

NON-COMPETITION AGREEMENT

THIS NON-COMPETITION AGREEMENT (the “Agreement”) is made as of _____, 2019, by and among WNET, a New York educational corporation chartered by the Board of Regents of the State University of New York (“Buyer”), Peconic Public Broadcasting, a New York not-for-profit corporation (“Seller”), and each of the members of the Board of Trustees of Seller listed on the signature page hereto (collectively the “Members” and each individually, a “Member”).

RECITALS

A. Under an Asset Purchase Agreement (the “Purchase Agreement”), dated _____, 2019 Buyer has agreed to purchase from Seller all or substantially all of the assets used or useful in the operation of radio station WPPB(FM), licensed by the Federal Communications Commission (the “FCC”) to serve Southampton, New York (the “Station”).

B. At Buyer’s request, and in partial consideration of the sale of the Station to Buyer pursuant to the terms of the Purchase Agreement, Seller and the Members have agreed to forego their rights to compete with Buyer, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the agreements contained herein and in the Purchase Agreement, the sufficiency and adequacy of the consideration being hereby acknowledged by the parties hereto, it is mutually stipulated, covenanted and agreed by and between the parties as follows:

1. Non-Compete and Non-Solicitation Agreements.

(a) Seller covenants and agrees that, for a period of three (3) years after the date of this Agreement, it shall not (i) Compete (as defined below) with Buyer, or (ii) solicit or induce any employee of Buyer who was an employee of Seller to terminate his or her employment with Buyer or to become an employee or independent contractor of Seller unless such employee has been discharged or terminated by Buyer, or has resigned employment with Buyer at least 90 days prior to any such discussions with Seller.

(b) Each Member covenants and agrees that, for a period of three (3) years after the date of this Agreement, he/she shall not (i) Compete with Buyer, or (ii) solicit or induce any employee of Buyer who was an employee of Seller to terminate his or her employment with Buyer or to become an employee or independent contractor of Seller or any entity which Competes with Buyer unless such employee has been discharged or terminated by Buyer, or has resigned employment with Buyer at least 90 days prior to any such discussions with such Member.

(c) To “Compete” with Buyer means to engage, participate or invest in or assist, as owner, part owner, shareholder, partner, director, officer, trustee, employee, agent or consultant, or in any other capacity, directly or indirectly, in any non-commercial radio broadcast station, or not-for-profit audio content delivery business that is similar to a non-commercial radio

broadcast station including without limitation through the use of internet or web-based platforms, that (i) in the case of a broadcast radio station licensed by the FCC has a 1.0 mV/m contour (or in the case of an AM station a 2.0 mV/m contour) that intersects with the 1.0 mV/m contour of the Station (except for any intersection which is wholly over water), or (ii) in the case of any distribution service not licensed by the FCC, is distributed and has listeners in the Nassau-Suffolk, NY radio market (as defined by The Nielsen Company or its affiliates) which comprise a substantial portion of its audience. Ownership interests by Seller or any Member of less than five percent (5%) of publicly owned companies will not be taken into account for purposes of the definition of Compete hereunder.

(d) Each restriction or covenant contained in this paragraph 1 is severable. If the time period, geographical area specified, or any of the substantive provisions in any paragraph should be adjudicated as unreasonable in any proceeding, then the time period shall be reduced by such number of months or years, the geographical area shall be reduced by the elimination of such portion thereof, or the substance shall be reduced in scope, or a combination of the foregoing, so that each such restriction or covenant may be enforced for such time period, in such geographical area and to the extent as is adjudicated to be reasonable.

2. Remedies. In the event that any of Seller or the Members defaults with respect to or breaches its obligations under this Agreement, then Buyer shall be entitled to all available remedies at law or in equity, including without limitation injunctive relief. Each of Seller and the Members expressly acknowledges and agrees that any default under or breach of this Agreement is likely to result in an injury of a nature which would justify the entry of an injunction and a temporary restraining order to restrain such default or breach, and that Buyer shall be entitled, if it so elects, to institute and prosecute proceedings in any court of competent jurisdiction or to enjoin Seller or any Member from activities in violation of this Agreement.

3. Successors and Assigns. Except as otherwise expressly provided herein, this Agreement shall be binding on and inure to the benefit of the parties hereto, and their respective heirs, representatives, successors and assigns. No party may assign any of its rights hereunder; provided, however, that Buyer may assign all or part of its rights hereunder to a third party which acquires, directly or indirectly including without limitation by transfer of control, the FCC license for the Station.

5. Amendments; Waivers. The terms, covenants, representations, warranties and conditions of this Agreement may be changed, amended, modified, waived, discharged or terminated only by a written instrument executed by the party against which enforcement of the same is sought. The failure of any party at any time or times to require performance or any provision of this Agreement shall in no manner affect the right of such party at a later date to enforce the same. No waiver by any party of any condition or the breach of any provision, term, covenant, representation or warranty contained in this Agreement, whether by conduct or otherwise, in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of any other provision, term, covenant, representation or warranty of this Agreement.

6. Notices. All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly made

and received when personally served, or when delivered by Federal Express or a similar overnight courier service, expenses prepaid, addressed as set forth below:

(a) If to Buyer, to:

WNET
Worldwide Plaza
825 Eighth Avenue, 14th Floor
New York, NY 10019
Attn: Neal Shapiro

With a copy (which shall not constitute notice) to:

Robert Feinberg, Esq.
Vice President, General Counsel & Secretary
WNET
Worldwide Plaza
825 Eighth Avenue, 14th Floor
New York, NY 10019

and

Sally A. Buckman, Esq.
Lerman Senter PLLC
2001 L Street, NW, Suite 400
Washington, DC 20036

(b) If to Seller, to:

Peconic Public Broadcasting

Attention:

(c) If to a Member, to the address set forth with respect to such Member on the signature page hereto.

Any party may alter the address to which communications are to be sent by giving notice of such change of address in conformity with the provisions of this Section providing for the giving of notice.

7. Captions. The captions of Sections of this Agreement are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

8. Entire Agreement. This Agreement constitutes the full and entire understanding and agreement between the parties with regard to its subject matter and supersedes all prior

agreements, understandings, inducements or conditions, express or implied, oral or written, relating to its subject matter. The express terms hereof control and supersede any course of performance and/or usage of trade inconsistent with any of the terms hereof.

9. Execution; Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories. This agreement may be executed and delivered by any party by facsimile or e-mail transmission, in portable document format (pdf), and such execution and delivery shall have the same effect as an originally-executed version.

10. Gender and Number. Where appropriate to the context, pronouns of other terms expressed in one number or gender will be deemed to include all other numbers or genders. The word “person” will include one or more individuals, corporations, firms, partnerships, entities or associations. The use of a word in one tense will include the other tenses, where appropriate to the context.

11. Third-Party Beneficiaries. This Agreement is intended to benefit only the parties to this Agreement, their successors and permitted assigns. No other person, entity, enterprise or association is an intended or incidental beneficiary of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Non-Competition Agreement to be executed on their behalf on the date first above written.

SELLER:

PECONIC PUBLIC BROADCASTING

BY: _____
Name:
Title:

BUYER:

WNET

BY: _____
Name:
Title:

MEMBERS:

Name:
Address:

Name:
Address:

Name:
Address: