

**CORPORATION
FOR PUBLIC BROADCASTING**

**TERMS AND CONDITIONS FOR
TELEVISION, RADIO AND OTHER MEDIA PRODUCTION
GRANTS**

November, 2002

INTRODUCTION

The Corporation for Public Broadcasting (“CPB”) was created by the Public Broadcasting Act of 1967. Congress mandated that CPB, among other goals,

facilitate the full development of public telecommunications in which programs of high quality, diversity, creativity, excellence, and innovation, which are obtained from diverse sources, will be made available to public telecommunications entities, with strict adherence to objectivity and balance in all programs or series of programs of a controversial nature

In order to carry out this purpose, CPB makes grants to both public telecommunications entities (both individually and as networks) and independent entities for the production of radio and television programming and other projects for broadcast and other use in public telecommunications and educational systems.

CPB has established Terms and Conditions governing the grants CPB provides for the production of radio and television programming and other projects. The Terms and Conditions are described in the following pages. Each recipient of a television or radio production grant is required to observe and comply both with these Terms and Conditions as well as the more specific obligations set forth in the individual written contract into which each applicant whose grant application has been approved must enter with CPB.

Persons applying for a grant are urged to review the Terms and Conditions set forth in the following pages carefully. Familiarity with these Terms and Conditions will assist a prospective applicant in determining whether a CPB production grant is an appropriate funding mechanism for its project. It will also permit a prospective applicant to structure its project in a manner that will ensure compliance with the Terms and Conditions and expedite CPB funding in the event that its application is approved.

In addition to reading and reviewing these Terms and Conditions, all prospective applicants for CPB production grants should visit the CPB web site at www.cpb.org/grants/list.html for more information about how to apply for a grant. Extensive information about the funding and evaluation process for CPB production grants can be obtained from the web site.

1. GRANT APPLICATIONS

Each Grant Application is evaluated by CPB based on various funding priorities and criteria. Once CPB approves a Grant Application, CPB sends the applicant a draft of a Grant Agreement. To receive a Grant, an applicant must execute and return the Grant Agreement to CPB.

A. Grant Agreement. To obtain a Grant from CPB, an applicant must prepare and submit a Grant Application following the procedures established by CPB. If a Grant Application is selected by CPB for funding, CPB will provide the applicant with a proposed Grant Agreement. No Grant will be awarded, and no disbursement of funds will be made under any Grant, until the applicant has signed a Grant Agreement and returned it to CPB and CPB has executed the Grant Agreement.

B. Compliance with Terms and Conditions. These Terms and Conditions are incorporated in all Grant Agreements. Each Grantee must comply with these Terms and Conditions as well as with the obligations set forth in its Grant Agreement. If there is a conflict between these Terms and Conditions and the terms of a Grant Agreement, the terms of the Grant Agreement will control.

2. CPB OBLIGATIONS

The relationship between CPB and a Grantee is limited. CPB has no obligations to Grantees except for those set forth in these Terms and Conditions and Grant Agreements.

A. CPB Obligations. The obligations of CPB to each Grantee are set forth in their entirety in these Terms and Conditions and in the Grant Agreement. CPB has no obligation to any applicant for a Grant until a Grant Agreement has been signed both by the applicant and CPB.

B. Grantee Commitments and Expenditures. All expenditures and commitments by a Grantee in connection with a Grant Project will be on Grantee's own behalf, and any obligations incurred by a Grantee with respect to a Grant Project will be at the Grantee's own risk without any obligation on the part of CPB beyond those obligations set forth either in these Terms and Conditions or in the Grant Agreement.

C. Relationship of CPB and Grantees. Nothing in these Terms and Conditions or the Grant Agreement should be read as creating an association, partnership, joint venture, or employment relationship between CPB and a Grantee.

3. PRODUCTION TERMS

A Grant Project must comply with minimum standards established by federal law.

A. Production Standards. Every Grant Project must conform to the highest standards in the public broadcasting industry; that is, each must reflect the editorial balance, innovation, accuracy, and technical quality reflected in public broadcasting projects of similar nature and budget.

B. Objectivity and Balance. Where the subject matter or content of a Grant Project requires, the Grantee is expected to meet professional standards of objectivity and balance.

C. Closed Captioning. If the Grant Project is a television program, it must be closed-captioned for the benefit of hearing-impaired viewers.

D. Technical Program Requirements. Every Grant Project delivered to CPB must comply with all national program specifications, technical standards, guidelines, and other policies regarding titles and production and underwriting credits that are generally recognized in the public television or radio industry, except as otherwise specifically described in the Grant Agreement, and must be of broadcast quality, fully cut, edited and in all respects ready for Broadcast on public television or radio and for any and all other uses described in the Grant Agreement. Every hard copy of the Grant Project and its Elements, and any written materials associated with the Grant Project or its Elements intended for public dissemination, must contain a copyright notice.

4. BUDGET AND FINANCIAL REPORTING

The award of a Grant depends in part on the submission of an acceptable Budget. This section describes the specific budget responsibilities of a Grantee, including the provision of periodic updates and a final report about how the Grant money has been spent and how production and expenditures compare with the approved Budget. No Grantee may make changes to its Budget, or deviate from planned expenditures, except as set forth in this section or with the advance written consent of CPB.

CPB normally provides only a portion of the funding necessary to complete a Grant Project. Although most Grantees will need to obtain additional funding, CPB Grants are awarded based on the understanding that CPB will receive a completed Grant Project. Every Grantee must be prepared to provide CPB with a completed Grant Project even if the Grantee cannot obtain funding from other sources or if those other sources of funding fall through.

Grantees must keep all books and records relating to their Grant Projects for three years from the date the Grant Project is delivered to CPB and must make those books and records available to CPB for audit. Certain underlying production agreements and other records relating to ancillary uses must be maintained for longer periods.

A. Budget. The award of a Grant is subject to the approval by CPB of a Budget for the Grant Project.

B. Other Funding Sources. A Grantee may obtain additional funding from other sources so long as those funding arrangements do not impede the Grantee's ability to meet its obligations to CPB. To the extent other sources have committed funds to an applicant or Grantee for the development of a Grant Project at the time the applicant submits a Grant Application, those sources and the total funds committed by them must be disclosed to CPB as part of the Grant Application. If other sources offer to commit funds before a Grant Agreement is signed, the applicant must disclose those funding offers to CPB prior to accepting them.

C. Completion of Grant Project. By accepting a Grant from CPB, the Grantee agrees to complete and deliver the Grant Project in its entirety, in accordance with these Terms and Conditions and the Grant Agreement, even if the other sources of a Grantee's funding fail to deliver committed funds or the actual costs of completing the Grant Project exceed the Total Project Cost provided in the Budget.

D. Changes to the Budget. Once a Budget has been approved and a Grant Agreement has been signed, the Grantee may make reallocations among Budget line items or categories (except those covering "above the line" salaries, equipment, and general administrative/overhead expenses) without CPB's approval so long as no such reallocation involves an increase or decrease in any single Budget category in excess of the greater of 25% of such category or \$5,000. CPB consent to an increase in Total Budget Cost will not signify an increase in the Grant. A Grantee may make no other changes to the overall Budget or individual line items without CPB's prior written approval. Each Grantee must specifically identify, report and explain any and all Budget reallocations in its interim and final financial accountings to CPB.

E. Decrease in Total Project Cost. A Grantee must notify CPB promptly of any decrease in the Total Project Cost for its Grant Project so that CPB may, if it chooses, adjust the amount of the Grant or the schedule upon which Grant disbursements are to be made. Generally, adjustments will be proportional to the amount by which the Total Project Cost has been reduced, but CPB may, if the decrease in Total Project Costs is caused by significant differences in the Grant Project, elect to make other adjustments or terminate the Grant in its entirety. If CPB adjusts the amount of a Grant because of a decrease in the Total Project Cost for the Grant Project, the Grantee must immediately return to CPB any CPB funds that were paid to the Grantee in excess of the adjusted amount of the Grant.

F. Authorized Uses of CPB Funds. No Grantee may apply amounts received under a Grant to any purpose other than actual costs incurred in performance of the Grant Project in accordance with its Budget. The salary of any employee who works on multiple projects must be allocated on the basis of time spent by the employee on each project. Grantee agrees to repay to CPB, immediately upon CPB's written request, any portion of the Grant which CPB determines has been expended in a manner that is inconsistent with either these Terms and Conditions or the individual Grant Agreement.

G. Records. A Grantee must keep books, records, and accounts relating to the Grant and the Grant Project sufficient to:

- i) enable CPB to verify all direct costs, overhead, and administrative allocations associated with the Grant Project;
- ii) disclose fully the amount and use of the proceeds of the Grant, the Total Project Cost, and the amount and nature of any portion of the Total Project Cost supplied by sources other than CPB; and
- iii) permit an effective audit.

H. Audit. Each Grantee and its subcontractors, if any, are required to allow CPB and the Comptroller General of the United States or their representatives access, for the purpose of audit and examination, to any books, documents, papers, and records that relate to a Grant or any other funds received from CPB.

I. Additional Audit Requirement for Public Telecommunications Entities. If the Grantee is a “public telecommunications entity” (*i.e.*, the Grantee is a public broadcast station or a noncommercial telecommunications entity which disseminates public telecommunications services to the public), the Grantee must, in accordance with section 396(l)(3)(B) of the Communications Act:

- i) undergo a biennial audit, conducted by an independent public accountant certified or licensed by a state regulatory authority, in accordance with CPB’s auditing standards and furnish the audit report to CPB; or
- ii) submit a financial statement in lieu of the audit report where CPB concludes that the cost burden of an audit is excessive in light of the financial condition of the Grantee.

J. Grant Project Status and Financial Reports. Each Grantee must provide CPB with interim financial reports during production of its Grant Project according to the schedule contained in the Grant Agreement. Each Grantee must also provide CPB with a final financial report when the Grant Project is completed and delivered.

K. Form of Financial Reports. All financial reports must

- i) set forth the amounts originally provided in the Budget for each line item and the amounts expended under each line item to date;
- ii) specifically identify and explain any variances in excess of the limits set forth in Section 4(D) hereof (both in dollars and percentages) from the Budget that exist or are expected;
- iii) include a certification that the Grant Project can be completed on schedule and within the Budget or provide a detailed explanation setting forth the

reasons why the Grant Project may not be completed on schedule or within the Budget;

- iv) cover all expenditures incurred in the performance of the Grant Project, whether or not CPB funds were applied to those expenditures;
- v) be reconcilable with the Grantee's general ledger accounts; and
- vi) bear the signature of the official responsible for supervising their preparation (who must be the Grantee's chief financial officer or comparable official, if the Grantee employs one).

L. Maintenance of Records. Each Grantee must

- i) maintain and retain all books, documents, papers, and records related to its Grant Project for a period of three years from the date of delivery of the completed Grant Project, or for a longer period as required for records related to the receipt and payment of Ancillary Revenues;
- ii) maintain and retain a complete file of all production subcontracts, property acquisitions, rights arrangements, talent contracts, employment agreements, clearance forms, and other documents related to production for a period of three years from the date of CPB's approval of the final financial report for the Grant Project; and
- iii) make copies of these documents available to CPB upon request.

M. Consultation. Grantee shall advise CPB promptly, and consult with CPB, regarding any matter affecting or potentially affecting CPB's interests or revenues (current or potential) relating to the Grant Project or its Elements.

5. CPB RIGHTS

Each Grantee must take whatever steps are necessary to protect and preserve the intellectual property rights in its Grant Project in accordance with copyright, trademark, and other applicable laws so as to ensure that it can provide certain required rights to CPB.

A. Ownership and Control of Copyright and Other Intellectual Property Interests. A Grantee must secure and maintain all intellectual property rights in the Grant Project and its Elements that are needed to enable the Grantee to grant, assign, or license those rights to CPB as contemplated by these Terms and Conditions and the Grant Agreement. In the event a Grantee is unable to secure any necessary intellectual property rights, Grantee shall immediately notify CPB and describe in detail the extent to which and reasons why such rights are unavailable.

B. CPB Credits. Unless prohibited by applicable law, all distribution, publication, or exhibition of a Grant Project or its Elements or related materials must carry underwriter credit

identifying CPB's financial assistance in connection with the Grant Project in such manner as CPB may require; provided, however, that Grantee shall exercise its best efforts to cause such credit to be carried in any foreign distribution of the Grant Project or its Elements. For any distribution of the Grant Project in a video format, the CPB credit must include the CPB animated logo, which will be provided to the Grantee by CPB upon request, and any other markings or information required by CPB or otherwise as provided in the Grant Agreement. For any distribution of the Grant Project in a radio format, the CPB credit will appear, where appropriate, at the beginning and end of each program, and also at breaks during the program, and the precise wording of this on-air credit shall be subject to prior CPB approval.

C. Exclusive Rights – Television. By accepting a Television Production Grant from CPB, each Grantee grants, assigns, and licenses to CPB, and allows CPB to reassign or sublicense, the exclusive right:

- i) to any and all uses of the Grant Project and its Elements, and to any derivatives thereof, during the Initial Term; and
- ii) to Broadcast the Grant Project and its Elements in the Domestic Area during the License Term.

D. Non-Exclusive Rights. By accepting a Grant from CPB, each Grantee grants, assigns, and licenses to CPB, and allows CPB to reassign or sublicense, the following rights on a non-exclusive basis:

- i) the right to authorize the Museum of Television and Radio in New York City and Los Angeles to perform or display the Grant Project and its Element to the public and to authorize others to perform or display the Grant Project and its Elements for educational purposes (and, at CPB's request, Grantee shall deliver a copy of the Grant Project to the Museum of Television and Radio free of charge);
- ii) the right to perform or display the Grant Project and its Elements to officials, employees, and agents of the federal government;
- iii) the right to use and authorize others to use the Grant Project and its Elements, and the names, voices, likenesses, and biographies of any and all persons appearing on or performing services in connection with the Grant Project, for promotional purposes reasonably related to the Grant Project or its Elements or the institutional promotion of CPB;
- iv) the right to duplicate and distribute, and authorize others to duplicate and distribute, any written materials prepared by CPB, the Grantee, or any other person or entity for use in conjunction with the Grant Project or its Elements; and
- v) if the Grant is a Television Production Grant, the right to describe the Grant Project and its Elements on a separate audio channel as a special service

for the visually impaired and to duplicate, distribute, Broadcast, or otherwise perform publicly, or use the Grant Project and its Elements with this audio description in any medium or forum in connection with any use of the Grant Project or its Elements.

E. Radio Distribution Rights. By accepting a Radio Grant from CPB, Grantee agrees to make the Grant Project available to all public radio stations over the Public Radio Satellite Interconnection System, or another distribution system designated by CPB. Grantee shall take all actions necessary for the distribution of the Grant Project.

