

PROGRAM ARCHIVING AND DISTRIBUTION AGREEMENT

This Agreement describes the relationship between the Pacifica Foundation (“Pacifica”) and a Pacifica Affiliate (“Affiliate” or “you”) who wishes to participate in the Pacifica AudioPort program (“Pacifica AudioPort”).

The Pacifica Affiliation Agreement provides that Pacifica will offer Affiliates certain Pacifica Affiliated Services, including “An archive of audio programs that Affiliate may download for broadcast.” This Agreement implements that provision of the Pacifica Affiliation Agreement by setting forth the terms and conditions upon which an Affiliate may upload audio programs to the Pacifica Program Warehouse (now called Pacifica AudioPort) and download archived Programs for broadcast on an Affiliate broadcast station or for streaming on the Internet.

As a Pacifica Affiliate, you will become a party to, and will be bound by this Agreement and any Policies to which it refers. Pacifica may modify this Agreement from time to time as provided in Section 3.14 below. A link to the current Agreement and Policies is available on the Pacifica website, www.pacifica.org (the “Pacifica Site”).

This Agreement addresses two (2) different categories of service available on the Pacifica Site (each a "Service.")

Through the Uploading Service, you supply audio and other content to Pacifica and allow Pacifica to include your materials in the Pacifica AudioPort. Through the Downloading Service, a Pacifica Affiliate can download Programs for broadcast on a station licensed to Affiliates or for streaming on Affiliate’s Internet site.

The legal terms which apply to the Uploading Service and Downloading Service are set forth in Sections I and II, respectively. Legal terms applicable to all Services are described in Section III.

Section I - Uploading Service

Programs. In order to use the Uploading Service, you must create an account, and provide Pacifica with one or more broadcast-quality audio programs ("Programs").

1.1. License for Content and Materials. By delivering Programs to Pacifica, you grant Pacifica a non-exclusive worldwide license to publicly perform, publicly display, broadcast, encode, reproduce, transmit, manufacture, distribute and synchronize the Programs. You further grant Pacifica and other Pacifica Affiliates a nonexclusive worldwide license to download, reproduce, use, and broadcast the Programs on terrestrial noncommercial radio stations and/or to stream the Programs on your Internet site.

1.2. Consideration. Pacifica AudioPort is offered by Pacifica as a service to its Affiliates. Pacifica pays no consideration to contributing Affiliates or their producers, other than the opportunity to archive Programs and distribute them to Pacifica stations and Affiliates.

1.3. Certification. By delivering any Program to Pacifica you certify that:

(a) You own, or have the right to license, the copyright interests in the Program conferred in this Agreement;

(b) The Program does not contain musical works or sound recordings, except as background music.

1.4. Termination of Uploading Service License. Subject to the provisions contained in Section III, "Term and Termination" below, you may terminate your license to Pacifica with respect to some or all of your Programs at any time by giving written notice to Pacifica. The termination will become effective within three (3) days after Pacifica's receipt of the notice.

Section II - Downloading Service

2.1. Licensing. By uploading a Program to the Program Warehouse, an Affiliate licenses Pacifica and any other Pacifica Affiliate to download the Program for broadcast on a noncommercial educational station licensed to Pacifica or Affiliate or for streaming on the Internet site of a Pacifica station or Affiliate.

2.2. Termination of Downloading Service. Subject to the provisions contained in Section III, "Term and Termination" below, you may terminate your participation in the Downloading Service. You must still comply with the Terms of Use for any Programs downloaded by you during your use of the Downloading Service

Section III - General Terms

The following terms apply to the Uploading Service, the Downloading Service and the Pacifica AudioPort generally:

3.1. Requirements for Use. The Service is for individuals over 18 years of age who can form legally binding contracts under applicable law. If you do not meet the foregoing or other applicable requirements, you may not use the Pacifica Audio Services without making special arrangements with Pacifica. In order to make such an arrangement, contact Pacifica personnel designated on the Pacifica Site.

3.2. Privacy. Pacifica's Privacy Policy is expressly incorporated herein by reference and made a part of this Agreement.

3.3. Registration Information. You agree to provide current, complete, and accurate information required to complete your registration with Pacifica (such information will be referred to as "Registration Data"). You further agree to maintain and update Registration Data as required to keep it current, complete, and accurate. You shall not use

a false or misleading name or a name that you are not authorized to use. If any information you provide is false, incomplete or inaccurate, Pacifica may terminate your rights to any or all of the Pacifica Service.

