transmitted to any private home, apartment, guest room in a hotel or motel, or other similar location.

You further acknowledge that these Licenses only apply to acceptable use of the Service provided by Custom Channels and that any additional licenses required by your business must be obtained independently and are your sole responsibility (for example, licenses from the PROs for live music, DJ/Dancing, fitness classes, etc.). If you have any questions about whether your use of the Services (or any Third-Party Content), complies with the Licenses, we recommend you contact your legal counsel or the PROs directly.

Custom Channels reserves the right to suspend Service at any Subscribing Location that we believe to the best of our knowledge to be using Service in a manner outside the approved uses.

In the event a License expires, is terminated or is materially amended, Company's obligations hereunder will be suspended to the extent Company's ability to provide the Business Streaming Service are in Company's judgment materially affected by such expiration, termination or amendment.

Client-Provided Content: Some of our Service may allow you to upload or provide your own content including, but not limited to, advertisements, promotional messages, jingles, or other audio recordings or compositions ("User Content") to the Service. You are solely responsible for your User Content, and you acknowledge that we are only acting as a passive conduit for your User Content. We, however, reserve the right to remove any User Content from the Service at our sole discretion or to comply with any lawful take-down notice we may receive from a rights holder.

When you supply User Content to the Service, you agree as follows:

- You are solely responsible for your account and the activity that occurs while signed in to or while using your account;
- You retain all ownership rights in your User Content but when you upload or post User Content to the Site or the Service, you grant to us a worldwide, non-exclusive, royalty-free, transferable license to use, reproduce, distribute, prepare derivative works of, display, and

perform the User Content in connection with the provision of the Service;

- You will not submit content that is copyrighted or subject to third party proprietary rights, including privacy, publicity, trade secret, or others, unless you are the owner of such rights or have the appropriate permission from their rightful owner to specifically submit and use such content; and
- You understand and agree that any liability, loss, or damage that occurs as a result of the use of any User Content that you make available or access through your use of the Service is solely your responsibility.

7. Warranty and Limitation of Liability

Warranty of Service and Liabilities

Except as specifically provided in these GTC, we make no warranty, express or implied, with respect to the Service(s) we render. We shall make our best efforts to ensure your satisfaction with the Service(s) we provide to you but will not be contractually bound to anything above and beyond the specifications detailed in these GTC and any mutually-agreed-upon Supplemental Terms. In the event of a disruption of Services, we shall make our best efforts upon discovery or notification of the interruption to restore service within 24 hours. Without limitation of the foregoing, Custom Channels is not responsible for disruptions in services due to Internet traffic, local Internet Service Provider (ISP) outages, client equipment or network failures, or technical or human errors or failures beyond our reasonable control. Custom Channels may, at your request, provide recommendations as to certain third-party audio or network equipment or services you may need, but any and all such recommendations are made to the best of our ability without warranty or guarantee as to their validity or viability.

Mutual Indemnification

For the purposes of this sub-section, you and Custom Channels may each be referred to as the “Indemnifying Party” or the “Other Party”—as reasonably defined by the circumstances to which these provisions allude—and are bound by the terms that follow.

The Indemnifying Party agrees to defend (at the Other Party’s option), indemnify, and hold the Other Party and its parents, subsidiaries, affiliates and agents (collectively, “Representatives”) harmless from and against any and all third-party claims, damages, costs, judgments, penalties, and expenses (including reasonable outside attorney’s fees) which may be obtained against, imposed upon, or suffered by the Other Party or its Representatives as a result of any material breach by the Indemnifying Party of the Agreement, or any warranties or representations made by the Indemnifying Party therein; provided, however, that the Other Party must:

- Give the Indemnifying Party prompt notice of any such claims, suits, etc. that may come to the Other Party's attention;
- Permit the Indemnifying Party to conduct and control the defense that the Indemnifying Party provides with counsel of the Indemnifying Party's choosing; and
- Fully cooperate with respect to any such defense provided by the Indemnifying Party.

8. Use of Client Marks

By using the Custom Channels service, you agree to grant us a non-exclusive, royalty-free license to display your company's trademark and/or trade name on our website and in marketing materials, solely for the purpose of providing a list or example of Custom Channels' customers. You reserve the right to notify us by phone or email of your preference to opt out of this provision, at which point we will make our best effort to remove your mark from our website and marketing materials as soon as reasonably possible.

9. Ownership

Custom Channels owns all copyrighted works and other intellectual property, proprietary rights, or material created or produced by us while performing the Services, as well as those owned by Custom Channels prior to the effective date of your Subscription (collectively, "Company Materials"). During the term of your Subscription, you are hereby granted a non-exclusive, non-transferable, limited license to use Company Materials solely within the term and territory of your subscription, and solely to the extent necessary to enable your use of the Services. During the term of your Subscription, Custom Channels is likewise granted a non-exclusive, royalty-free license to use copyrighted works or other intellectual property or proprietary rights owned by you prior to or after the effective date of your subscription, which we agree to use expressly for the purpose of performing the Services herein.

Any routines, libraries, tools, equipment, hardware, software, methodologies, processes, or technologies created, adapted, or used by Custom Channels in our business generally, including all associated intellectual property rights (collectively, the "Development Tools") that we may use in connection with the Services, are and remain the sole property of Custom Channels. You will have no interest in or claim to the Development Tools, except such license rights as may be necessary to use the Services, as provided herein. We retain the right to develop, use, and distribute works that are substantially similar to the work products of your Service, including those similar in function, structure, sequence, or organization. We are free to use any ideas, concepts, or know-how that we develop or acquire during the performance of your agreement with us, to the extent that we obtain and retain such information as impressions and general learning. All rights not expressly granted to the Client in the Agreement are reserved to Custom Channels.

10. Changes to the GTC and Services

From time to time, Custom Channels may, at our sole discretion, make changes to our GTC or Services. Any updates to these GTC will be published on this page of our website, along with a date by which those updates will go into effect. Additionally, we will make our best efforts to provide subscribing clients with prominent and advance notification of any material changes to these GTC or the Services, either broadly via a bulletin within an access point of the Service or directly through the affected clients' contact information on file. Your continued use of the Service beyond the effective date of any updates to the GTC or Services will constitute your acceptance of any such updates. If you do not wish to continue using the Service under the updated terms, you may terminate your Agreement by cancelling your Subscription, as provided herein.

11. Entire Agreement and Severability

These GTC and any associated Supplemental Terms set forth the entire agreement between you and Custom Channels, which supersedes any and all prior agreements between the parties. Your Supplemental Terms may not be changed except by an instrument in writing signed by both parties. If any provision in your Agreement is deemed by a court of competent jurisdiction to be invalid or unenforceable, it shall be regarded as stricken while the remainder of your Agreement shall continue to be in full effect.