

## **MANAGEMENT AND PROGRAMMING AGREEMENT**

THIS MANAGEMENT AND PROGRAMMING AGREEMENT (this "Agreement") is made this 1st day of July, 2011, by and between New Jersey Public Broadcasting Authority, an independent instrumentality of the State of New Jersey allocated in, but not of, the Department of the Treasury of the State of New Jersey ("Licensee") and New York Public Radio ("Manager").

### **RECITALS:**

WHEREAS, Licensee is the Federal Communications Commission ("FCC") licensee of noncommercial educational radio stations WNJT-FM, Trenton, NJ, WNJY(FM), Netcong, NJ, WNJP(FM), Sussex, NJ and WNJO(FM), Toms River, NJ (the "Stations");

WHEREAS, Manager is an experienced noncommercial station broadcaster and the licensee of multiple noncommercial educational FM radio stations, pursuant to authorization of the FCC;

WHEREAS, Licensee and Manager desire that Manager undertake the management and programming of the Stations for, and under the supervision of, Licensee;

WHEREAS, Licensee expects that management by Manager will promote quality public radio programming, including New Jersey-centric news and information programming, over the facilities of the Stations;

WHEREAS, Manager and Licensee are entering into this Agreement under the authority of and subject in all respects to all applicable provisions of the New Jersey Public Broadcasting System Transfer Act (L. 2010, c. 104) (the "Transfer Act");

WHEREAS, Licensee and Manager have entered into an Asset Purchase Agreement of even date herewith (the "Purchase Agreement"), pursuant to which Licensee has agreed to sell to Manager, and Manager has agreed to purchase from Licensee, the Stations and associated assets as described therein under the terms and conditions set forth in the Purchase Agreement;

WHEREAS, concurrently herewith Licensee and Manager are entering into a Facilities Use Agreement (the "FUA") with respect to Manager's use of certain Licensee facilities during the term of this Agreement; and

WHEREAS, capitalized terms used herein but not defined herein have the meaning ascribed to them in the Purchase Agreement.

NOW, THEREFORE, in consideration of the above recitals and mutual promises and other good consideration, the parties agree as follows:

### **1. MANAGEMENT**

Manager hereby agrees to manage and program the Stations during the term of this Agreement (as described in Section 2) under the supervision and control of Licensee (including as described in Section 6). As FCC licensee, Licensee shall at all times retain ultimate responsibility for the Stations' essential functions, including programming, finances and personnel of the Stations employed by Licensee. Subject to the foregoing limitations, the services to be provided by Manager pursuant to this Agreement shall include without limitation the production and acquisition of programming, engineering maintenance and support for Stations' facilities, accounting services and routine engineering services.

(a) **Programming.** During the term of this Agreement, Manager will provide programming for the Stations for 24 hours per day, seven days per week (the "Programming") with a public radio station news and information format. Licensee shall broadcast the Programming on the Stations, subject to the last sentence of this Section 1(a). The Programming shall endeavor to serve the needs and interests of the communities of Trenton, New Jersey, Netcong, New Jersey, Sussex, New Jersey and Toms River, New Jersey and further Licensee's educational objectives. Manager will not change the format of the Stations without the prior consent of Licensee. The Programming will comply with Licensee's program standards, set forth in Attachment 1 (which is in a form that Licensee has adopted for each Station), the Communications Act of 1934, as amended, the FCC's rules and all applicable content-related law for broadcast programming. Manager will be responsible for obtaining or maintaining any and all intellectual property rights, including copyright licenses, necessary for the broadcast of the Programming it provides or licenses over the Stations, and Licensee will be responsible for maintaining any and all intellectual property rights, including copyright licenses, necessary for the broadcast of any programming it licenses for use on the Stations. Licensee acknowledges that its right to broadcast the Programming is non-exclusive and that ownership or license rights in the Programming shall be and remain vested in Manager. Each of Manager and Licensee shall promptly report any listener complaints or FCC inquiry concerning the Programming or the Stations to the other. Licensee shall have the right to preempt or reject any Programming if Licensee, in its reasonable judgment, concludes that the Programming is contrary to the public interest, but Licensee shall comply with the CPB Statement of Principles of Editorial Integrity in Public Broadcasting.

(b) **Delivery of Programming.** Manager shall deliver the Programming to the Stations at Manager's cost and expense. Manager will be responsible for all routine operational costs and expenses incurred in connection with equipment for receiving Programming at the Stations, including appropriate equipment for satellite reception, EAS compliance, transmitter remote control and confidence monitoring. Licensee will be responsible for all capital expenditures, non-routine maintenance costs and replacement costs of any equipment used or held for use in the operation of the Stations ("Cap Ex"); provided, however, that if Licensee elects not to spend Cap Ex, then (i) Manager may, in its sole discretion, spend Cap Ex for the Stations or (ii) Licensee may take the affected Station off the air or reduce its operations. Manager shall at all times retain title to any equipment purchased by it for the Stations (including following any termination of this Agreement or the Purchase Agreement).

