



## BROADCASTING AGREEMENT

This Broadcasting Agreement (“Agreement”) is between **METRO RADIO, INC.**, a Virginia corporation (“Metro Radio”) and the undersigned Programmer (“Programmer”).

### Recitals

**R-1.** Metro Radio owns several radio stations serving Northern Virginia and Washington, D.C.

**R-2.** Programmer desires to purchase air time on certain of Metro Radio’s stations to broadcast Programmer’s programming.

### Agreement

In consideration of the foregoing recitals, the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties hereto agree as follows:

**1. Sale of Air Time.** Metro Radio hereby agrees to sell the right to broadcast programming on a station or stations owned by Metro Radio on the terms set forth below and subject to all of the terms and conditions of this Agreement. Programmer’s programming may be rebroadcast or simulcast on other stations or translators owned by Metro Radio at Metro Radio’s sole discretion. The decision by Metro Radio to rebroadcast or simulcast Programmer’s programming on a Metro Radio station or translator in no way shall be deemed (i) to create any right in Programmer to have its programming rebroadcast or simulcast on such station or translator or (ii) to waive Metro Radio’s right to terminate any rebroadcast or simulcast of Programmer’s programming without notice of any kind and without liability.

**a. Radio Station.** The air time sold shall be on the radio station(s) indicated on Schedule A attached hereto and made a part hereof (the “Station(s)”).

**b. Broadcast Days.** Programmer’s Broadcast Days shall be as set forth on Schedule A.

**c. Broadcast Hours.** Programmer’s Broadcast Hours shall be as set forth on Schedule A.

**d. Per Program Rate, Total Weekly Rate, Total Monthly Rate.** The Per Program Rate, Total Weekly Rate, Monthly Rate shall be the amounts specified on Schedule A. The Per Program Rate or Total Weekly Rate is due in advance of each broadcast month (on or before the first). In the event that the Per Program Rate or Total Weekly Rate is not paid, Metro Radio shall have the right to refuse to allow Programmer to broadcast on the Station(s) and cancel the broadcasting agreement. A fee of \$25.00 shall be assessed to Programmer on all returned checks.

**e. Provision of Programming.** Programmer is responsible for providing content for time slot. Programmer is responsible for payment for the entire broadcast agreement term regardless of whether or not content is provided. Programmer is responsible for transmitting, at Programmer’s expense, its programming to the Station(s)’ transmitting facilities via a mode of transmission (e.g., satellite facilities, microwave facilities, internet and/or telephone lines) that will ensure that the programming meets technical and quality standards at least equal to those of the Station(s)’ broadcasts made prior to the commencement of this Agreement.

### 2. Contract Term, Termination, Cancellation.

**a. Term.** Subject to the rights of Metro Radio to terminate or cancel this Agreement as set forth herein, the Term of this Agreement and the period for which Programmer shall have the right to broadcast on the Station(s) shall be for the period as set forth on Schedule A.

**b. Renewal or Extension.** Any renewal or extension of this Agreement shall require a separate written agreement of the parties.

**c. Termination.** Metro Radio shall have the right to immediately terminate this Agreement upon written notice to Programmer, without liability, if:

- (i) Programmer becomes subject to any voluntary or involuntary order of any court or government agency limiting Programmer’s right to broadcast over the public airways;
- (ii) Programmer breaches any of the provisions of this Agreement;
- (iii) Programmer fails to make payments when due as provided for in this Agreement;
- (iv) Programmer files a petition in bankruptcy or is adjudicated bankrupt or insolvent, or makes an assignment for the benefit of creditors or an arrangement pursuant to any bankruptcy law;
- (v) any representation or warranty in this Agreement made by Programmer is not true and correct as of the date of this Agreement and any point thereafter; or
- (vi) as otherwise specified in this Agreement.
- (vii) this agreement is VOID if not executed on or before March 1, 2019.

### d. Cancellation.

Initials

Programmer \_\_\_\_\_ Station \_\_\_\_\_

**3. Programmer's Representations and Warranties.** Programmer represents and warrants to Metro Radio that:

**a. Programmer's Principal Office.** Programmer's principal executive office is located at the address set forth below its signature, and Programmer has no other offices except as follows:

**b. Programmer's Authority.** If the Programmer is a corporation, joint venture or a general or limited partnership, Programmer's execution and delivery of this Agreement and its consummation of the transactions contemplated hereby:

- (i) have been duly authorized by all necessary corporate, joint venture or partnership action on the part of the Programmer;
- (ii) will not conflict with or result in any violation of any organic entity document, by-law provision, partnership or operating agreement, or other agreement binding upon Programmer;
- (iii) will not violate any agreement, instrument, judgment, decree, order, statute, regulation or rule applicable to Programmer; and
- (iv) will not require the giving of any notice to, the making of any filing with or the obtaining of any consent or waiver from any person, entity, court, political subdivision or agency.

**c. No Brokerage Arrangements.** Programmer has not dealt with any broker, finder, or other person or entity entitled to any financial remuneration in connection with the transactions contemplated hereby. Programmer shall be responsible for any costs associated with any broker, finder, or other person or entity entitled to any financial remuneration in connection with the transactions contemplated hereby.

**d. Familiarity with Station Policies.** Programmer is familiar with and will adhere to the programming and commercial policies and practices of Metro Radio and the Station(s).

**e. Familiarity with Federal Communications Commission ("FCC") and other Regulatory and Legal Requirements.** Programmer is familiar with and will adhere to the rules and regulations of the FCC, the rules and regulations of the Federal Trade Commission ("FTC") and all other federal, state, and local laws.

**f. Broadcast Refusals.** Programmer is aware of and acknowledges Metro Radio's and the Station(s)' right to cancel or refuse to broadcast any programming content that, in the sole discretion of Metro Radio and the Station(s), is deemed inconsistent with any FCC or FTC rule or regulation, or any federal, state or local law.

**g. Commercial Content Verification.** Programmer is aware of and acknowledges Metro Radio's and the Station(s)' right to verify and delete, as provided by this Agreement, Programmer's or Programmer's sponsors' commercial content.

**h. EAS Broadcasts.** Programmer is aware of and acknowledges the requirement for and will cooperate with the Station(s) in complying with the FCC's EAS rules and policies.

**i. Compliance with Law and Regulation.** Programmer's execution and performance of this Agreement is, and will remain, in compliance with FCC rules, regulations and policies, including, without limitation, 47 C.F.R. 73.3555. All advertisements and broadcasts pursuant to this Agreement shall strictly comply with all laws, regulations and ordinances that may apply to program and advertisement broadcasts, including, but not limited to, all applicable FCC rules and regulations. Programmer will immediately serve Metro Radio and the Station(s) with notice and a copy of any letters of complaint it receives concerning any programming. Specifically, and not by way of limitation, Programmer is aware of and shall ensure that:

- (i) all sponsorship identification announcements are properly made in every broadcast;
- (ii) accurate entries shall be made in the program logs to reflect by whom messages are sponsored and the exact length of each commercial; and
- (iii) all advertising copy to be broadcast by Programmer is reviewed by Programmer to assure conformance with all applicable FCC rules and FTC rules, including those concerning the broadcast of false, misleading and deceptive advertising.

**j. Music Licenses.** During the term, Programmer will obtain and maintain in full force and effect in its own name all music licenses necessary for its Programming.

**k. Political Time.** During the term, Programmer shall cooperate with Metro Radio and the Station(s) in their attempt to comply with their political broadcast responsibilities and shall supply information promptly to Metro Radio and the Station(s) as may be necessary to comply with the FCC's political time record keeping and lowest unit charge requirements. Programmer shall release advertising availabilities to Metro Radio and the Station(s) during the Broadcasting Days/Hours as necessary to permit compliance with the FCC's political broadcast rules.

**4. Programmer Indemnity.** Programmer will indemnify, defend and hold harmless Metro Radio, the Station(s), and their shareholders, owners, officers, directors, agents and employees from any and all liability for any cause of action, including, but not limited to, defamation, libel, slander, trademark, trade name or copyright infringement, fraud, illegal competition or trade practices, violation of privacy or property rights, or in connection with any FCC or FTC action, arising from (i) any programming content provided by Programmer on the Station(s), (ii) the breach by Programmer of any of Programmer's representations, warranties, covenants or other agreements contained in or arising out of this Agreement, and (iii) Programmer's conduct of its business and operations at the Station(s). The obligations under this Section shall survive any termination of this Agreement.

**5. Metro Radio Rights.** In addition to and not in limitation of any other rights of Metro Radio specifically set forth in this Agreement, Metro Radio shall have the authority, in its sole discretion, to:

**a. Substitute Broadcast Times.** In the event that, for any reason, Metro Radio or the Station(s) are unable to broadcast any of Programmer's programming or announcements at any stipulated time on Schedule A, the Station(s) may make the broadcasts at subsequent times, in the same or comparable classes of air time, without liability to Programmer.

Initials

Programmer \_\_\_\_\_ Station \_\_\_\_\_

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- b. Enforce Station Policies.** Take all necessary steps to ensure that Programmer adheres to the programming and commercial policies and practices of Metro Radio and the Station(s).
- c. Enforce FCC Compliance.** Take all necessary steps to ensure that Programmer adheres to the rules and regulations of the FCC.
- d. Refusal to Broadcast.** Refuse to broadcast any programming content that, in the sole discretion of Metro Radio or the Station(s), is deemed inconsistent with any FCC or FTC rule or regulation or other federal, state or local law.
- e. Commercial Content Verification.** Verify Programmer's or Programmer's sponsors' commercial content and to delete any commercial announcements that do not comply with the requirements of the FCC's sponsorship identification policy.
- f. EAS Broadcasts.** Ensure that all required broadcast content, including, but not limited to EAS Broadcasts, is broadcast as required, notwithstanding Programmer's Broadcast Days or Hours. Programmer agrees to cooperate with Metro Radio and the Station(s) to ensure that EAS transmissions are properly performed in accordance with Metro Radio or the Station(s)' instructions.

**6. Limitation of Metro Radio Liability.** IN NO EVENT SHALL METRO RADIO BE LIABLE TO PROGRAMMER FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS INCURRED BY PROGRAMMER OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF METRO RADIO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The aggregate and cumulative liability of Metro Radio to Programmer for direct and proven damages hereunder shall in no event exceed the Per Program Rate or Total Weekly Rate.

**7. Individual Guarantee.** In the event that Programmer is not an individual, the undersigned individual signing on behalf of Programmer, as a material inducement to Metro Radio to enter into this Agreement, hereby guarantees to Metro Radio the performance of all of Programmer's obligations contained in this Agreement.

**8. Control of the Station(s).** Notwithstanding anything to the contrary in this Agreement, as long as Metro Radio remains the licensee of the Station(s), Metro Radio will have full authority, power and control over the operation of the Station(s).

**9. Miscellaneous.**

- a. Recitals Incorporated.** The recitals are true and correct and incorporated herein by reference as substantive provisions of this Agreement.
- b. Schedules and Exhibits Incorporated.** All Schedules and Exhibits referred to in this Agreement are incorporated herein and made a part hereof as if fully set forth herein.
- c. Notice.** Any notice required or permitted by the provisions hereof shall be conclusively deemed to have been received by a party hereto on the day it is delivered to such party at the address indicated below or at such other address as may be specified by such party in writing, or, if sent by certified mail, three (3) business days after the date of mailing:

For Metro Radio: Metro Radio, Inc.  
 Attn: Dave Houston  
 11240 WAPLES MILL ROAD, SUITE 405  
 FAIRFAX, VA 22030  
 PHONE 703-659-0406  
 FAX 703-865-6316

