

## TERMS AND CONDITIONS OF AFFILIATION

This **TERMS AND CONDITIONS OF AFFILIATION** (the “**Agreement**”) is made and

entered into this \_\_\_ day of \_\_\_\_\_, \_\_\_\_ (the “**Effective Date**”) by and between \_\_\_\_\_, (“**Affiliate**”), and NETCAST, LLC an Oregon Limited Liability Company (“**NETCAST**”). The Affiliate and NETCAST may each be referred to individually as a “**Party**” or collectively as the “**Parties**” throughout this Agreement.

### RECITALS

WHEREAS, NETCAST is the developer and owner of an affiliate network to allow for distribution of Hebrew Nation Radio programming via over the air Equipment to be supplied by NETCAST;

WHEREAS, NETCAST desires to sell Equipment and license Programming to affiliates wishing to become part of this network;

WHEREAS, Affiliate wishes to purchase this Equipment and license this Programming to become a part of this network;

NOW, THEREFORE in consideration of the mutual covenants and obligations set forth herein, and other good a valuable consideration, the receipt and sufficiency of which is hereby acknowledged, intending to be legally bound, Affiliate and NETCAST do agree as follows:

### I. Definitions.

A. “**Equipment**” means the NETCAST AM Transmitter with Internet Connectivity, which includes:

- Procaster Transmitter
- 104 inch side-mount aluminum antenna with hardware
- Standard Studio Interface
- AC wall adapter
- Tuning tool
- Pole mounting hardware
- Shielded connecting cable of 50 feet or 100 feet to connect the Procaster Transmitter to the Studio Interface

B. “**Marketing Materials**” means marketing ideas, including a list of “guerilla” and “grassroots” marketing ideas, provided by NETCAST to Affiliate from time to time. NETCAST is not obligated to provide any pre-determined amount of Marketing Materials to Affiliate. Affiliate is not obligated to use these Marketing Materials.

C. “**Programming**” means the Hebrew Nation Radio programming streamed via the website found at: <http://hebrewnationonline.com/>.

D. **“Services”** means, collectively, the “Programming”, the “Marketing Materials” and the “Technical Support”.

E. **“Technical Support”** means assistance from a member of the NETCAST staff to fix technical problems relating to the Equipment provided by NETCAST which are preventing the rebroadcast of Programming

## **II. General.**

A. NETCAST hereby sells to Affiliate the Equipment as defined in Section 1, above.

Affiliate shall not, and shall not authorize others, to use material delivered by NETCAST except as specified in this Agreement. Affiliate shall not, and shall not authorize others to, copy or duplicate any material furnished by NETCAST hereunder, in whole or in part, and shall take all reasonable precautions to prevent any such copying or duplicating.

B. Subject to the terms and conditions contained in this Agreement, NETCAST will deliver to Affiliate, Hebrew Nation Radio programming which NETCAST makes available to Affiliate for broadcasting solely by means of the Equipment.

NETCAST will deliver the Programming hereunder by Internet transmission. The selection, scheduling, modification, substitution and withdrawal of any Programming or any portion thereof delivered shall at all times remain within NETCAST’S sole discretion and control.

NETCAST hereby grants to Affiliate a license to perform the Programming (as defined in Section I above) via an over-the-air rebroadcast using the Equipment. There is conveyed no other license to copy, perform, distribute or otherwise use the Programming. Affiliate may not authorize the retransmission of the Programming by any other media or platforms without the prior written consent of NETCAST.

Affiliate shall not authorize others to broadcast or otherwise use any Programming (or part thereof), or other material delivered by NETCAST except as specified in this Agreement. Affiliate shall not, and shall not authorize others to, record, copy or duplicate any Programming or other material furnished by NETCAST hereunder, in whole or in part, and shall take all reasonable precautions to prevent any such recordings, copying or duplicating.

C. NETCAST agrees to include Affiliate (as identified at the top of this Agreement) in the listing of Affiliates found on the Hebrew Nation Radio Website.

D. NETCAST agrees to provide Affiliate with Marketing Materials to Affiliate’s radio station.

E. NETCAST agrees to provide Affiliate with Technical Support when technical problems arise in the receipt or rebroadcast of the Programming.

### **III. Compensation.**

A. Affiliate shall pay NETCAST as follows:

1. Three Thousand Five Hundred (3500) U.S. dollars immediately upon Execution of this Agreement, representing the purchase price of the Equipment and the initial Affiliate registration. This payment shall be a condition precedent to the shipping of the Equipment by NETCAST to Affiliate.
2. Ten (10) U.S. dollars due monthly, representing the license fee for the Programming, access to Marketing Materials and the ability to receive Technical Support when requested.