F. Use by Educational Institutions. In addition to the rights granted to CPB, all Television Grant Projects must be available for use by all educational institutions on a basis that permits each educational institution, at a minimum, to

- i) record the Grant Project;
- ii) in the case of primary and secondary educational institutions (educational institutions teaching students in pre-kindergarten through twelfth (12th) grade), retain the recording for one (1) year from the date of its recording and use such recording an unlimited number of times during that one (1) year period for educational and instructional purposes;
- iii) in the case of post-secondary and other educational institutions, retain the recording for seven (7) days from the date of its recording and use such recording an unlimited number of times during that seven (7) day period for educational and instructional purposes; and
- iv) subject to the time restrictions described in sub-paragraphs (ii) and (iii) above, distribute the Grant Project an unlimited number of times by retransmission over noncommercial limited frequency, closed circuit, and playback facilities.

G. Web Sites. By accepting a Grant for a Grant Project that includes a web site, as specified in the Workslope of the Grant Agreement, Grantee agrees:

- i) to research, develop, design, build, host and maintain the website ;
- ii) to obtain an Internet protocol address and corresponding domain name necessary to establish the address of the web site (unless the web site is to be hosted and maintained as part of the websites of PBS, NPR or other party acceptable to CPB);
- iii) to use its best efforts to seek the widest possible distribution of the web component of the Grant Project, including, as appropriate, but not limited to seeking linkage from related sites and portals, embedding tags and search terms to promote search engine carriage, and including the web site's URL (Uniform Resource Locator) in all print and other ancillary materials;

iv) to maintain the web site on Grantee's or a third party's web service during the License Term or as otherwise agreed by CPB, so that the funded content is available to Internet users on a non-subscription basis and otherwise free of charge, twenty-four hours a day, seven days a week;

v) to store and maintain accurate back-up materials, including all code for the web site, in a safe and secure environment;

vi) to remedy promptly any aspect of the web site that fails to operate properly during the License Term;

vii) to grant, assign, and license to CPB, on a non-exclusive basis during the License Term, the right to use the web site and corresponding materials for the web site, including program images, text, HTML code, program code, and any materials that appear on the web site for any purpose reasonably related to the promotion of the Grant Project and its Elements or the institutional promotion of CPB;

viii) to provide on the Grant Project website an active link to the CPB on-line comment line soliciting comments from viewers, listeners and users regarding the website or Grant Project;

ix) to grant, assign, and license to CPB, on a non-exclusive basis, the nontransferable right to use any proprietary materials (such as programming architecture, library materials, programming and computer code) that may be necessary to utilize the web site and any functional copies thereof required by the Grant Agreement to be delivered to CPB; and

x) to use its best efforts to make the web site and its contents accessible to diverse audiences, including audiences with disabilities and audiences without high-speed internet connections

H. Transfer of Rights. No Grantee may grant, license, transfer, assign, or otherwise dispose of rights of any nature in the Grant Project or its Elements to any affiliate of Grantee without first obtaining CPB's written consent. CPB will withhold that consent only if it believes that the proposed disposition of rights does not reflect a fair market arms length transaction and will adversely affect, interfere with, or reduce the rights available to CPB, or adversely affect the interests of CPB, under these Terms and Conditions or the Grant Agreement. Grantee may grant, license, transfer, assign, or otherwise dispose of rights of any nature in the Grant Project or its Elements to any other party on the condition that any such transaction (i) reflects an arms-length business transaction, (ii) does not interfere with any of the rights granted to CPB and (iii) has, in the case of theatrical releases and pre-screenings, received CPB's advance consent.

I. Ownership of Grant Project Recordings. CPB will own all videotapes, DVDs, videocassettes, computer disks, or other tangible forms on which the final Grant Project and its Elements are recorded and delivered to CPB as required in the Work Scope of the Grant

Agreement. Only CPB or its assignees may use these recordings, and CPB and its assignees may use them in any manner and for any purpose consistent with these Terms and Conditions and the terms of the Grant Agreement. CPB is not liable to any Grantee for any loss, destruction, or damage of or to any recording delivered to CPB.

J. Other Limitations on Use of Grant Project by Grantee. By accepting a Grant from CPB, Grantee agrees that it will not Broadcast or distribute, or allow any third person to Broadcast or distribute, the Grant Project or its Elements in Canada within ninety (90) days of the initial Broadcast of the Grant Project or for the period set forth in the Grant Agreement.

6. REVENUE PARTICIPATION

In addition to the various exclusive and non-exclusive rights in a Grant Project set out above, CPB is entitled to share in the revenues generated by the Grant Project or any derivation of the Grant Project or its characters, story, music, or other individual Elements. Before any payment from these future revenues is made to CPB, however, the Grantee is entitled to recover any costs of the initial production of the Grant Project that were not covered by the Grant or other funding.

A. Rights During the Initial Term. During the Initial Term, CPB retains all rights described in these Terms and Conditions or in the Grant Agreement to use the Grant Project and its Elements.

B. Provisions for Revenue Sharing After the Initial Term. After the Initial Term, the Grantee may exploit the Grant Project and its Elements, so long as such exploitation does not interfere with CPB's exclusive rights under these Terms and Conditions and the Grant Agreement. In the event the Grantee does exploit the Grant Project and its Elements, CPB is entitled to receive a share of all Ancillary Revenues generated in connection with a Grant Project and its Elements, according to the provisions of the Grant Agreement and subject to the following:

i) CPB Share. Each Grantee must pay CPB that portion of Ancillary Revenues received that is specified in the Grant Agreement. Each Grantee must remit CPB's share of Ancillary Revenues on or before each November 15 for all Ancillary Revenues received in the twelve month period ending on the preceding September 30.

ii) Reporting Obligations; Records. Each Grantee must report to CPB by November 15 of each year all Ancillary Revenues received in the twelve-month period ending on the preceding September 30. In addition to the other records a Grantee is required to maintain and retain, each Grantee must maintain and retain records of all Ancillary Revenues for three years following the last date any Ancillary Revenues are received by the Grantee until three years after the

conclusion of the time period within which CPB may share in Ancillary Revenues.

7. INSURANCE

Each Grantee must obtain adequate insurance to protect against general liability in connection with the Grant Project and to cover any indemnification of CPB that may be required under these Terms and Conditions.

A. Minimum Insurance Coverage. Each Grantee must, at its expense, obtain and maintain, until the end of the License Term, general commercial liability, copyright infringement, and errors and omissions insurance, or any other insurance specified in the Grant Agreement or by CPB in writing, sufficient to cover all of the Grantee's activities under these Terms and Conditions and the Grant Agreement and the Grantee's indemnification obligations to CPB. All insurance policies must name CPB as an additional insured.

B. Proof of Insurance. Each Grantee must have its insurance carriers furnish to CPB a certificate demonstrating that the required insurance policies are in force and stipulating that the insurance will not be canceled or materially modified prior to the end of the License Term without 30 days' prior written notice to CPB. A Grantee must immediately notify CPB of any cancellation, non-renewal, expiration, or material modification of any such insurance.

8. DELEGATION AND SUBCONTRACTS

No Grantee may assign its rights to its Grant or delegate 50% or more of its obligations to produce the Grant Project to any third party or third parties.

A. Assignment. The Grantee may not assign its rights under the Grant Agreement to any other party without CPB's consent. During the term of the Grant Agreement, a Grantee must obtain written approval from CPB prior to delegating or subcontracting 50% or more (including any other delegations or subcontracts entered into) of its duties under these Terms and Conditions or the Grant Agreement. CPB approval or disapproval will be based upon CPB's assessment of whether the proposed assignment might negatively impact the production values or delivery of materials to CPB or impinge on CPB's rights as described in these Terms and Conditions or the Grant Agreement.

B. Subcontracts. A Grantee must include in any and all subcontracts or other assignment contracts a provision that will effectuate the Grantee's obligations to CPB. Any subcontracts or other assignment contracts must also allow CPB and the Comptroller General of the United States or their representatives access to and the right to examine and audit pertinent books, documents, papers, and records of such subcontractor or assignee involving the Grant Project for three years following the final disbursement by CPB under the Grant Agreement.

9. COMPLIANCE WITH LAW AND CPB TERMS AND CONDITIONS

In addition to meeting its obligations under these Terms and Conditions and the Grant Agreement, each Grantee must comply with state and federal laws and regulations.

A. Compliance with Law. Each Grantee must comply in the production of its Grant Project with all applicable federal, state, and local laws, rules, and regulations, including the Communications Act and the rules, regulations, opinions, and decisions of the Federal Communications Commission.

B. Non-Discrimination. Each Grantee must comply with the CPB policies on “Equal Opportunity and CPB Assistance” set forth as Annex A to these Terms and Conditions. In addition, if a Grantee is a licensee or permittee of a public broadcasting station, it must comply with the annual statistical reporting and certification requirements in section 396(k)(11) of the Communications Act.

10. TERMINATION OR REDUCTION OF GRANT

If a Grantee fails to comply with any of these Terms and Conditions or the terms of its Grant Agreement, CPB may terminate or reduce the Grant and require the Grantee to repay to CPB all or a portion of that part of the Grant that has been disbursed to the Grantee.

A. Termination or Reduction of Grant. CPB may terminate or reduce a Grant if the Grantee is in breach of any of its obligations set forth in these Terms and Conditions or the Grant Agreement and the Grantee has not corrected the breach within 30 days after CPB has notified the Grantee in writing of the breach. If CPB terminates a Grant, the Grantee must repay to CPB any portion of the Grant disbursed by CPB under the Grant but not expended or irrevocably committed through the date of termination. If CPB reduces the dollar amount of a Grant, the Grantee must return to CPB any Grant funds that were disbursed to the Grantee in excess of the reduced Grant amount that were not expended or irrevocably committed through the date of the reduction. The termination or reduction of a Grant under this paragraph will have no effect on the other rights and obligations of CPB and the Grantee under these Terms and Conditions or the Grant Agreement.

B. Other Remedies. In addition to terminating or reducing a Grant, CPB may pursue any other legal remedy that may be available to it as the result of the Grantee’s failure to comply with any of the provisions of these Terms and Conditions or the Grant Agreement.

C. Waiver. No modification to or waiver of these Terms and Conditions will be effective unless in writing and signed by a Vice President of CPB or other officer that the President of CPB may designate from time to time.

D. Force Majeure. Any delay in delivery of a completed Grant Project by the Grantee that results from any act of God, riot or other civil disorder, war or armed insurrection,

strike, lockout or other labor action related to a Grant Project, or governmental enactment, rule, act, order, or lack of action that does not exceed 120 days will not constitute a basis for termination or reduction of the Grant. In the event that any such delay exceeds 120 days, CPB may terminate or reduce the Grant. In the event of termination or reduction of the Grant pursuant to the preceding sentence, CPB will reimburse the Grantee, in an amount that with all amounts previously disbursed to the Grantee in respect of the Grant does not exceed the total amount of the Grant, for any incurred or unavoidably committed expenses for which CPB has not yet paid the Grantee but which were authorized by the Grant Agreement to be expended on the Grant Project through the date of such termination or reduction.

E. Bankruptcy. If, during the term of this Grant Agreement, Grantee becomes insolvent or is unable to pay its debts as they mature, or files a voluntary petition in bankruptcy or is the subject of an involuntary petition that is neither stayed nor dismissed within 60 days after the petition is filed, CPB may terminate the Grant.

F. Governing Law. These Terms and Conditions, and any Grant Agreement executed according to these Terms and Conditions, shall be construed under the laws of the District of Columbia, regardless of the place of execution or performance. All agreements between a Grantee and CPB executed according to these Terms and Conditions or a Grant Agreement shall also be governed by the laws of the District of Columbia.

G. Consent to Jurisdiction. Unless the Grantee is a state agency prohibited by law to consent to the jurisdiction of another jurisdiction, the courts sitting in the District of Columbia will have exclusive jurisdiction to hear and resolve any claim or dispute related to these Terms and Conditions or a Grant Agreement, and each Grantee shall submit and consent to jurisdiction in the District of Columbia and agree that venue will be proper for all matters.

H. CPB Ethics Policy. CPB's Code of Ethics and Business Conduct requires that recipients of discretionary grants and contracts agree to act with integrity and perform their duties in compliance with applicable Federal, state and local laws, and with CPB contract/grant requirements, and otherwise act as efficient and impartial stewards of CPB funds. In addition, CPB employees are obligated to disclose to CPB certain communications regarding prospective employment with contractors and grantees, and contractors and grantees are encouraged to act in compliance with CPB's ethical conduct standards.

11. COMMUNICATION WITH AND PAYMENTS TO CPB

Communications with, and payments to, CPB must be directed to the addresses specified below.

A. Communications with CPB. The delivery of financial reports and Grant Projects and all other communications to CPB, except for payments, must be addressed to the attention of the Office of Business Affairs.

B. Payments. All funds paid to CPB must be in the form of checks made payable to "Corporation for Public Broadcasting" and addressed to the attention of the Office of Budget and Finance.

12. REPRESENTATIONS, WARRANTIES AND INDEMNIFICATION

A. Grantee's Representations and Warranties. Grantee represents and warrants that: (a) no portion of the Grant Project and none of the materials produced or supplied by it pursuant to the Grant Agreement will be defamatory or violate or infringe upon the copyright, trademark, privacy, creative or other rights of any third party by reason of any production, distribution, broadcast, exhibition or other use contemplated hereby; (b) Grantee has not granted, licensed, transferred, assigned, encumbered or otherwise disposed of rights of any nature, including rights relating to underwriter identification and Ancillary Rights, in the Grant Project or any Element thereof to any third party for any purpose whatsoever except as specifically described in the Grant Agreement; (c) Grantee owns all rights and licenses necessary to perform its obligations under the Grant Agreement and these Terms and Conditions; (d) Grantee's performance under the Grant Agreement and the rights it has granted therein do not conflict with or violate any commitment, agreement or understanding that it has with any third party; and (e) there are no pending or, to the knowledge of Grantee, threatened claims, actions, investigations, or proceedings against or affecting Grantee or any of its property which, if adversely determined, would adversely affect the ability of Grantee to complete its undertakings in accordance with the terms of the Grant Agreement and these Terms and Conditions.

B. Indemnification by Grantee. Unless the Grantee is a state agency prohibited by applicable state law from providing indemnification, Grantee agrees to indemnify and hold CPB, its distributors, and all public broadcasting stations, and their respective directors, officers, agents, and employees, harmless from and against any and all liabilities arising out of the production or any use of the Grant Project or any Elements thereof under the Grant Agreement or any breach or alleged breach by Grantee of any of its representations, warranties, covenants, or other obligations set forth therein or in these Terms and Conditions.

C. Indemnification by CPB. CPB agrees to indemnify and hold Grantee and its directors, officers, agents and employees, if any, harmless from and against any and all liabilities arising out of a breach by CPB of any of its representations, warranties, covenants and other obligations set forth in the Grant Agreement or in these Terms and Conditions.

13. DEFINITIONS

This section defines various terms that are used in these Terms and Conditions and in CPB's other grant materials, including Grant Agreements.

A. Defined Terms. The following terms, when used in these Terms and Conditions or in a Grant Agreement, have, except where the context otherwise requires, the following meanings:

i) “Ancillary Revenues” are gross revenues received by any party other than CPB from any use of a Grant Project or its Elements beyond those exclusive rights expressly granted to CPB by these Terms and Conditions or the Grant Agreement. These uses include any exploitation of an Ancillary Right.

ii) “Ancillary Rights” means any and all rights in (or uses of) all or any part of the Grant Project or its Elements, including any subsidiary rights, other than those expressly granted, assigned or licensed pursuant to this Grant for the exclusive use of CPB or its assignees or sublicensees. These rights (and uses) include any exploitation of the Grant Project or Elements, whether through distribution, exhibition, licensing, or otherwise, including theatrical exhibition; cable television; domestic commercial television broadcast; foreign commercial or noncommercial television broadcast; audiovisual exhibition; on-line or any electronic or digital broadband network transmission, distribution and/or delivery now known or hereafter developed; video dialtone or other telephone-line transmission, distribution or delivery now known or hereafter developed; analog or digital satellite transmission; books and other literary works; musical works and sound recordings; merchandising (including clothing, toys, games and personal appearances); video products and other audiovisual works (including cassettes, tapes, discs and other optically, magnetically or magneto-optically readable materials now known or hereafter developed); CD-rom, software and other computer-related materials now known or hereafter developed and any and all other works or products derived from the Grant Project or its Elements.

iii) “Broadcast” means the right, at one or more times on one or more days, for television or radio, as the case may be:

(a) to broadcast or rebroadcast or cablecast or recablecast a Grant Project or its Elements and to authorize others to do so;

(b) to distribute and display and to authorize others to distribute and display a Grant Project or its Elements over-the-air, by interconnection (including satellite interconnection or DBS), by recording, or by any other means now known or hereafter developed (including video on demand, video dialtone, or any medium or other delivery system).

The total number of permitted releases under the Grant Agreement may be made for each manner of Broadcasting hereunder. Rebroadcasts by an entity within seven days of a Broadcast shall not be deemed to be an additional Broadcast.

iv) “Budget” means the Grant Project budget attached to the Grant Agreement.

iv) “Communications Act” means the Communications Act of 1934, as amended.

- v) “CPB” means the Corporation for Public Broadcasting.
- vi) “Domestic Area” means the United States of America, its territories and possessions (including Guam, Puerto Rico, American Samoa, and the U.S. Virgin Islands), and United States military bases abroad.
- vii) “Direct Production Costs” means all reasonable and legitimate costs of production, but shall exclude any expenditures for promotion, marketing, distribution, outreach and similar costs.
- viii) “Elements” means the component parts of a Grant Project as described in the Work Scope of the Grant Agreement.
- ix) “Grant” means the funding, in cash or in kind, to be provided by CPB pursuant to a Grant Agreement for the production of a Grant Project.
- x) “Grant Agreement” means the individual written contract signed by a Grantee and CPB concerning the production of a Grant Project.
- xi) “Grant Application” means a written application for a Grant from CPB.
- xii) “Grant Project” means the particular radio or television program or series, web site, or other project for which a Grantee has obtained partial or complete funding from CPB, as described in the Work Scope of the Grant Agreement.
- xiii) “Grantee” means each individual or entity that has signed a Grant Agreement.
- xiv) “Gross Proceeds” means the aggregate of all amounts, monies or sums received by any party from any and all sources arising out of the exercise of any and all Ancillary Rights in a given year without regard to any costs, losses, liabilities or set-offs and shall include any interest earned on such amounts, monies or sums from the date of receipt to the end of the calendar quarter prior to the date of payment to CPB of CPB’s share. Gross Proceeds shall be attributed to the given year in which they become contractually due; provided, however, that Grantee shall not be obligated to transfer any portion of CPB’s share attributable to such Gross Proceeds until such amounts, monies or sums have been received or credited.
- xiv) “Initial Term” means the period beginning on the date a Grant Agreement is signed and ending on the earliest of (a) the date of the initial National Public Television Release [or initial national public radio release] of the Grant Project, (b) the first date the Grant Project is otherwise distributed, broadcast, displayed, or otherwise made available, in each case to the general

public on a national or regional basis in the Domestic Area, and (c) the fifth anniversary of the date on which the Grant Agreement is signed.

xv) “License Term” means the period described in the Grant Agreement beginning on the date of the first National Public Television Release of a Grant Project. If there has been no national or regional distribution or broadcast by a CPB authorized entity to public television stations, public radio stations, or related entities within the Domestic Area of the Grant Project or other distribution, broadcast, or display of the Grant Project by the fifth anniversary of the date the Grant Agreement is signed, then the License Term will be coterminous with the Initial Term.

xvi) “National Public Television Release” means the first national or regional distribution or broadcast by a CPB authorized entity to public television stations or related entities within the Domestic Area, and initial national public radio release means any national distribution or broadcast by a CPB authorized entity to public radio stations or related entities within the Domestic Area.

xvii) “Net Proceeds” means Gross Proceeds arising out of an exercise of any Ancillary Right less the aggregate amount required to reimburse Grantee for the actual, Direct Production Costs, marketing, promotion, duplication, distribution, or other exploitation (not including charges for Grantee’s overhead) incurred in connection with such exercise and less a mutually-agreed-upon management charge or distributor's fee, in those circumstances where such a fee is appropriate, as determined by CPB. For purposes of this paragraph (a) Gross Proceeds and costs claimed by Grantee to be deductible from Gross Proceeds shall not include any proceeds or costs provided for in the Budget; (b) if any costs claimed by Grantee to be deductible from Gross Proceeds reflect sums attributable to charges or fees for goods or services provided by Grantee or any of its affiliates, no portion of such charges or fees may be deducted from Gross Proceeds to the extent that such portion exceeds the reasonable charges or fees that would be incurred by a third-party provider between unaffiliated parties in an arms-length transaction; and (c) any costs incurred by Grantee in any given year in connection with an exercise of an Ancillary Right that will contribute to the generation of Gross Proceeds from such exercise in succeeding years may be deducted to the extent otherwise permitted hereunder dollar for dollar against such Gross Proceeds until such costs are exhausted. Grantee shall, at the request of CPB, exercise all available legal rights to secure payments of sums due under any exercise of Ancillary Rights that would increase Net Proceeds.

xviii) “Radio Production Grant” means a Grant for the production of a Grant Project that is or includes a radio program.

xix) “Television Production Grant” means a Grant for the production of a Grant Project that is or includes a television program.

xx) “Total Project Cost” means the estimated total cost of completing a Grant Project as provided in the Budget.

B. Interpretation. The terms “including” or “include” mean including, without limiting the generality of any description preceding such term. The captions, headings, and italicized summaries included in these Terms and Conditions are solely for convenience of reference and are not to be considered in matters of interpretation.

EQUAL OPPORTUNITY AND CPB ASSISTANCE

Policy

It is the policy of the Corporation for Public Broadcasting (1) to comply fully with all applicable laws and regulations, including laws and regulations prohibiting discrimination against any person on the basis of race, color, religion, national origin, age, gender, or physical or mental handicap; and (2) to require that each recipient of assistance from CPB, whether in cash or in kind, comply with all such laws and regulations.

CPB Role and Cooperation with Government Agencies

The Corporation for Public Broadcasting is a private, nonprofit corporation. Because CPB is neither a government agency nor a law enforcement body, it does not have the legal authority to investigate and adjudicate complaints based upon allegedly discriminatory practices by recipients of its assistance that such agencies and bodies do. CPB will, however, promptly refer all such complaints received by it to a government agency with jurisdiction for any proceedings that may be appropriate. Further, CPB will cooperate fully with every agency with jurisdiction to inquire into allegedly discriminatory practices of recipients of CPB assistance.

Laws and Regulations Applicable

Applicable laws and regulations prohibiting discrimination against persons on the basis of race, color, religion, national origin, age, gender, or physical or mental handicap may be federal, state, or local, and may vary from recipient to recipient and from jurisdiction to jurisdiction. Each applicant or recipient of CPB assistance shall inform itself of the laws and regulations applicable to it, and CPB shall not undertake to so inform the applicant or recipient, unless a law or regulation requires that CPB do so, and then CPB shall undertake to inform the applicant or recipient only to the extent the law requires.

Suspension or Cancellation of CPB Assistance

Whenever a court or government agency with jurisdiction determines by a final judgment or order that a recipient of assistance from CPB is in violation of federal, state, or local laws and regulations prohibiting discrimination on the basis of race, color, religion, age, national origin, gender, or physical or mental handicap, and notice of such determination is given in writing to CPB by the court, agency, or any other person and officially certified, CPB may suspend or cancel all assistance to the recipient following 30 days' prior written notice to the recipient unless during such 30-day period the recipient demonstrates to CPB's reasonable satisfaction that the violation has been fully corrected or that the recipient is in full compliance with all remedial provisions of the court's final determination.

Applicants Ineligible to Receive CPB Assistance

An applicant for assistance from CPB whom a court or government agency with jurisdiction has determined finally to be in violation of any federal, state, or local law or regulation prohibiting discrimination on the basis of race, color, religion, age, national origin, gender, or physical or mental handicap shall be ineligible for assistance from CPB, unless the applicant shall demonstrate to the satisfaction of CPB that the violation has been fully corrected or that it is in full compliance with all remedial provisions of such final determination.

Effective Date

The provisions of this policy statement shall become effective with respect to assistance granted or applications for assistance filed pending on or after March 1, 1974 (revised July 1976; further revised February 1985).