3.4. User Account, Password, and Security.

a. Account and Password. As a registered user of the Pacifica AudioPort, you may receive or establish one or more passwords and accounts ("Pacifica Account(s)"). You are solely responsible for maintaining the confidentiality and security of your passwords and Pacifica Accounts. You may not divulge your password to anyone else or use anyone else's password or Pacifica Account. You are entirely responsible for all activities that occur on or through your Pacifica Account(s), and you agree to notify Pacifica immediately about any unauthorized use of Pacifica Accounts or any breach of security.

b. Security, Cracking and Hacking. You shall not violate or attempt to violate the security of the Program Warehouse Service. Accordingly, you shall not attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper authorization. You agree that it is your responsibility to install anti-virus software and related protections against viruses, Trojan horses, worms, time bombs, cancelbots or other computer programming routines or engines that are intended to damage, destroy, disrupt or otherwise impair a computer's functionality or operation which may be transferred to your computer via the Program Warehouse Service.

3.5. Licensed Materials. For the purpose of this Agreement, the term "Licensed Materials" means anything that you submit to Pacifica or post on the Site including, but not limited to Programs.

3.6. Site Access License. Pacifica grants you a limited, revocable, non-exclusive, non-transferable license to access and make personal non-commercial use of the Pacifica Site. This license does not include any resale or commercial use of the Pacifica Site or its contents; any collection and use of any Program listings or descriptions; any derivative use of the Pacifica Site or its contents; any downloading or copying of account information for a commercial purpose; or any use of data mining, robots, or similar data gathering and extraction tools. The Pacifica Site and/or any portion of the Pacifica Site may not be reproduced, duplicated, copied, sold, resold, visited or otherwise exploited for any commercial purpose without Pacifica's express written consent. Except as permitted by the Affiliation Agreement you shall not frame or utilize framing techniques to enclose any trademark, logo or other proprietary information (including images, text, page layout or form) of Pacifica or its Affiliates without express written consent. You shall not use any Meta tags or any other "hidden text" utilizing Pacifica's name or trademarks without its express written consent. Any unauthorized use automatically terminates this Agreement. You are granted a limited, revocable, non-exclusive, nontransferable right to create a hyperlink to the Pacifica home page so long as the link does not portray Pacifica, Pacifica's content providers, Pacifica's Affiliates or Pacifica's products or services in a false, misleading, derogatory or otherwise offensive manner. You may not use any Pacifica logo or other proprietary graphic or trademark as part of the link without express written permission.

3.7. Intellectual Property.

- a. Ownership of Copyrights. As between you and Pacifica, you retain ownership of the copyrights and all other rights in the Licensed Materials and Programs furnished by you, subject to the non-exclusive rights granted to Pacifica under this Agreement. You are free to grant similar rights to others during and after the term of this Agreement.
- b. Removal of Programs or other Materials. Notwithstanding any other provision of this Agreement, Pacifica reserves the right to remove or disable access to any Program that violates or otherwise allegedly infringe the copyright or other intellectual property or proprietary rights of any person, company or other entity. Pacifica will not be liable for the good faith removal of or disabling of access to any such Program under this Agreement.
- c. Pacifica Copyrights. All copyrights in and to the Pacifica Site are owned by Pacifica and/or its suppliers and/or licensors.
- d. Trademarks. The Pacifica trademark, the call signs of the Pacifica stations and other trademarks, service marks, graphics and logos used in connection with the Pacifica AudioPort are trademarks or registered trademarks of Pacifica. Other trademarks, servicemarks, graphics and logos used in connection with the Program Warehouse are the trademarks of their respective owners. Except as provided in the Pacifica Affiliation Agreement, you are granted no right or license with respect to any of the aforescribed trademarks and any unauthorized use of such trademarks, including but not limited to use in connection with any product or service that is not that of the respective trademark owner in any manner that is likely to cause confusion among customers or that disparages or discredits the respective trademark owner, is strictly prohibited.

3.8. Representations and Warranties. You represent and warrant that:

- (a) Pacifica and its Affiliates shall not be required to make any payments in respect of the authorized use of your Programs, including, without limitation, payments to you, third parties claiming through you or otherwise, music publishers, mechanical rights agents, performance rights societies, persons who contributed to or appear in your Programs, your licensors, unions or guilds;
- (b) you have the full right and power to enter into and perform this Agreement, and have secured all third-party consents, licenses and permissions necessary to enter into and perform this Agreement;
- (c) the Programs do not and will not infringe on any third party's copyright, patent, trademark, trade secret or other proprietary rights, rights of privacy, publicity or performance or literary or dramatic right of any party, or moral rights;
- (d) the Programs comply with all applicable laws and regulations of any Federal, state or local authority;
- (e) the Programs do not and will not constitute libel, slander or defamation and will not be pornographic or obscene;
- (f) the Programs do not contain, and you will not introduce through data transmission or any other medium, any virus, worm, trap door, back door, or other contaminant that may have the effect or be used to access, alter, delete, damage, or disable the Programs or any hardware, software, information or other property of Pacifica or any third parties;
- (g) all factual assertions that you have made and will make to Pacifica are true and complete; and

(h) you are of legal age of consent in all applicable jurisdictions and, in any event, are at least eighteen (18) years of age.