B. NETCAST shall pay Affiliate Two Hundred (200) dollars upon the signing of a NETCAST Terms and Conditions of Affiliation agreement by an individual or entity referred by Affiliate, as evidenced by both the Referring Affiliate and the New Affiliate confirming this with their Account Executive.

C. The provisions of this section will survive the termination of this Agreement until all payments earned during the term of this Agreement have been made.

### **IV. Term; Renewal; Termination.**

A. Term. The Term shall commence on the date of execution and last for a period of five (5) years

B. Renewal. At the end of the initial five year period, Affiliate shall have the right to renew this Agreement for successive 3 year periods by giving NETCAST written notice no less than thirty (30) days prior to the expiration of the then-current term.

C. Termination.

1. Affiliate may terminate this Agreement within seven (7) days of initial execution with no penalty, but only if the Equipment has not shipped.

2. Thereafter, either Party may terminate this Agreement immediately in the event the other party commits a material breach of the Agreement and fails to cure it within fifteen (15) days of receiving written notice thereof, which notice shall identify the breach with particularity. For purposes of this Agreement, a material breach shall be deemed to have occurred when:

a. AFFILIATE:

- i. Fails to remit the required monthly payment to NETCAST within ten (10) days of the beginning of a calendar month.
- ii. Otherwise violates any of the Representations and Warranties described in Section V below.

b. NETCAST:

- i. Fails to provide Affiliate with the ability to broadcast the Programming with a signal of sufficient strength and quality to allow

the Programming to be heard via the use of a standard radio receiver within ½ to 5 miles of the AFFILIATE'S transmitter when the AFFILIATE uses the Equipment purchased under this Agreement in the manner prescribed.

ii. Otherwise violates any of the Representations and Warranties described in Section V below.

3. Either Party may terminate this Agreement for any other cause by providing ninety (90) days' written notice to the other party.

D. **Effect of Non-Renewal/Termination.** In the event of a non-renewal or termination under this Section:

1. Affiliate's rights to utilize the Services shall terminate;

2. No amounts paid by Affiliate to NETCAST pursuant to the Agreement will be refunded;

3. Affiliate shall not be precluded from contracting with any other third party for services similar to those contemplated hereunder.

**V. Intellectual Property.** Any copyright, trademark, or other right in material furnished by NETCAST or included in the Programming shall remain the sole property of NETCAST or the party from which NETCAST obtained the right to use the mark or right. Affiliate may use the mark and name of NETCAST in reasonably publicizing its affiliation and the Programming provided NETCAST provides its prior written consent to the use and publicizing efforts, and such consent shall not be unreasonably withheld. Notwithstanding anything set forth herein, each party shall have the full right and ability to pursue all available recourse upon the discovery of any abuse, infringement, violation or unauthorized use by the other party of any mark or copyright.

## **VI. Representation and Warranties.**

A. **Affiliate's Representations and Warranties.**

1. Affiliate represents and warrants that:

a. Affiliate has full power and authority to enter into this Agreement and, specifically, is eighteen (18) years or older and a resident of the United States or Canada.

b. Affiliate will provide registration information to NETCAST that is true, accurate and complete and will make sure that information remains true, accurate and complete at all times.

c. Affiliate will perform all of its obligations under this Agreement.

2. Affiliate further represents and warrants that it will not:

a. Provide its password to any other person or entity or use any other people or entity's user name and password;

- b. Alter the Programming in any way;
- c. Infringe on NETCAST's intellectual property or copyright of provided Programming.
- d. Copy, reproduce, "rip", record or make available to the public reproducing, any part of the Programming or any other content delivered to Affiliate, or otherwise making use of Programming in a manner which is not expressly permitted under this Agreement;
- e. Use the Service to import or copy any local files Affiliate does not have the legal right to import or copy in this way;
- f. Reverse-engineer, decompile, disassemble, modify or create derivative works based on the Services, Programming or Marketing Materials or any part thereof;
- g. Circumvent any technology used by NETCAST, its licensors, or any third party to protect content accessible through the Services;
- h. Rent or lease of any part of the Services;
- i. Circumvent any territorial restrictions applied by NETCAST;
- j. Manipulate the Services by using a script or other automated process;
- k. Remove or alter any copyright, trademark or other intellectual property notices contained on or provided through the Services;
- l. Upload malicious content such as malware, trojan horses or viruses, or otherwise interfere with any user's access to the Services;
- m. Harass or bully other users;
- n. Interfere with the Services, tamper with or attempt to probe, scan, or test for vulnerabilities in the Services or NETCAST computer systems or network, or breach any of NETCAST security or authentication measures;
- or
- o. Otherwise use the Services in any manner in violation of any laws, treaties or this Agreement.