For Programmer: The address set forth on the Signature Page below

- d. Choice of Law.** This Agreement shall be construed in accordance with and governed by the laws of the Commonwealth of Virginia, without regard to the conflicts of law's provisions thereof.
- e. Waiver of Trial by Jury.** Programmer waives the right to trial by jury.
- f. Jurisdiction.** Programmer consents to venue and the nonexclusive jurisdiction of any Virginia state court sitting in Fairfax County and, when federal jurisdiction applies, the U.S. District Court for the Eastern District of Virginia with respect to any controversy arising out of or relating to this Agreement or any supplement hereto or to any transaction in connection herewith.
- g. Attorney's Fees.** In the event Metro Radio is successful in any litigation, arbitration or administrative hearing or proceeding with Programmer, Metro Radio shall be entitled to recovery of its attorneys' fees and other costs incurred in connection with any such litigation, arbitration or administrative hearing or proceeding from Programmer.
- h. Amendment; Remedies Cumulative.** No amendment, modification or waiver of, or consent with respect to, any provision of this Agreement shall in any event be effective unless the same shall be in writing and signed by both parties. No failure or delay by Metro Radio to exercise any right or power under this Agreement nor any partial exercise of any such right or power nor the exercise of any other right or power shall operate as a waiver of any right or power under this Agreement. Except as otherwise provided in this Agreement, the rights and remedies provided in this Agreement are cumulative and not exclusive of any other rights or remedies that Metro Radio may otherwise have.
- i. Entire Agreement.** This Agreement sets forth the entire agreement and understanding of the parties hereto and hereby merges and supersedes all prior negotiations and discussions, whether oral or written.

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 Programmer \_\_\_\_\_ Station \_\_\_\_\_  
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**j. Assignment.** Programmer shall not assign this Agreement without Metro Radio's prior written consent, which may be withheld in Metro Radio's absolute discretion. Metro Radio may assign its rights and obligations in whole or in part to any assignee of the FCC licenses of the Station(s). This Agreement shall benefit and be binding upon the parties hereto and their respective successors and assigns.

**k. Call Signs.** During the Term, Metro Radio will retain all rights to the call letters of the Station(s) or any other call letters which may be assigned by the FCC for use by the Station(s).

**l. Severability.** If any provision of this Agreement is held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if it does not contain such invalid, illegal, or unenforceable provision.

**m. Counterpart Signatures.** This Agreement may be signed in one or more counterparts, each of which will be deemed a duplicate original.

**n.** Programmer is not an agent of Metro Radio and shall have no authority to enter into any commitments on behalf of Metro Radio. Programmer shall not hold itself out as an agent of Metro Radio. Nothing contained herein shall be deemed to create a joint venture or partnership.

Initials

Programmer\_\_\_\_\_Station\_\_\_\_\_



11240 WAPLES MILL ROAD, SUITE 405  
FAIRFAX, VA 22030  
PHONE 703-659-0406  
FAX 703-865-6316

## Schedule A

Broadcast Agreement between  
Metro Radio, Inc.  
And

**West Virginia Radio Corporation** (“Programmer”)

**MONDAY, JUNE 03, 2019**

Radio Station(s): **WXDC 92.9 FM and WCST AM 1010**

Contract Term: **May 1, 2019 to October 31, 2020**

Broadcast Days: **Monday-Sunday**

Broadcast Hours: **24 hours a day**

Per Program Rate: **[REDACTED]**

[REDACTED]

- Programmer is responsible to air FCC legal ID at the top of every hour. WXDC & WCST Berkley Springs.
- Programmer would be responsible for airing five quarterly local issue programs reports.
- Programmer is brokering the station and is responsible for entire contract term regardless if content provided.
- Programmer is responsible for sending show content to main transmitter for airing on broadcast day and hour.
- Programmer is responsible for paying Per Program Rate on or before the first day of each month.
- Programmer is responsible Music License Fees (ASCAP, BMI, SESAC)
- Programmer is responsible for 100% of operational costs from May 1, 2019 through consummation of the asset purchase agreement.

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Programmer \_\_\_\_\_ Station \_\_\_\_\_

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11240 WAPLES MILL ROAD, SUITE 405  
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**Addendum to Schedule A**

Broadcast Agreement between  
Metro Radio, Inc.  
And

**West Virginia Radio Corporation** (“Programmer”)

**Programmer: West Virginia Radio Corporation**

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

Signature

Dale B. Miller

President & CEO

West Virginia Radio Corporation

Corporate Offices

[260 Spruce Street](#)

[Morgantown, WV 26505](#)

Direct: [\(304\) 554-3906](#)

Fax: [\(304\) 554-3924](#)

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

**Metro Radio, Inc.**

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

(Signature)

Dave Houston

Chief Executive Officer

Metro Radio Inc.

O) [703-659-0406](#)

F) [703-865-6316](#)

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

Initials

Programmer \_\_\_\_\_ Station \_\_\_\_\_

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