

## LOCAL MARKETING AGREEMENT

THIS LOCAL MARKETING AGREEMENT (this "Agreement") is made this 1st day of August, 2019, by and between EUREKA BROADCASTING CO., INC., a California corporation ("Licensee"); and KPOD, LLC, a California Limited Liability Company ("Programmer").

### RECITALS

A. Licensee is the licensee of the following radio broadcast stations (each a "Station" and together the "Stations"):

- a. KURY-AM, Brookings, Oregon, FCC Facility ID# 35801;
- b. KURY-FM, Brookings, Oregon, FCC Facility ID# 35798; and
- c. K287CF, Brookings, Oregon, FCC Facility ID# 202482.

B. Programmer desires, in conformity with the rules, regulations and policies (the "FCC Rules") of the Federal Communications Commission ("FCC") and this Agreement, to use the Stations' broadcasting time for the presentation of programming, including the sale of advertising time.

C. Licensee desires to accept the programming produced by Programmer and to make broadcasting time on the Stations available to Programmer on terms and conditions that conform to the FCC Rules and to this Agreement.

D. The parties have entered into an Asset Purchase Agreement dated as of August 1, 2019, for sale by Licensee and purchase by Programmer of certain assets of the Stations (the "Purchase Agreement").

E. This Agreement and the Purchase Agreement are interrelated according to their respective provisions.

NOW, THEREFORE, in consideration of the above recitals and mutual promises and covenants contained in this Agreement, the parties, intending to be legally bound, agree as follows:

### 1. Sale of Stations' Air Time.

#### 1.1 Scope

Beginning on August 1, 2019 (the "Commencement Date"), Licensee shall make available to Programmer all the Stations' air time, excluding only the Reserved Time and time for repair as provided in Section 5.4 of this Agreement, for broadcast of programming provided by Programmer. Subject to the restrictions set forth in Section 2.3, Programmer shall provide programming of its selection, together with commercial matter, news, public service announcements, and other suitable programming for broadcast on the Stations. Licensee may set aside such time as it may require (up to eight (8) hours per week on each Station) during the hours of midnight to 6 a.m. Monday through Saturday and midnight to 9 a.m. Sunday (the

“Reserved Time”) for the broadcast of its own regularly scheduled news, public affairs, and other programming.

### **1.2 Term**

This LMA shall remain in place for six (6) months from the Commencement Date (the “LMA Period”), unless extended by mutual agreement of the Parties, superseded by a sale of the Station to Programmer, or otherwise terminated. In the event this LMA shall carry over due to time required to obtain the FCC grant to an assignment of the Station’s FCC License, the terms contained herein shall continue on a month-to-month basis until such time that the assignment may be granted and consummated..

### **1.3 Consideration**

As consideration for this Agreement, Programmer shall pay Licensee the monthly fee (“Monthly Fee”) set forth in Schedule I attached to this Agreement. In addition, Programmer shall reimburse Licensee for Licensee’s reasonable Operating Expenses (as defined on Schedule I). The Monthly Fee will be paid in advance by Programmer to Licensee on the first day of each calendar month, commencing on the date of this Agreement (and shall be prorated for any partial month). The Operating Expenses shall be reimbursed in the manner set forth in subsection 2.1.1 of this Agreement.

### **1.4 Certifications**

Pursuant to Note 2(j)(3) to Section 73.3555 of the FCC Rules, Licensee certifies it maintains ultimate control over the Stations’ facilities, including, specifically, control over station finances, personnel and programming, and Programmer certifies this Agreement complies with Section 73.3555(a), (c) and (d) of the FCC Rules.

## **2. Operation**

### **2.1 Licensee’s Responsibilities and Operational Expenses.**

#### **2.1.1 Expenses**

Licensee shall be responsible for, and pay in a timely manner, the Operating Expenses, excepting only the costs incurred directly by Programmer for the production of and delivery to the Stations of the programming to be broadcast pursuant to this Agreement; *provided, however*, that such Operating Expenses shall be reimbursed by Programmer in the manner set forth in Schedule I.

#### **2.1.2 Regulatory Compliance**

Licensee shall be responsible for the Stations’ compliance with all applicable provisions of the Communications Act of 1934, as amended (the “Communications Act”), the FCC Rules and all other applicable laws. Licensee shall at all times be responsible for meeting all of the FCC’s requirements with respect to public service programming, for maintaining the political and public inspection files and each Station’s logs, and for the preparation of issues/programs lists. Programmer shall also

provide, upon Licensee's reasonable request, such other information necessary to enable Licensee to prepare any other records and reports required by the FCC and local, state or other federal governmental authorities, provided such information is reasonably available to Programmer. Licensee shall, on a regular basis, assess the needs of its community and address those needs in connection with the preparation of its public affairs programming to the extent that Licensee deems appropriate in order to supplement the public interest programming presented by Programmer. Licensee shall also record those needs and place the issues/programs list in each Station's Online Public Inspection File quarterly. Further, promptly upon Licensee's request, Programmer shall provide Licensee with all information reasonably available to Programmer with respect to Programmer's programs which are responsive to public needs and interests so as to assist Licensee in the preparation of required programming in the satisfaction of its community service needs.

### **2.1.3 Licensee Personnel**

Licensee shall engage and retain personnel as may be required to comply with the FCC's requirements for staffing the Stations' main studio, and Licensee's President will be responsible for the daily operations of the Stations.

### **2.1.4 Studios**

Upon the Commencement Date, Licensee will, subject to the terms and conditions herein, make available to Programmer the broadcast transmission facilities of the Station on a twenty-four (24) hour per day, seven (7) day per week basis for carriage on the Station of programming content produced and/or selected by Programmer and delivered by Programmer provided that any and all programming material proffered by Programmer for carriage on the Station will be in material compliance with any and all applicable laws and governmental regulations, including but not limited to the Communications Act of 1934, as amended (the "Act"), and the rules and regulations of the FCC. To facilitate the production of programs for the Stations, Programmer and Licensee shall, for a period not to exceed five (5) days after the Commencement Date, use their own respective equipment and software for traffic and logging on a parallel basis. Further, Seller will provide Buyer (via printout or thumb drive) a complete list of customers for the Stations and all orders on record to be scheduled through the end of the year. Upon the Commencement Date, Seller will provide Buyer with the customer information through the end of business, July 31, 2019. Further, Seller will continue to prepare a traffic log from August 1 through August 7, 2019. On August 7, 2019, Seller will provide advance traffic logs for the period of August 8, 2019 through August 12, 2019. Any interim orders will have to be input by Buyer.

### **2.1.5 Intellectual Property**

During the term of this Agreement, Licensee grants Programmer a license to use all intellectual property to be sold to Programmer under the Purchase Agreement.

### **2.1.6 FCC Licenses**

Licensee shall maintain all authorizations required for the operation of the Stations in full force and effect during the term of this Agreement, unimpaired by any acts or omissions of Licensee.

### **2.1.7 Licensee Assets**

During the term of this Agreement, Licensee shall not sell, or otherwise dispose of, any of the assets used for the operation of the Stations, except as explicitly permitted by the Purchase Agreement.

### **2.1.8 Insurance**

During the term of this Agreement, Licensee shall maintain in effect all insurance covering assets used in the operation of the Stations in the amounts and on all other terms described in the schedules to the Purchase Agreement.

### **2.1.9 Maintenance, Repair and Replacement of Assets**

During the Term hereof and consistent with the terms of sub-Section 6.5.4 of the Purchase Agreement, Buyer shall be responsible for the maintenance of the Stations' Tangible Personal Property and use, operate, and maintain all of the assets in a reasonable manner and in accordance with the terms of any FCC Licenses and the FCC Rules. Licensee shall use the proceeds of any claim under any insurance policy solely to repair, replace, or restore any of the assets that are lost, damaged, impaired, or destroyed.

### **2.1.10 Music Licenses**

During the term of this Agreement, Licensee shall maintain in effect its existing contracts with music licensing agents (such as ASCAP, BMI, GMR and SESAC). Licensee grants Programmer a license to use the licenses granted to Licensee in such agreements.

### **2.1.11 Traffic and Logging System.**

Seller agrees to support Buyer in the management and recording of the stations traffic and logging system for seven (7) days following commencement of the LMA, at the conclusion of which it will prepare advance logs for the next succeeding five (5) days for delivery to Buyer and thereafter to be updated solely by Buyer.

## **2.2 Programmer's Responsibilities**

Programmer shall employ and be responsible for the salaries, taxes, insurance, and related costs for all personnel used in the production of the programs supplied to the Stations by Programmer under this Agreement, and all other costs incurred by Programmer for the

production of such programs. Programmer shall be responsible for any expenses incurred in the origination and/or delivery of programming from any remote location to the Stations' transmitter sites, and for any publicity or promotional expenses incurred by Programmer. Programmer shall maintain in full force and effect through the term of this Agreement insurance with responsible and reputable insurance companies in customary amounts covering acts and omissions of its employees and agents (including claims of defamation and infringement arising from its programming) and shall name Licensee as an additional insured thereunder. Programmer shall use due care in the use of any equipment or other property of Licensee. Programmer shall reimburse Licensee for any damage (normal wear and tear excepted) to Licensee's equipment or other property caused by Programmer or any employee, contractor, agent or guest of Programmer. Such reimbursement shall be made within five (5) business days of Licensee's written notice to Programmer of the cost of such damage. Programmer shall coordinate with Licensee the Stations' hourly station identification announcements so that such announcements are aired in accord with the FCC Rules. In addition, Programmer shall coordinate with Licensee the broadcast of such sponsorship identification announcements as are necessary and appropriate concerning the programming supplied by Programmer under this Agreement.

### **2.3 Advertising and Programming**

Programmer shall be entitled to all revenue from the sale of advertising or programming broadcast on the Stations on or after the Commencement Date, except for revenues from advertising or program time sold by Licensee for broadcast during the hours reserved for Licensee's programming. Programmer will make no change in the Station's formats and will continue to broadcast the programming set forth on the list of "KURY Radio Programming Contracts" attached as Attachment B, excepting only those programs which Licensee consents to cease broadcasting, provided, however, the Shopping Show™ will no longer be broadcast over the Stations and Programmer will need to find replacement programming therefor.

### **2.4 Licensee's Liabilities**

Except as expressly set forth in this Section 2.4 or as provided in the Purchase Agreement, Programmer expressly does not assume, shall not assume or be deemed to assume any of Licensee's liabilities, obligations or commitments. On the Commencement Date, Licensee shall assign to Programmer, and Programmer shall assume and undertake to pay, discharge and perform, all rights, obligations and liabilities of Licensee under: (i) all contracts with advertisers for the sale of advertising time on the Stations; (ii) all trade and barter agreements relating to the Stations (collectively, the "Assumed Contracts") insofar as such Assumed Contracts: (a) relate to periods for the broadcast of advertising time to occur on and after the Commencement Date; (b) arise out of Programmer's operation of the Stations pursuant to this Agreement on and after the Commencement Date; (c) arose in the ordinary course of business; and (iii) all programming contracts described in schedules to the Purchase Agreement.. Licensee shall use commercially reasonable efforts to obtain the consent of any third party necessary for the assignment to Programmer of any of the Assumed Contracts.

### **2.5 Political Time**

At the later of: (a) at least ninety (90) days before the start of any primary or general election campaign; or (b) the Commencement Date, Programmer shall clear with Licensee the rates to be

charged political candidates for public office to be sure that the rate is in conformance with applicable law and policy. As soon as practicable, but in any event within twenty-four (24) hours of any request to purchase time on any of the Stations on behalf of a candidate for public office or to support or urge defeat of an issue on an election ballot, Programmer shall report the request, and its disposition, to Licensee so that appropriate records can be placed in the public inspection file for each Station. In the event that Programmer fails to provide adequate broadcast time for the broadcast of programming or advertising by political candidates, Licensee shall have the right to preempt Programmer programming to make time available to these political candidates.

## **2.6 Licensee's Accounts Receivable**

Upon the Commencement Date of this LMA, Seller shall provide to Buyer a true and complete list of Accounts Receivable as of the Commencement Date and the aging thereof. During the One Hundred Twenty (120)-day period following the Commencement Date (the "Collection Period"), Buyer shall use reasonable efforts to collect the Accounts Receivable, consistent with its usual collection practices (but without obligation to institute legal proceedings or use any other extraordinary means of collection). Each payment received by Buyer that is not specifically designated in writing as a payment of a particular invoice or invoices shall be presumptively applied by Buyer to the Account Receivable for such customer outstanding for the longest amount of time; provided, however, that if, during the Collection Period, Buyer or Seller receives a written notice of dispute from a customer with respect to an Account Receivable that has not been resolved, Buyer shall apply any payments from such customer to such customer's oldest, non-disputed Account Receivable. Buyer shall remit such collections to Seller within ten (10) days after the end of each calendar month in the Collection Period. At the end of the Collection Period, Buyer shall return to Seller any uncollected Accounts Receivable, and Buyer shall have no further obligation with respect to the Accounts Receivable.