(c) **Expenses.** During the term of this Agreement, Manager shall, in the manner consistent with FCC policies, pay Licensee the sum of \$1,317 per month, each payment due in arrears on the last day of each calendar month during the term of this Agreement, as

reimbursement for the Stations' operating expenses reasonably incurred by Licensee in the ordinary course of business consistent with industry custom (taking into account this Agreement and the services provided by Manager to the Stations hereunder), including, but not limited to, utility charges and expenses related to the maintenance and repair of the transmission facilities. Fees for any partial month shall be prorated. Upon the first to occur of (i) Closing under the Purchase Agreement or (ii) the date six (6) months after the date of this Agreement, Manager and Licensee shall true up the difference between Licensee's actual operating expenses incurred for the Stations and the amounts paid by Manager to Licensee pursuant to this Section, and the appropriate party shall make a prompt payment to the other in the amount of any such difference. In accordance with such true up, Licensee shall promptly provide Manager with reasonable supporting documentation for its expenses incurred. Notwithstanding anything in this Agreement to the contrary, Licensee shall bear full responsibility for the hiring, firing and compensation (without reimbursement by Manager) of the Stations' employees on Licensee's payroll, including staffing and other requirements necessary to satisfy the FCC's main studio rules and capital expenditures as provided by Section 1(b). Licensee shall remain ultimately responsible for the finances of the Stations, as required by FCC rules and policies.

(d) Manager acknowledges that Manager will provide the services as a contractor to an agency and instrumentality of the State of New Jersey. In providing such services to the Stations during the term of this Agreement, Manager shall comply with all applicable provisions of federal law and New Jersey law and regulations, including without limitation, New Jersey Public Broadcasting Authority Act of 1968 (L. 1968, c. 405), the New Jersey Public Broadcasting System Transfer Act (L. 2010, c. 104) (the "Transfer Act"), and the State of New Jersey, New Jersey Public Broadcasting System, New Jersey Network, Standard Terms and Conditions for Contractors (as summarized in Schedule 1(d) hereto) as amended or supplemented from time to time (if such amendments or supplements are promptly provided to Manager).

## 2. TERM OF AGREEMENT

Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on July 1, 2011 and shall continue in full force and effect until and shall end on the earliest of: (a) the Closing Date (as defined in the Purchase Agreement); (b) the date of termination of this Agreement in accordance with Section 3; or (c) ten (10) days following the date of termination of the Purchase Agreement according to its terms.

## 3. TERMINATION

(a) Licensee may terminate this Agreement by written notice to Manager: (i) if, in the reasonable good faith discretion of Licensee as disclosed in writing to Manager, the Stations are operated by Manager in a manner contrary to the public interest, FCC rules and regulations or the Communications Act of 1934, as amended, and Manager fails to cure such operational matter within ten (10) days of written notice from Licensee, provided, however that Licensee hereby acknowledges that it is in the public interest for Manager to exercise its editorial discretion in its news and other similar Programming, or (ii) if Manager breaches its obligations or its representations under this Agreement in any material respect, and Manager fails to cure such breach within thirty (30) days of written notice from Licensee.

(b) Manager may terminate this Agreement by written notice to Licensee: (i) if, in the reasonable good faith discretion of Manager as disclosed in writing to Licensee, Licensee unreasonably frustrates or impedes the effective management and programming of the Stations by Manager in a material respect, and Licensee fails to cure such frustration or impediment within ten (10) days of written notice from Manager, or (ii) if Licensee breaches its obligations or its representations under this Agreement in any material respect, and Licensee fails to cure such breach within thirty (30) days of written notice from Manager.

(c) Upon termination of this Agreement (other than at Closing under the Purchase Agreement), Licensee shall assume complete operational responsibility for the Stations, and Manager shall be relieved of all obligations under this Agreement, except for: obligations incurred prior to the effective date of the termination and the obligation to reasonably cooperate with Licensee to wind up Manager's operation of the Stations in an orderly fashion. In the event of any termination of this Agreement (other than at Closing under the Purchase Agreement), either party may, but is not obligated to, terminate the Purchase Agreement upon written notice to the other. If this Agreement is terminated pursuant to Section 3(a)(i) or 3(b) and the Purchase Agreement is then terminated, Buyer shall be entitled to the Deposit under the Purchase Agreement and Licensee shall promptly return the Deposit to Buyer in full.

#### 4. GRANTS/FUNDRAISING/MARKETING

(a) Grants. Manager may, but is not obligated to, apply for grants, awards, contributions, donations, bequests, devises, legacies or other property or monies (hereinafter collectively referred to as "grants") regardless of nomenclature, for the use or benefit of the Stations, including, but not limited to Corporation for Public Broadcasting ("CPB") grants, Public Telecommunications Facilities Program ("PTFP") grants, and any other grants applied for or received in the name of Licensee and intended for the use and benefit of the Stations, and Licensee shall cooperate with Manager in any such applications; provided that (1) Manager shall provide Licensee with drafts for Licensee's review and approval of all applications or other documentation required by such grants; (2) Manager agrees to the terms and conditions of, and serves as fiscal agent for, such grants; and (3) Manager covers all administrative costs, such as audits or financial reports, required by such grants.

(b) Underwriting. During the term of this Agreement, Manager will be exclusively responsible for the sale of all underwriting on the Stations and for the collection of accounts receivable arising therefrom. Manager shall be entitled to all underwriting revenues of the Stations from any source, which revenues shall be dedicated for the use and benefit of the Stations during the term of this Agreement.

(c) Fundraising. Manager may, but is not obligated to, conduct fundraising activities for the benefit of the Stations, including but not limited to membership drives. Manager shall conduct any fundraising so as to comply with the rules and policies of the FCC applicable to noncommercial educational broadcast stations, including (with specificity) Section 73.503(d) of the FCC rules, and with IRS requirements for documenting charitable contributions.