## B. NETCAST's Representations and Warranties.

1. As of the Effective Date and continuing thereafter, NETCAST represents and warrants that:

- a. NETCAST is the sole owner of the Services, specifically including but not limited to the Programming and Marketing Materials, and has the sole and exclusive right and power to enter into this Agreement; and
- b. The Affiliate's broadcast, in accordance with this Agreement, of any Programming provided by NETCAST to Affiliate shall not violate or infringe upon the trade name, trademark, copyright, literary or dramatic right, or right of privacy or publicity of any party, or constitute a libel or slander of any party; provided, however, that the foregoing representations and warranties shall not apply: (1) to public performance rights in music, (2) to any material furnished or added by any party other than NETCAST

after delivery of the Programming to Affiliate or (3) to the extent such Programming is changed or otherwise affected by deletion of any material by any party other than NETCAST after delivery of the Programming to Affiliate.

2. NETCAST represents and warrants that it has the sole and exclusive responsibility for providing the Services, including but not limited to the Programming and Marketing Materials, and all of the necessary Technical Support services required to lawfully operate the Services.
3. NETCAST represents and warrants that Equipment and Services rendered pursuant to this Agreement are and will be manufactured, produced, sold and rendered in conformity with all applicable laws, ordinances, orders, directions, rules, and regulations of the Federal, state, county, and municipal governments applicable thereto, all as they may be amended from time to time. Equipment comes with a one year warranty which allows for replacement if the Equipment does not work for reasons other than Affiliate's modifying or otherwise tampering with the Equipment.
4. NETCAST warrants that all Services provided by NETCAST under this Agreement will be performed by qualified personnel in a good and workmanlike manner. NETCAST will re-perform all services not performed in compliance with this warranty at no additional cost to Affiliate.
5. NETCAST has full power and authority to enter into this Agreement.
6. NETCAST shall perform all of its obligations under this Agreement.
7. NETCAST makes no representations, warranties or indemnities, express or implied, except as expressly set forth in subparagraphs (1)-(6) of Article VI.B.

## **VII. Indemnification.**

### **A. NETCAST Indemnification Obligations.**

1. In the event that any third-party alleges threatens to file or actually files a lawsuit in any jurisdiction alleging that the Services, specifically including but not limited to the Programming and the Marketing Materials, delivered by NETCAST either directly or secondarily infringe any copyright, trade secret, patent or other related intellectual property right of any third party, NETCAST shall fully and completely indemnify, hold harmless, and defend Affiliate against the claim, provided that Affiliate does not make any modifications of any type to the Services without NETCAST'S prior approval.
2. NETCAST agrees to indemnify, defend and hold harmless Affiliate and its subsidiaries, and the directors, officers, employees and agents of each, against any and all losses, damages, liabilities, judgments, awards and costs arising out of or related to claims arising from physical injuries or other damage arising from use of the Equipment, provided that the AFFILIATE does not make any modifications

of any type to the Equipment without NETCAST'S prior approval.

B. Affiliate Indemnification Obligations. Affiliate agrees to indemnify, defend and hold harmless NETCAST and its directors, officers, employees and agents, against any and all losses, damages, liabilities, judgments, awards and costs arising out of or related to claims arising from Affiliates' modification of Equipment or Services, specifically including but not limited to the Programming and Marketing Materials, without prior approval from NETCAST.

C. Each party further agrees to indemnify, defend and hold harmless the other party and its subsidiaries, and the directors, officers, employees and agents of each, against any and all losses, damages, liabilities, judgments, awards and costs arising out of or related to claims arising from a violation of any representations and warranty contained in this Agreement.

D. Indemnification Notice. If either party requests indemnification pursuant to this section, the party seeking indemnification will (i) give prompt written notice to the party from which indemnification is requested; and (ii) cooperate fully in said defense (at the expense of the indemnifying party). The provisions of this section will survive termination of this Agreement for a period equal to the statute of limitations governing the indemnified claim, and will continue to apply to any claim filed within that period.

E. The indemnification set forth above will survive the termination of this Agreement for a period equal to the statute of limitations governing the indemnification claim, and will continue to apply to any claim filed within that period.

**VIII. Limitations on Warranties.** Equipment and Services may be subject to U.S. export and re-export control laws and regulations, including the Export Administration Regulations ("EAR") maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control ("OFAC"), and the International Traffic in Arms Regulations ("ITAR") maintained by the Department of State.

Affiliate agrees to comply with all applicable export and re-export control laws and regulations, including the EAR, trade and economic sanctions maintained by OFAC, the ITAR and all laws and regulations regarding purchasing or running products or services provided by NETCAST. Specifically, Affiliates agree that it shall not – directly or indirectly – sell, export, re-export, transfer, divert, or otherwise dispose of any products or technology (including products derived from or based on such technology) received from under this Agreements to any destination, entity, or person prohibited by the laws or regulations of the United States, without obtaining prior authorization from the competent government authorities as required by those laws and regulations. This export control clause shall survive termination or cancellation of these Agreements.

**IX. Limitation of Liability and Remedies.** IN NO EVENT WILL EITHER PARTY BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL AND CONSEQUENTIAL OR PUNITIVE DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY'S MAXIMUM LIABILITY TO THE OTHER UNDER THIS AGREEMENT SHALL BE THE RECOVERY OF ACTUAL DAMAGES UP TO THE AMOUNT PAID TO THAT POINT BY THE AFFILIATE UNDER THIS AGREEMENT; PROVIDED, HOWEVER, THAT THE FOREGOING LIABILITY LIMITATIONS SHALL NOT APPLY WITH RESPECT TO: (A) DAMAGES OCCASIONED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE; (B) CLAIMS THAT ARE SUBJECT TO INDEMNIFICATION IN PARAGRAPH VII; OR (C) DAMAGES OCCASIONED BY THE IMPROPER OR WRONGFUL TERMINATION OR ABANDONMENT OF THIS AGREEMENT OR ANY STATEMENT OF WORK BY NETCAST. THE PROVISIONS OF THIS SECTION IX WILL SURVIVE TERMINATION OF THIS AGREEMENT FOR A PERIOD EQUAL TO THE STATUTE OF LIMITATIONS GOVERNING ANY CLAIM SUBJECT TO THIS SECTION IX, AND WILL CONTINUE TO APPLY TO ANY CLAIM FILED WITHIN THAT PERIOD.

**X. Applicable Law.** This Agreement shall be governed by the laws of the state of Oregon without regard to conflicts of law rules, and the exclusive jurisdiction and venue for any dispute shall be in the County of Marion, State of Oregon.

**The following applies only to users located in the United States:**

Affiliate and NETCAST agree that any dispute, claim or controversy arising out of or relating in any way to the NETCAST Services or Affiliate's use thereof, including our Agreements, shall be determined by mandatory binding arbitration. Affiliate agrees that the U.S. Federal Arbitration Act governs the interpretation and enforcement of this provision, and that Affiliate and NETCAST are each waiving the right to a trial by jury and the right to participate in a class or multi-party action. This arbitration provision shall survive termination of this Agreement. The arbitration will be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes of the American Arbitration Association (the "AAA Rules"), as modified by these Agreements, and as administered by the AAA. Affiliate and NETCAST agree that these Agreements involve interstate commerce and are subject to the Federal Arbitration Act.

Affiliate and NETCAST agree that:

- (a) Any claims seeking to enforce, protect, or determine the validity or ownership of any intellectual property rights, and
- (b) Any claims related to allegations of theft, piracy or unauthorized use of the NETCAST Services are NOT subject to mandatory arbitration.



Instead, Affiliate and NETCAST agree that these claims (including but not limited to claims for injunctive or equitable relief) shall be exclusively decided by courts of competent jurisdiction in the State of Oregon, and that applicable Oregon and/or Federal law shall govern, without regard to choice of law principles.

AFFILIATE AND NETCAST AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A CLASS MEMBER OR IN ANY REPRESENTATIVE CAPACITY OR PROCEEDING. Further, no arbitrator shall consolidate any other person's claims with your claims, and may not otherwise preside over any form of multi-party or class proceeding. If this specific provision is found to be unenforceable in any way, then the entirety of this arbitration section shall be null and void. The arbitrator may not award declaratory or injunctive relief.

Any arbitration must be commenced by filing a demand for arbitration within ONE (1) YEAR after the date the party asserting the claim first knows or reasonably should know of the act, omission or default giving rise to the claim; and there shall be no right to any remedy for any claim not asserted within that time period. If applicable law prohibits a one-year limitations period for asserting claims, any claim must be asserted within the shortest time period permitted by applicable law. Each party's arbitration fees and each party's share of arbitrator compensation will be limited to those fees set forth in the relevant arbitrator's terms or policies.

**XI. Notices.** Any notice and/or documents required or permitted to be submitted by either party to the other under this Agreement shall be in writing to the party's respective addresses set forth below, or to any other address as either party may designate by giving a written notice to the others, and be deemed effectively delivered: (a) if delivered personally, upon the date of delivery; (b) if delivered by registered mail, within 5 business days from the dispatch thereof; or (c) if delivered by an overnight delivery service, within two (2) business days after dispatch thereof.

If to NETCAST:

Cindy Wyant

Netcast, LLC

3190 Lancaster Drive NE

Salem, OR 97305

Phone: 503-585-5582

Fax: 503-584-1926

Email: [Info@net-casters.net](mailto:Info@net-casters.net)

With a copy to:

Matt McCormick  
Fletcher, Heald & Hildreth, P.L.C.  
1300 17<sup>th</sup> St. North  
Arlington, VA 22209  
Phone: 703-812-0400  
Fax: 703-812-0486  
Email: [mccormick@fhhlaw.com](mailto:mccormick@fhhlaw.com)

If to Affiliate:

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585-5582 503-585-5582

With a copy to:

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585-5582 503-585-5582

**XII. Confidentiality.** Each party undertakes to retain in confidence (a) the terms and conditions of this Agreement and (b) all non-public information (including but not limited to ideas, inventions, trade secrets, etc...) and know-how disclosed pursuant to this Agreement which is either designated as proprietary and/or confidential or, by the nature of the circumstances surrounding disclosure, ought in good faith to be treated as proprietary and/or confidential (collectively, "Confidential Information"); provided that each party may disclose the terms and conditions of this Agreement to its immediate

legal and financial consultants in the ordinary course of its business or, in confidence, to its investors or potential investors. "Confidential Information" does not include (i) public information (unless such information becomes public through the receiving party's actions), or (ii) information which the receiving party can show was developed independently or was rightly disclosed to it by a source other than the disclosing party. Each party agrees to use reasonable efforts to protect Confidential Information, with precautions that are at least as great as those taken to protect its own confidential information. A party's disclosure of Confidential Information as required by law is not prohibited by this Agreement, provided that the disclosing party gives the other party prompt notice of such order and assists in the procurement of an appropriate order protecting the information from public disclosure. Nothing contained herein limits either party's right to develop products independently without the use of the other party's Confidential Information. To the extent not inconsistent with this section, any non-disclosure agreement(s) entered into between the parties prior to this Agreement are deemed incorporated herein by this reference. The disclosing party will be entitled, in addition to any remedies otherwise available to it and without posting bond, to injunctive and other equitable relief to enforce or prevent breach of this section. This section will survive the termination of this Agreement for one year, or in the case of any trade secret, for as long as such information remains a trade secret.

**XIII. Assignment.** All modifications to this Agreement must be made in writing. Affiliate shall have the right to assign this Agreement to an Affiliate by providing written notice of such assignment to NETCAST and provided such assignee assumes all of Affiliate's rights and obligations hereunder.

**XIV. Relationship of Parties.** Neither this Agreement, nor any terms and conditions contained herein, may be construed as creating or constituting a partnership, joint venture or agency relationship.

**XV. No Inadvertent Waiver.** No waiver of any breach of any provision of this Agreement constitutes a waiver of any prior, concurrent or subsequent breach of the same or any other provisions, and will not be effective unless made in writing and signed by both parties.

**XVI. Force Majeure.** Neither party is liable for, and will not be considered in default or breach of this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any causes or conditions that are beyond such party's reasonable control, provided that the party whose performance is affected gives prompt notice to the other of the force majeure condition, and proceeds diligently to remedy such condition. No party shall be required to settle any labor dispute except in its sole discretion.

Specifically, NETCAST shall not be liable to Affiliate for failure to supply any Programming or any part thereof for failure to broadcast any such Programming or any part thereof, by reason of any act of God, labor dispute, nondelivery by program

suppliers or others, failure or breakdown of Internet or other facilities, legal enactment, governmental order or regulation or any other similar or dissimilar cause beyond their respective control (“Force Majeure Event”).

**XVII. Specific Performance.** In the event of any breach of this Agreement, each party agrees that the non-defaulting party will not have an adequate remedy at law and, in addition to any other available remedies, shall be entitled to seek an injunction restricting the defaulting party from committing or continuing any violation of this Agreement and requiring specific performance of all terms and conditions hereof.

**XVIII. Entire Agreement; Severability.** This Agreement (including any referenced Exhibits or Addendums) is the entire Agreement between Affiliate and NETCAST relating to the Services. If any provision of this Agreement is held to be void, invalid, unenforceable, or illegal, the other provisions shall continue in full force and effect

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**[THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

**NETCAST, LLC AFFILIATE**

by: \_\_\_\_\_ By: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_ PRINTED NAME:  
\_\_\_\_\_

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

Date: \_\_\_\_\_ date: \_\_\_\_\_