Pacifica provides the Pacifica AudioPort and the Pacifica Site on an "as is," "as available" basis without warranties of any kind, either express or implied, including but not limited to warranties of performance, merchantability, fitness for a particular purpose, noninfringement, or freedom from viruses. Pacifica does not guarantee that the Service or the Pacifica Site will be available or that the services will be uninterrupted or error-free. In no event shall Pacifica be liable for any direct, indirect, special, or consequential damages, including but not limited to loss of profits, income, or business opportunities, regardless of the nature of the claim or the form of action, arising from the licensed materials, the services, or the Site, whether or not Pacifica shall have had any knowledge, actual or constructive, that such damages might be incurred.

3.9. Indemnity. You agree to indemnify and hold harmless Pacifica, its Affiliates, subsidiaries, shareholders, officers and directors, agents, employees and partners, from any third party claim or demand, including reasonable attorneys' fees for damages and/or costs due to or arising out of your breach of your representations, warranties or obligations under this Agreement.

3.10. Term and Termination. Upon termination of this Agreement, all of Pacifica's licensed rights terminate. Pacifica shall use commercially reasonable efforts to discontinue access to your Programs promptly upon termination. Pacifica may terminate this Agreement with respect to any Programs at any time by so notifying you. The Agreement will terminate upon your actual receipt of such notice or three (3) days after Pacifica sends a notice of termination to the email address you supply.

3.11. Notifications of Infringement. Upon receipt of notice, Pacifica will act expeditiously to remove or disable access to any Programs claimed to be infringing or claimed to be the subject of infringing activity, and Pacifica will act expeditiously to remove or disable access to any reference or link to any Program or activity that is claimed to be infringing. Notwithstanding anything contained in this Agreement or in Pacifica's "Privacy Policy," you expressly consent to Pacifica's disclosure of your personally identifiable and all other personal information in the event that you or your Programs are the subject matter of any such infringement claim.

3.12. Disclaimer. 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 MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR OTHERWISE. WITHOUT LIMITATION, PACIFICA DISCLAIMS ANY AND ALL WARRANTIES REGARDING THE SECURITY, RELIABILITY, TIMELINESS AND PERFORMANCE OF THE SERVICE. PACIFICA MAKES NO WARRANTY, EXPRESS OR IMPLIED, THAT THE SERVICE WILL BE UNINTERRUPTED, TIMELY OR ERROR-FREE.

3.13. Waiver of Certain Damages. EXCEPT FOR DAMAGES RELATED TO A BREACH OF THE SECTION TITLED "REPRESENTATIONS AND WARRANTIES," NEITHER YOU NOR PACIFICA WILL BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, STATUTORY OR INCIDENTAL DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT.

3.14. Modification or Amendment of Agreement. Pacifica reserves the right, in its sole discretion, to change, modify, add or remove all or part of this Agreement. Notice of any amendments and/or modifications shall be sent to you or posted on the Pacifica website at least three (3) days prior to their effective date. In the event that you do not consent to any such amendments and/or modifications, your sole recourse shall be to terminate this Agreement with respect to any or all Programs, as provided above.

3.15. Miscellaneous. This Agreement sets forth the entire understanding and agreement of the parties as to this Agreement's subject matter and supersedes all prior proposals, discussions or agreements with respect to such subject matter. You agree not to resell, assign, otherwise transfer, or delegate your rights or obligations under the Agreement without Pacifica's prior express written authorization. Notices or communications under this Agreement shall be sent by electronic mail or in writing and shall be deemed delivered upon receipt to the party to whom such communication is directed, at the following addresses:

(a) if to Pacifica, such notices shall be addressed to:

Pacifica Foundation
1925 Martin Luther King Jr Way
Berkeley, CA 94704

and

(b) if to you, such notices shall be addressed to the electronic or mailing address specified when you register for the Service.

The Agreement shall be governed by and construed in accordance with, and all legal issues arising from or related to your use of, or participation in the Services shall be determined by the laws of the State of California without regard to that State's conflict-of-law provisions. The State and Federal courts of California shall be the exclusive forum and venue to resolve any and all disputes arising out of or relating to the Agreement or to your use of, or participation in, the Services. Pacifica's failure to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision. All headings in the Agreement are for convenience only and shall have no legal or contractual effect. You agree that Pacifica and you are independent contractors under this Agreement, and nothing herein shall be construed to create a partnership, joint venture or agency relationship. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors "and assigns. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.