(d) If requested by Licensee no more than once per quarter during the term of this Agreement, Manager shall reasonably account to Licensee for all grants, underwriting and fundraising activities conducted over or for the benefit of the Stations.

5. LICENSE MAINTENANCE

Licensee, as FCC licensee, has the ultimate responsibility with respect to all activities in connection with FCC license renewals and such other filings and reports as may be required by the FCC. Manager agrees to reasonably assist Licensee in such activities and to prepare all necessary documents, filings and reports for the timely review and approval by Licensee in consultation with Licensee's own legal counsel.

6. RESPONSIBILITY OF FCC LICENSEE

Licensee shall operate the Stations in compliance with all laws, rules, policies and regulations of the FCC, which is the ultimate responsibility of Licensee, as licensee. Nothing in this Agreement shall be construed as limiting, transferring, assigning or relieving Licensee of such responsibility. Licensee and Manager acknowledge that their relationship requires a commitment on both parties' parts to the mission of the Stations. To the extent necessary to perform this Agreement and subject to Manager's reimbursement obligations hereunder, during the term of this Agreement, Licensee shall provide Manager with the benefits of any of the Stations' contracts and agreements (including without limitation access to and use of facilities covered by the Real Property Leases) and Manager shall perform the obligations of Licensee thereunder, to the extent of benefits received, in accordance with their terms with respect to the Stations.

7. STANDARDS OF OPERATION

Manager agrees that it will program the Stations during the term of this Agreement consistent with industry standards for noncommercial educational broadcasting. During the term of this Agreement, Manager will use commercially reasonable efforts to provide a quality news and public information program service that includes New Jersey-centric programming to the public on the Stations, and shall comply with all applicable legal requirements. Manager further agrees to use commercially reasonable efforts to manage and program the Stations, to the extent reasonably possible, in such a manner allowing the production and acquisition of radio programming of community value, and to combine these programs into a nonprofit radio service of high quality for broadcast to New Jersey.

8. INSTITUTIONAL COOPERATION AND MEDIA PROMOTION

(a) Identification of Licensee. During the term of this Agreement, Manager will air station identifications that comply with the FCC's rules at the beginning and end of each time of operation and on the hour while each Station is on the air. During the term of this Agreement, Manager will identify Licensee as the Stations' licensee during each on-air identification, and, as feasible, in marketing or promotional materials that refer to the Stations. Notwithstanding the foregoing, Licensee is responsible for ensuring that proper station identifications are made in

accordance with FCC rules and regulations. Manager is authorized to use the Stations' call letters in its Programming and in any marketing or promotional material in any media.

(b) On-Air Announcements About Licensee. During the term of this Agreement, Manager may, but is not obligated to, air announcements over the Stations that will provide information on Licensee and its programs and opportunities, it being understood that Licensee wishes to share in the goodwill generated from the operation of the Stations. All such announcements shall comply with FCC requirements and Manager's internal underwriting guidelines and the requirements of Schedule 2.1(b) of the Purchase Agreement. Any such announcements provided by Licensee during the term of this Agreement shall be credited toward Manager's obligations after Closing set forth on Schedule 2.1(b) of the Purchase Agreement.

## 9. REPRESENTATIONS AND WARRANTIES

Manager represents and warrants that it will maintain its organization and operate in accordance with all laws and regulations applicable to nonprofit organizations in its state of incorporation. Each of Manager and Licensee represents and warrants to the other that: (a) it will perform its obligations under this Agreement in compliance with all applicable laws, rules and policies, including intellectual property and FCC law; (b) to its knowledge, there exists no event or circumstance within its control which precludes or prohibits it from performing its obligations under this Agreement; (c) no consent, approval, order, or authorization of, or registration, qualification, designation, declaration, or filing with, any governmental authority on its part is required in connection with the execution, delivery, and performance of this Agreement, except that Licensee shall file this Agreement with the FCC and in the Stations' public files; (d) the execution, delivery and performance of this Agreement by it have been duly authorized by all necessary actions on its part; and (e) this Agreement constitutes a valid and binding obligation of it, enforceable against it in accordance with its terms except as the enforceability of this Agreement may be affected by bankruptcy, insolvency, or similar laws affecting creditors' rights generally and by judicial discretion in the enforcement of equitable remedies.

## 10. INSURANCE

(a) During the term of this Agreement and any extensions or renewals thereof, Manager shall maintain insurance with respect to the Stations in compliance with the State of New Jersey, New Jersey Broadcasting System, New Jersey Network, Standard Terms and Conditions for Contractors (as summarized in Schedule 1(d) hereto).

(b) During the term of this Agreement and any extensions or renewals thereof, Licensee shall either self-insure or obtain insurance policies that insure Licensee's employees, agents and representatives with respect to the Stations. Coverage shall include, but not be limited to, media liability insurance covering liability arising out of any programming provided by Licensee; comprehensive general liability insurance; workers compensation insurance covering Licensee employees and agents who may visit the Stations premises as needed; and property insurance covering damage to or risk of loss of Stations' equipment.

## 11. CONSIDERATION

The parties acknowledge that their respective undertakings and commitments herein, designed to ensure the provision of high quality news and information public radio programming that includes New Jersey-centric programming on the Stations, constitute sufficient consideration for this Agreement.

12. RECORDS

Licensee shall be responsible for ascertaining the programming needs of the Stations' communities of license and maintaining each Station's public inspection file in compliance with FCC requirements, provided, however, that during the term of this Agreement Manager shall provide reasonable assistance with respect to the ascertainment of programming needs and shall provide Licensee with all relevant documents and information in its possession required to be placed in the Stations' public inspection files. During the term of this Agreement, Manager shall keep adequate financial and accounting records of the Stations' activities and, upon Licensee's reasonable request, shall make such records available for inspection by representatives of Licensee upon reasonable prior written notice. During the term of this Agreement, within ten (10) business days after the end of each quarter or after reasonable request by Licensee in conjunction with periodic state accounting (including fiscal year end accounting), Manager shall provide to Licensee a financial report that reasonably accounts for all revenues and expenses attributable to the Stations during such period. Manager shall also reasonably cooperate with Licensee's auditor as part of Licensee's periodic audit, as may be reasonably requested by Licensee and its auditor, including permitting ordinary audit procedures to be followed involving the books and records of Manager, with any out-of-pocket expenses incurred to be promptly paid by Licensee.

13. RELATIONSHIP

Manager is hereby authorized to enter into contracts related to the Stations in order to perform its obligations under this Agreement. Manager shall be responsible for all such contracts and financial obligations that it has entered into as necessary to perform its obligations under this Agreement and Licensee shall have no obligation to assume any such contracts in the event of a termination of this Agreement. Manager shall serve as an independent contractor in rendering the services set forth herein and its employees shall not be employees of Licensee. This Agreement is not intended to be, and shall not be construed as, an agreement to form a partnership, agency relationship or joint venture between the parties. Neither party shall be authorized to act as an agent of or otherwise to represent the other party.

14. OVERSIGHT AND CONTROL

Notwithstanding anything in this Agreement to the contrary, Licensee shall retain and exercise oversight and control of the activities and operations of the Stations. Without limiting the foregoing, Licensee (through its governing board or the board's designated representative(s)) shall have the right: (a) to promulgate basic policies regarding personnel (but only to the extent such personnel are working on matters relating to the Stations), finances and programming; (b) to direct the day-to-day activities of Manager's employees working on Licensee's premises or using Licensee's Station equipment (but only to the extent required by the FCC), but Licensee may not interfere with Manager's business and operations or its relationships with Manager's

employees; (c) to inspect the Stations' facilities at any time during operation; (d) to consult with Stations' management, review FCC-required operating and maintenance records and procedures, and investigate operational complaints; and (e) to require reasonable written reports, no more often than once a quarter, with respect to a reasonable summary of each Station's programming service, and personnel actions (including EEO compliance) during such period. For purposes of clarity, Licensee shall not have oversight or control of Manager's employees generally, but only to the extent that those employees are working on matters relating to the Stations within the scope of this Agreement.

Licensee shall bear responsibility for the Stations' compliance with the rules, regulations and policies of the FCC and all other applicable laws. Without limiting the foregoing, Licensee shall employ a manager for the Stations who will report to Licensee and direct the day-to-day operation of the Stations (and who will have no employment, consulting or other relationship with Manager) and employ a second employee for the Stations, who will report to and be solely accountable to Licensee's manager.

#### 15. NOTICES

All notices, demands, requests, waivers or other communications required or permitted under the provisions of this Agreement shall be (i) in writing; (ii) delivered by personal delivery, facsimile transmission (with automatic machine confirmation) or sent by commercial delivery service or certified U.S. mail, return receipt requested; (iii) deemed to have been given on the date of personal delivery, facsimile transmission (with automatic machine confirmation) or the date of delivery set forth in the records of the commercial delivery service or on the return receipt; and (iv) addressed to the recipient at the address specified below, or with respect to any party, to any other address that such party may from time to time designate in a writing delivered in accordance with this Section 15.



If to Licensee:

New Jersey Public Broadcasting  
Authority  
25 South Stockton Street  
P.O. Box 777  
Trenton, New Jersey 08625  
[jblair@njn.org](mailto:jblair@njn.org)  
Attn: John Blair  
Telephone: (609) 777-5255  
Fax: (609) 633-0254

And:

David A. Ridolfino  
Director, Division of Administration  
N.J. Dept. of the Treasury  
50 West State Street, 8th Floor  
P.O. Box 211  
Trenton, N.J. 08625  
phone: 609-633-2825  
fax: 609-633-9090

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

Office of the Attorney General  
Richard J. Hughes Justice Complex  
25 Market Street  
6th Fl., P.O. Box 106  
Trenton, NJ 08625  
[kavin.mistry@dol.lps.state.nj.us](mailto:kavin.mistry@dol.lps.state.nj.us)  
Attn: Kavin K. Mistry, Assistant Chief,  
Deputy Attorney General  
Telephone: (609) 292-8564  
Fax: (609) 777-3515

Dow Lohnes PLLC  
1200 New Hampshire Avenue, N.W.  
Suite 800  
Washington, DC 20036  
Attention: Margaret L. Miller, Esq.  
Telecopy: 202-776-2222  
Telephone: 202-776-2000

If to Manager:

New York Public Radio  
160 Varick St.  
New York, NY 10013  
Attn: Laura Walker  
Phone: (646) 829-4445  
Fax: (646) 829-4568

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

Wiley Rein LLP  
1776 K Street, NW  
Washington, DC 20006  
Attn: Richard Bodorff  
Jessica Rosenthal  
Telephone: (202) 719-7000  
Fax: (202) 719-7049

16. INDEMNIFICATION

(a) No Indemnification by Licensee. Manager recognizes and acknowledges that Licensee is an instrumentality of the State of New Jersey and without legal authority to enter into an indemnity arrangement for the benefit of Manager. The parties acknowledge and agree that any claim by Manager against Licensee related to this Agreement or the transactions contemplated hereby shall be governed by the New Jersey Contractual Liability Act. (L. 1974, c. 45, N.J.S.A. 59:13-1 et seq.) and the New Jersey Tort Claims Act. (L.1972, c. 45, N.J.S.A. 59:1-1 et seq.) and further agree that there shall be no recovery by Manager under this Agreement and the FUA (in the aggregate) with respect thereto in excess of the Cash Purchase Price.

(b) Indemnification by Manager. Manager shall indemnify and hold harmless Licensee and all officers, directors, employees, partners, members and agents of Licensee, (individually, a "Licensee Indemnitee") from and against any and all Losses arising from any and all Claims arising out of Manager's gross negligence or willful misconduct in connection with the performance of the services under this Agreement, or Manager's breach of this Agreement; provided that neither Manager nor any of its Affiliates shall be deemed a Licensee Indemnitee under this Section 16(b). Notwithstanding the foregoing or anything else herein to the contrary, the maximum aggregate liability of Manager under this Agreement and the FUA (in the aggregate) shall be an amount equal to the Cash Purchase Price.

(c) Other Rights and Remedies Not Affected. The indemnification rights of the parties under this Section 16 are independent of, and in addition to, such rights and remedies as the parties may have at law or in equity or otherwise for any intentional or knowing misrepresentation, breach of warranty or failure to fulfill any agreement or covenant hereunder on the part of any party hereto, including the right to seek specific performance, rescission or restitution, none of which rights or remedies shall be affected or diminished thereby.

17. SEVERABILITY

If any provision of this Agreement shall be prohibited by or invalid under applicable law, then so long as no party is deprived of the benefits of this Agreement in any material respect, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or any remaining provisions of this Agreement, provided that such remaining portions or provisions can be construed in substance to constitute the agreement that the parties intended to enter into in the first instance.

18. BINDING ON SUCCESSORS

This Agreement may not be assigned by either party without the other party's consent, which may be given or withheld in its sole discretion. Any attempted assignment without such consent shall be cause for immediate termination of the Agreement by the other party. This Agreement shall bind and inure to the benefits of the parties' respective successors and permitted assigns. No assignment shall relieve a party of any obligation under this Agreement.

19. COMPLETE AGREEMENT

This Agreement (including the Schedules and Attachment hereto), together with the FUA, contains the entire agreement of the parties with respect to the management and programming of the Stations during the term hereof, and, except as specifically referred to herein, all prior obligations, proposals and agreements relating to the subject matter hereof have been merged herein. This Agreement shall not be modified or amended except by agreement in writing duly executed by the parties hereto.

20. GOVERNING LAW

This Agreement and any and all litigation arising therefrom or related thereto shall be governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles and shall be filed in the appropriate Division of the New Jersey Superior Court. Seller does not consent to federal court jurisdiction.

21. COUNTERPARTS; FACSIMILE SIGNATURES

This Agreement may be signed in counterparts, each of which shall be deemed to be an original but which, when taken together, shall constitute one and the same instrument. Facsimile signature pages of this Agreement shall be valid and binding as original signatures and when the same are delivered by each party to the other party, such delivery shall be considered an agreement of the respective parties to fully execute and deliver to one another originally signed copies of this Agreement.

*[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]*

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IN WITNESS WHEREOF, the parties to this Agreement have duly executed this Agreement as of the first date set forth above.

LICENSEE:

NEW JERSEY PUBLIC BROADCASTING AUTHORITY

By: 

Title: Chair

MANAGER:

NEW YORK PUBLIC RADIO

By: 

Title: \_\_\_\_\_

Management and Programming Agreement  
Schedule 1(d)

State of New Jersey, New Jersey Broadcasting System, New Jersey Network,  
Standard Terms and Conditions For Contractors

**State of New Jersey  
New Jersey Public Broadcasting System  
New Jersey Network  
Standard Terms and Conditions**

**1. STANDARD TERMS AND CONDITIONS APPLICABLE TO THE CONTRACT:**

Unless the bidder is specifically instructed otherwise in the Request for Proposals (RFP), the following terms and conditions shall apply to the Contract between the Contractor and the New Jersey Public Broadcasting System ("NJPBS" or the "State"). These terms are in addition to the terms and conditions set forth in the RFP and should be read in conjunction with same unless the RFP specifically indicates otherwise. In the event the Contractor has presented terms and conditions which conflict with the State's, the State's terms and conditions shall prevail, unless the Contractor is notified in writing of the State's specific acceptance of some or all of the Contractor's terms and conditions.

**2. STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS:**

The statutes, laws or codes cited herein are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625.

**2.1 BUSINESS REGISTRATION:**

As a condition to entering into a State Contract, pursuant to N.J.S.A. 52:32-44, the State is prohibited from entering into a Contract with an entity unless the bidder and each subcontractor named in the bid proposal has a valid Business Registration Certificate on file with the Division of Revenue.

The Contractor and any subcontractor providing goods or performing services under the Contract, and each of their affiliates, shall, during the term of the Contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the Sales and Use Tax Act, P.L. 1966, c. 30

(N.J.S.A. 54:32B-1 *et seq.*) on all their sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG can be filed online at <http://www.state.nj.us/treasury/revenue/busregcert.htm>.

**2.2 ANTI-DISCRIMINATION:**

All parties to any Contract with the State agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A.10:51 *et seq.* and N.J.S.A.10:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference.

**2.3 PREVAILING WAGE ACT:**

The New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.26 *et seq.* is hereby made part of every Contract entered into on behalf of the State of New Jersey except those Contracts which are not

within the contemplation of the New Jersey Prevailing Wage Act. The bidder's signature on this proposal is his guarantee that neither he nor any subcontractors he might employ to perform the work covered by this proposal has been suspended or debarred by the Commissioner, Department of Labor for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; the bidder's signature on the proposal is also his guarantee that he and any subcontractors he might employ to perform the work covered by this proposal shall comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required.

**2.4 AMERICANS WITH DISABILITIES ACT:**

The Contractor must comply with all provisions of the Americans with Disabilities Act (ADA), P.L. 101-336, in accordance with 42 U.S.C. 12101, et seq.

**2.5 MACBRIDE PRINCIPLES:**

The bidder must certify pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.

**2.6 PAY TO PLAY PROHIBITIONS:**

**a. Definitions** - For the purpose of this section, the following shall be defined as follows:

1) Contribution B means a contribution reportable as a recipient under The New Jersey Campaign Contributions and Expenditures Reporting Act., P.L. 1973, c83 (N.J.S.A. 19:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19:25-7 and N.J.A.C. 19:25-10.1 et seq. Contributions in excess of \$300 during a reporting period are deemed "reportable" under these laws.

2) Business Entity B means any natural or legal person, business corporation, professional services corporation, Limited Liability Company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of New Jersey or any other state or foreign jurisdiction, but does not include non profit or not for profit corporations. The definition of a business entity includes:

A. all principals who own or control more than 10 percent of the profits or assets of a business entity or 10 percent of the stock in the case of a business entity that is a corporation for profit, as appropriate and for a for profit entity, the following:

- (i) in the case of a corporation: the corporation, any officer of the corporation, and any person or business entity that owns or controls 10% or more of the stock of the corporation;
- (ii) in the case of a general partnership: the partnership and any partner;
- (iii) in the case of a limited partnership: the limited partnership and any partner;
- (iv) in the case of a professional corporation: the professional corporation and any shareholder or officer;
- (v) in the case of a limited liability company: the limited liability company and any member;
- (vi) in the case of a limited liability partnership: the limited liability partnership and any partner;
- (vii) in the case of a sole proprietorship: the proprietor; and
- (viii) in the case of any other form of entity organized under the laws of this State or any other state or foreign jurisdiction: the entity and any principal, officer, or partner thereof;

B. any subsidiaries directly or indirectly controlled by the business entity;

C. any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and

D. if a business entity is a natural person, that person's spouse or civil union partner, or child residing in the same household provided, however, that, unless a contribution made by such spouse, civil union partner, or child is to a candidate for whom the contributor is entitled to vote or to a political party committee within whose jurisdiction the contributor resides unless such contribution is in violation of section 9 of Chapter 51.

**b. Breach of Terms of Chapter 51 or EO 117 is a Breach of Retention Agreement** -It shall be a breach of the terms of the Retention Agreement for the Business Entity to do any of the following:

- 1) make or solicit a contribution in violation of the Chapter 51 or EO 117;
- 2) knowingly conceal or misrepresent a contribution given or received;
- 3) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
- 4) make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or of Lieutenant Governor, or to any State, county or municipal party committee, or any legislative leadership committee;
- 5) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of Chapter 51 or EO 117;
- 6) fund contributions made by third parties, including consultants, attorneys, family members, and employees;
- 7) engage in any exchange of contributions to circumvent the intent of the Chapter 51 or EO 117; or
- 8) directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Chapter 51 or EO 117.

## **2.10 SERVICE PERFORMANCE WITHIN U.S.:**

Pursuant to N.J.S.A. 52:34-13.2, all Contracts primarily for services shall be performed within the United States, except when the Treasurer certifies in writing a finding that a required service cannot be provided by a Contractor or subcontractor within the United States and the certification is approved by the State Treasurer.

A shift to performance of services outside the United States during the term of the Contract shall be deemed a breach of Contract. If, during the term of the Contract, the Contractor or subcontractor, proceeds to shift the performance of any of the services outside the United States, the Contractor shall be deemed to be in breach of its Contract, which Contract shall be subject to termination for cause pursuant to Section 3.3(b)(1) of the Standard Terms and Conditions, unless previously approved by the Treasurer.

## **2.11 COMPLIANCE – LAWS:**

The Contractor must comply with all local, state and federal laws, rules and regulations applicable to this Contract and to the services performed hereunder.

## **3. INDEMNIFICATION AND INSURANCE**

**3.1 INDEMNIFICATION FOR THIRD PARTY CLAIMS** -The Contractor shall indemnify and hold harmless the State of New Jersey, the NJPBA, and its employees, agents and affiliates from and against any and all damages, losses, liabilities and expenses including,, without limitation, reasonable attorneys' fees, arising out of or resulting from:

- a. any act or omission, event or occurrence that was or shall be caused by the Contractor, its employees, agents or affiliates relating to the business and operations of the Contractor of the NJPBA;
- b. any libel, slander, illegal competition or trade practice, infringement of trademarks, trade names, or program titles, violation of rights of privacy, and infringement of copyrights and proprietary rights, including intellectual property rights, resulting from or relating to any programming produced or furnished by the Contractor; and
- c. any breach by the Contractor of any of its obligations, representations, warranties, covenants or other agreements made by the Contractor in the Contract.

The Contractor's indemnification and liability under this section is not limited by, but is in additional to the insurance obligations contained in Section 3.2 of these Terms and Conditions.

**3.2 INSURANCE** -The Contractor shall secure and maintain in force for the term of the Contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A-VIII or better rating by A.M. Best & Company. The Contractor shall provide the State with current certificates of insurance for all coverages and renewals thereof, naming the State as an Additional Insured and shall contain the provision that the insurance provided in the certificate shall not be canceled for any reason except after sixty (60) days written notice to the Treasurer of the State of New Jersey.

The insurance to be provided by the Contractor shall be as follows:

- a. Comprehensive General Liability Insurance or its equivalent: The minimum limit of liability shall be \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Comprehensive General Liability Insurance policy or its equivalent shall name the State, its officers, and employees as Additional Insureds. The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic, unamended, and unendorsed Comprehensive General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage.
- b. Automobile liability insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1 million per occurrence as a combined single limit. State of New Jersey, its officers and employees shall be named Additional Insureds. Physical damage insurance covering automobiles shall name the State of New Jersey Loss Payee to any State owned vehicles.
- c. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:
  - \$2,000,000 BODILY INJURY, EACH OCCURRENCE
  - \$2,000,000 DISEASE EACH EMPLOYEE
  - \$2,000,000 DISEASE AGGREGATE LIMIT
- d. **Broadcast libel and errors/omissions insurance of at least \$5,000,000. The State of New Jersey shall be named Additional Insured by endorsement to this policy. The policy must be endorsed to cover Cyber Risk Multimedia/Technology Errors and Omissions. Any exclusion of coverage for actions by a governmental authority must be amended to exclude the State of New Jersey in their capacity as owner.**
- e. All Risk property insurance covering real and personal property of the State, including property in vehicles and while in transit, for the replacement cost of the property. State shall be named loss payee under the property insurance.
- f. Umbrella Liability Insurance in an amount not less than \$10 million per occurrence and in the aggregate naming the State of New Jersey as Additional Insured.

**4. TERMS GOVERNING OPERATING CONTRACT(S)**



#### **4.1 CONTRACTOR IS INDEPENDENT CONTRACTOR:**

The Contractor's status shall be that of any independent Contractor and not as an employee of the State.

#### **4.2 TERMINATION OF CONTRACT**

a. For Cause

The NJPBA may terminate the Contract (i) immediately by giving written notice if, in the reasonable good faith discretion of the NJPBA, the Station is operated by the Contractor in a manner contrary to the best interests of NJPBA, the public interest, convenience and necessity, FCC rules and regulations, the Communications Act of 1934, as amended, or other applicable law; or (ii) if Contractor otherwise breaches its obligations under the Contract and the Contractor fails to cure such breach within thirty (30) days of written notice from the PBA.

- b. Upon termination of the Contract, NJPBA shall assume complete operational responsibility for the Station, and the Contractor shall be relieved of all obligations under the Contract except for: obligations incurred prior to the effective date of the termination; the obligation to provide a final accounting pursuant to the Contract and the obligation to cooperate with NJPBA to wind up Contractor's operation of the Station in an orderly fashion.
- c. In the event of termination under this section, the Contractor shall be compensated for work performed in accordance with the Contract, up to the date of termination. Such compensation may be subject to adjustments.

#### **4.3 SUBCONTRACTING OR ASSIGNMENT:**

The Contractor may not subcontract other than as identified in the Contractor's proposal or assigns its responsibilities under the Contract, in whole or in part, without the prior written consent of the NJPBA. Such consent, if granted, shall not relieve the Contractor of any of his responsibilities under the Contract.

#### **4.4 NO CONTRACTUAL RELATIONSHIP BETWEEN SUBCONTRACTORS AND STATE:**

Nothing contained in any of the Contract documents, including the RFP and vendor's bid or proposal shall be construed as creating any Contractual relationship between any subcontractor and the State.

#### **4.5 MERGERS, ACQUISITIONS:**

If, during the term of this Contract, the Contractor shall merge with or be acquired by another firm, the Contractor shall give notice to the NJPBA as soon as practicable and in no event longer than 30 days after said merger or acquisition. The Contractor shall provide such documents as may be requested by the NJPBA which may include but need not be limited to the following:

- a. Corporate resolutions prepared by the awarded Contractor and new entity ratifying acceptance of the original Contract, terms, conditions and prices.
- b. State of New Jersey Bidders Application reflecting all updated information including ownership disclosure, pursuant to provision 1.5.
- c. Vendor Federal Employer Identification Number.

The documents must be submitted within 30 days of the request. Failure to do so may result in termination of the Contract for cause.

If, at any time during the term of the Contract, the Contractor's partnership, limited liability company, limited liability partnership, professional corporation, or corporation shall dissolve, the NJPBA must be so notified. All responsible parties of the dissolved business entity must submit to the NJPBA in writing, the names of the parties proposed to perform the Contract, and the names of the parties to whom payment should be made. No payment shall be made until all parties to the

dissolved business entity submit the required documents to the NJPBA.

**4.6 APPLICABLE LAW AND JURISDICTION:**

This Contract and any and all litigation arising therefrom or related thereto shall be governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles and shall be filed in the appropriate Division of the New Jersey Superior Court. The State does not consent to federal court jurisdiction.

**4.7. CONTRACT AMENDMENT:**

The Contract may only be amended by written agreement of the State and the Contractor.

**4.8 MAINTENANCE OF RECORDS:**

The Contractor shall maintain records for products and/or services delivered against the Contract for a period of three (3) years from the date of final payment unless otherwise specified in the RFP. Such records shall be made available to the State upon request.

**4.9 AVAILABILITY OF FUNDS:** The State's obligation to make any payment under the Contract is contingent upon the availability of appropriated funds and receipt of revenues from which payment for Contract purposes can be made. No legal liability on the part of the State for payment of any money shall arise unless and until funds are appropriated each fiscal year to the using agency by the State Legislature and made available through receipt of revenues.

Management and Programming Agreement  
Attachment 1  
FORM OF STATEMENT FOR EACH STATION

**STATEMENT OF STATION POLICIES OF  
LICENSEE**

Licensee ("Licensee"), Licensee of Radio Station \_\_\_\_\_  
(the "Station"), hereby establishes the following standards, practices, policies and regulations to govern the broadcast of all programming aired over the Station. The following standards, practices and policies are to be adhered to in the preparation, writing, production and broadcasting of all advertisements and programs aired over the Station:

I.     No Payola Or "Plugola". The mention of any business activity or "plug" for any commercial, professional or other related endeavor on the Station is prohibited, except where contained in an underwriting message that complies with the requirements of Section 399B of the Communications Act and Section 73.503 of the rules of the Federal Communications Commission ("FCC") and such message contains a sponsorship identification announcement which meets the requirements of Section 317 of the Communications Act and Section 73.1212 of the FCC's rules.

II.    No Lotteries. Except as expressly permitted under Section 73.1211 of the FCC's rules, no announcements, messages or programs may be broadcast over the Station (without the express prior written approval of the Licensee) which give any information about or which promote any lotteries or games of chance, including any bingo games and the like, which are to be held by a local church or other non-profit institution or organization. A lottery, for these purposes, is a game or promotion in which a prize is awarded and where the

selection of the winner or the amount or nature of the prize is determined in whole or in part on the basis of chance, and where contestants enter the promotion by paying or promising any form of consideration (e.g., money, substantial time, or substantial energy).

III. Station Identification Announcements Required. A Station identification announcement must be broadcast each time the Station goes on the air and when it signs off the air. A Station identification announcement must also be broadcast each hour, as close to the top of the hour as feasible, at a natural break in programming, and shall comply with the requirements of Section 73.1201 of the FCC's rules.

IV. Contests and Promotions. In the event that the Programming contains information about any contest that the Manager conducts, the Manager shall comply with Section 73.1216 of the FCC's rules by fully and accurately disclosing the material terms of the contest and by conducting the contest "substantially as announced." No contest description shall be broadcast on the Station where the Manager knows that such description is false, misleading or deceptive with respect to any material term.

V. Obscenity and Indecency Prohibited. No obscene material may be broadcast over the facilities of the Station. No indecent material may be broadcast on the Station during any time when the airing of such programming would be contrary to law or FCC regulations or policies. For these purposes, "indecent" material is defined as language or material that describes sexual or excretory activities or organs in a patently offensive manner, as measured by contemporary community standards for the broadcast medium. Material will be considered obscene if (a) the average person, applying contemporary community standards, would find that the material appeals to the prurient interest, (b) it describes or depicts, in a patently offensive manner, sexual conduct as defined by

applicable state law, and (c) taken as a whole, it lacks serious literary, artistic, political or scientific value.

VI. Advertising. No advertisements as defined by Section 399B of the Communications Act and Section 73.503 of the FCC's rules, shall be broadcast on the Station.

VII. Defamatory Statements Prohibited. No statements known to be libelous or defamatory may be broadcast on the Station. Libel is a false statement of fact about a person, which tends to injure that person's reputation or otherwise cause injury or damages to that person.

VIII. "Equal Time" For Political Candidates. If a legally qualified candidate for public office is allowed to "use" (as defined in Section 73.1941(b) of the FCC's rules) the Station during his/her campaign, his/her legally qualified opponents must be afforded equal opportunities to appear on the Station.

IX. Sponsorship Identification Announcements. All sponsored programs must (a) contain an announcement stating the fact that the matter broadcast was sponsored, paid for, furnished by, or in support of the Station, and must disclose the true identity of the person or entity on whose behalf payment was made or promised for the broadcast, or (b) otherwise comply with Section 317 of the Communications Act and Section 73.1212 of the FCC's rules. Whenever such a sponsorship identification announcement is required, the announcement must be made both at the beginning and conclusion of each program of over five minutes in length. If a sponsored broadcast is five minutes or less in duration, only one such announcement is required, and it may be made either at the beginning or the conclusion of the broadcast or announcement.