

Memorandum of Understanding

This Memorandum of Understanding ("MOU") is entered into as of the date on the signature page of this MOU ("Effective Date") and sets forth the agreement between Portland Community Media d/b/a Open Signal, an Oregon nonprofit corporation ("Open Signal"), and Futel ("Partner"), individually a "Party" and collectively the "Parties". This MOU outlines the responsibilities of each Party's involvement in the Sidewalk Voices at Open Signal located on 2766 NE Martin Luther King Jr Blvd. Portland, Oregon hereby referred to as the "Project".

Open Signal Contact:

Name: Taylor Neitzke
Title: Director of Programs
Email: taylor@opensignalspdx.org
Phone: (503) 673-8652

Partner Contact:

Name: Karl Anderson
Title: Founder
Email: kra@monkey.org
Phone: (503) 841-9766

The Parties agree as follows:

1. Open Signal's Duties.

Open Signal agrees to:

- A. Promote the Project on social media platforms such as Open Signal's website, Instagram, Facebook, e-newsletter etc.
- B. Provide 1 staff member to support with temporary phone kiosk installation at Open Signal Fest on Friday August 9, 2019 from 12:30pm – 2:00pm.
- C. Ensure temporary phone kiosk installation is secured while on-site.
- D. Manage permitting of Project.
- E. Coordinate physical install onsite.
- F. Create an application and place open call for Project submissions.
- G. Recruit community members to review submissions via Submittable.
- H. Communicate with applicants via acceptance and denial letters.
- I. Manage communication with selected artists.
- J. Create artist contracts, setting deadlines and parameters for file delivery, getting an image for promotion and description from artist.
- K. Coordinating equipment use at Open Signal for Project if necessary.
- L. Communicate technical and maintenance needs to Partner in writing when and if they occur while Project remains on-site at Open Signal's NE Martin Luther King Jr Blvd. facility.

2. Partner's Duties.

Partner agrees to:

- A. Credit Open Signal on all media created by Partner in relation to the Project and mention the partnership on Partner's web platforms. Partner shall use the following credit: "Created in partnership with Open Signal, Portland Community Media Center."
- B. Provide a technical support in the form of a software engineer, operations, design, user experience and administrative support of Project.
- C. Install the temporary and permanent phone kiosk in collaboration with Open Signal at Open Signal Fest and permanently on the building on a date TBD in September 2019.
- D. Provide on-going technical support and maintenance of permanent phone kiosk as needed while the Project remains on-site at Open Signal's NE Martin Luther King Jr Blvd. facility.

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- E. Refurbish and deliver the phone, IT equipment and enclosure for Open Signal Fest and on a date TBD in September 2019 for permanent installation on the building.
- F. Integrate artist content into the phone service on the schedule outlined in section 4.

3. Price and Payment.

Open Signal shall invoice Partner for work performed under this MOU and include reasonable documentation of the work performed for each invoice. Open Signal will pay Partner by check or any other method agreed upon by the parties. As full compensation, Partner shall pay Open Signal:

Fixed Fee. A one time, fixed fee of \$1,500 for artist fees and \$500 in administrative fees totaling \$2,000 payable within thirty (30) calendar days of Open Signal's acceptance of the services and receipt of Partner's final invoice.

Each Party will bear its own expenses in connection with the preparation, execution, and performance of this MOU and the transactions contemplated by this MOU. Open Signal may deduct or setoff against payments otherwise due to Partner amounts necessary in Open Signal's reasonable discretion to compensate Open Signal for Partner's failure to perform in accordance with this MOU. In addition, Partner is responsible for all collection and legal fees incurred by Open Signal caused by Partner's lateness or failure to perform.

4. Term.

The Project will begin on July 19, 2019 and end of December 31, 2020. While the Project remains permanently installed at Open Signal the Partner is responsible for providing technical support and maintenance of the phone kiosk. Partner will install artist content by October 1, 2019, February 1, 2020 and May 1, 2020.

5. Ownership of Work; Reproductions; License.

A. *Definitions.*

The term "Work" means all creative works, products, designs, software, materials, inventions, or original works of art and authorship produced or developed by a Party for the Project.

The term "Prior Work" means all creative works, products, designs, software, materials, inventions, or original works of art and authorship produced or developed by a Party prior to the Effective Date and incorporated into the Project.

B. *Ownership; License.*

Ownership and use of the Work and Prior Work is as follows:

Open Source. The Parties agree that the Project is open source and freely available to third parties for any use. Each Party will own and retain all right, title, and interest, including any associated intellectual property, in and to its Prior Work and the Work it contributes to the Project. Each Party shall freely license the Project, including its Prior Work and Work, to the public without any additional terms or conditions that restrict the use of the Project by any recipient. Each Party grants to the other Party a nonexclusive, royalty free, perpetual, worldwide, transferrable, sublicensable, and irrevocable right and license to copy, distribute, display, prepare derivative works of, perform, or otherwise use its Work and Prior Work in connection with any use of the Project and in any media or

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format, including providing the Project to third parties in an open source manner.

- C. **Credit License.** Each Party grants to the other Party a nonexclusive, royalty free, worldwide, nontransferable, and revocable right and license to use their name or logo in connection with promotion of the Project.

6. Termination.

This MOU will terminate upon the occurrence of any of the following events:

- A. Upon the expiration date of this MOU if this MOU is not renewed by both Parties in writing before that date.
- B. Upon the bankruptcy or dissolution of either Party.
- C. Upon 30 days' written notice by either Party.

7. Breach.

- A. If either Party claims the other has breached any material provision of the MOU, a conference will be called between the Parties and every reasonable effort shall be made to reach an amicable solution. At said conference either Party may have representatives present.
- B. Either Party shall have thirty (30) calendar days to correct any activity or conduct claimed by the other Party to have constituted a material breach of the MOU.
- C. If either Party notifies the other in writing within the thirty (30) day period of their denial of said material breach, the dispute may be submitted by either Party for binding arbitration in accordance with the terms of the MOU.
- D. If either Party shall fails to correct the activity claimed to constitute a material breach of this MOU, or to notify the other Party in writing of their denial of an alleged material breach of this MOU, with the thirty (30) day period this MOU will terminate at the end of the thirty (30) day period.

8. Certificate of Insurance.

Partner shall maintain insurance against losses and damages to persons or property caused by Partner or any of its employees, agents, or contractors in performing its services, including: (i) standard Commercial General Liability insurance with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; (ii) Commercial Automobile Liability insurance for owned, leased, hired, and non-owned vehicles with combined single limits of not less than \$1,000,000 per accident; (iii) Media Errors and Omissions Liability with limits not less than \$2,000,000; and (iv) Professional Liability insurance with limits of not less than \$1,000,000 if requested by Open Signal. Partner shall also maintain Workers' Compensation insurance as required by law.

- A. Except for Worker's Compensation or Employer's Liability insurance, Partner shall include Open Signal and its officers, directors, agents, and employees as additional insureds.
- B. All such policies must include a waiver of subrogation in favor of the additional insureds.
- C. Partner shall furnish certificates of insurance to Open Signal prior to commencement of services.
- D. Open Signal's failure to request, review, or object to the terms of such certificates of insurance will not be deemed a waiver of Partner's obligations or the rights of Open Signal.

9. Notices.

Any notice required or permitted to be given under this MOU shall be sufficient if in writing and sent by registered or certified mail, in the case of Partner to the address it provides Open Signal, and in the case of Open Signal to its principal office.

10. Suspension of Performance.

In the event of default of any obligation in this MOU, the non-defaulting Party may, without liability to the defaulting Party, suspend performance by notifying the

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defaulting Party while the default continues before termination or cure. If the default is cured, the non-defaulting Party may, without liability to the defaulting Party, extend any deadline or timeline as necessary to account for the duration of the default by notifying the defaulting Party.

11. No Agency.

Partner is an independent contractor under this MOU. Nothing in this MOU will be deemed to create any association, partnership, employment, joint venture, or agency relationship between the Parties. The Parties will not have the right or authority to create any obligations of any kind, make any representation or warranty on behalf of the other Party, or to bind the other Party in any respect, unless approved in writing by both Parties.

12. Representations and Warranties.

Partner and Open Signal represent and warrant that each has full power and authority to enter into this MOU and to effect the transactions contemplated in this MOU. Partner represents and warrants that (i) it has the right to carry out its obligations and grant to Open Signal any rights granted in this MOU; (ii) the rights granted in this MOU are free and clear of any claims, demands, liens, or encumbrances; (iii) the exercise by Open Signal of any rights with respect to the Work will not infringe upon or violate the intellectual property rights or other rights of any third party, or subject Open Signal to any royalty, residual, union fees, or other payment obligations, or attribution of any type to any third party, without Open Signal's prior written consent; and (iv) the Parties' performance under this MOU will not violate any separate agreements between Partner and any third party, or violate any applicable laws, rules, or regulations.

13. Indemnification.

Partner shall indemnify Open Signal against any claims, actions, damages, liabilities, losses, or costs, including attorneys' fees and costs incurred in the settlement or avoidance of any such claim, incurred by or asserted against Open Signal resulting from or arising in connection with any breach or alleged breach by Partner of any of its representations, warranties, covenants, or obligations under this MOU.

14. Transferability.

Partner shall not engage subcontractors or transfer or assign this MOU or any right or obligation of this MOU, by operation of law or otherwise, without the prior written consent of Open Signal. Upon consent, Partner shall require subcontractors or assignees to agree to the terms of this MOU. Partner is responsible for any payment to its subcontractors used in the performance of this MOU. In no event will Open Signal have any liability to any subcontractor.

15. LIMITED LIABILITY.

Neither Party will be liable for any indirect, special, incidental, or consequential damages, or lost profits, that may arise in connection with this MOU. Open Signal's liability arising out of this MOU will not exceed the amount actually paid or payable to Partner under this MOU.

16. Force Majeure.

The Parties shall not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond its reasonable control, including acts of God, medical emergencies, war, strikes or labor disputes, embargoes, government orders, or any other force majeure event. The affected Party shall notify the other Party of such cause within a reasonable time.

17. Miscellaneous.

This MOU constitutes the entire agreement between the Parties supersedes all prior understanding, whether written or oral. Except as provided in this MOU, no term or condition may be amended or deemed waived, except by a writing signed by the Parties that refers to this MOU. This MOU may be signed in separate counterparts. If any term or part of a term of this MOU is invalid, illegal, or unenforceable, the rest of the MOU will remain in effect. This MOU will be governed by and construed in accordance with the laws of the state of Oregon, without regard to conflict of laws

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principles. Any claim arising out of this MOU, including tort claims, must be resolved in Multnomah County, Oregon.

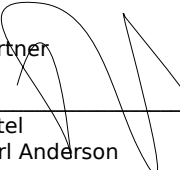
The Parties to this MOU agree to its terms as of July 19, 2019.

Open Signal


Executive Director
Justen Harn

7/19/19

Date

Partner


Futel
Karl Anderson

7/19/19

Date

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