## **2.7 Rights to Programs**

All right, title and interest in and to the programming produced by Programmer for the Stations pursuant to this Agreement and the right to use such programming in any manner and in any media whatsoever shall be and remain vested at all times solely in Programmer, provided, however, that upon termination of this Agreement, other than under subsection 6.1.2 of this Agreement as a result of breach by Licensee or under subsection 6.1.4, Licensee shall have the option to require Programmer to assign to it without additional consideration such right, title and interest in any or all such programming as Licensee may chose as part of its continuation of programming for the Stations.

## **3. Prorations**

### **3.1 Apportionment of Income and Expense**

Licensee shall be entitled to all income attributable to, and shall be responsible for all expenses arising out of, the operation of the Stations until 12:01 a.m. on the Commencement Date. Programmer shall be entitled to all income attributable to, and shall be responsible (whether directly pursuant to Section 2.2 or indirectly by reimbursing Licensee pursuant to subsection 2.1.1 of this Agreement) for all expenses arising out of, the operation of the Stations after 12:01 a.m. on the Commencement Date. All overlapping items of income or expense shall be prorated or reimbursed, as the case may be, as of 12:01 a.m. on the Commencement Date.

### **3.2 Employee Compensation**

Licensee shall pay all compensation and benefits owed to its employees up to and including the Commencement Date. At its option, Programmer shall, after the Commencement Date, shall offer employment to those of Licensee's employees who worked at the Stations as of that date on terms and conditions determined by Programmer in Programmer's sole discretion.

## **4. Compliance with regulations**

### **4.1 Licensee Authority**

Nothing in this Agreement shall abrogate the unrestricted authority of the Licensee to discharge its obligations to the public and to comply with all applicable law and the FCC Rules. Without limiting the generality of the foregoing, Programmer recognizes that Licensee will have certain obligations to broadcast programming that covers issues of public importance in the service area of the Stations. The parties intend that Licensee will use a substantial portion of the Reserved Time to satisfy its programming obligations to the extent that Licensee determines a need to supplement Programmer's public interest programming.

### **4.2 Stations' Identification Announcements/EAS Tests/Duty Operators**

During all hours when Programmer is delivering the programming for broadcast over the Stations, Programmer shall include in its programming, at the appropriate times, the hourly station identification announcements required to be broadcast over the Stations. During all hours when Programmer's programming is being broadcast over the Stations, Programmer shall maintain at the location from which the programming is being originated a receiver capable of receiving test messages and alerts over the Emergency Alert System ("EAS"), which EAS receiver shall be either continuously monitored or compliance with FCC EAS rules shall be had in any other legal manner. If an EAS test or alert is received during the hours when Programmer is delivering its programming for broadcast over the Stations, Programmer shall cause the appropriate EAS test or alert message to be transmitted over the Stations and shall, in the event of an actual activation of the EAS, cause all steps that each Station is required to take in such an event to be taken, and shall be responsible for assuring that the receipt and broadcast of all EAS tests and alerts are properly recorded in the station log.

### **4.3 Additional Licensee Obligations**

Licensee retains the right to pre-empt Programmer's programming in case of an emergency, and both parties shall cooperate in the broadcast of emergency information over the Stations. Licensee shall maintain a main studio within the principal community contour of each Station or at such other location as complies with the FCC Rules, and shall also maintain each Station's Online Public Inspection Files in accord with the FCC Rules.

#### **4.4 Access to Programming Materials**

Licensee, for the purpose of ensuring Programmer's compliance with all applicable laws, including the Communications Act, the FCC Rules, and the Stations' policies, shall be entitled to review on a confidential basis any of Programmer's programming.

#### **4.5 Regulatory Changes**

In the event of any order or decree of an administrative agency or court of competent jurisdiction, including without limitation any material change or clarification in the FCC Rules, that would cause this Agreement to be invalid or violate any applicable law, and such order or decree has become effective and has not yet been stayed, the parties will use their respective best efforts and negotiate in good faith to modify this Agreement to the minimum extent necessary so as to comply with such order or decree without material economic detriment to either party, and this Agreement, as so modified, shall then continue in full force and effect.

### **5. Station Broadcasts**

#### **5.1 Station Broadcast Guidelines**

Licensee has adopted and will enforce certain guidelines ("Guidelines"), a copy of which appears as Attachment A to this Agreement. Programmer agrees and covenants to comply in all material respects with the Guidelines and the FCC Rules with respect to the programming supplied to the Stations by Programmer.

#### **5.2 Licensee Control of Programming**

Programmer recognizes that the Licensee has full authority to control the operation of the Stations. The parties agree that Licensee's authority includes, but is not limited to, the right to reject, pre-empt, and replace such portions of Programmer's programming which Licensee reasonably believes to be contrary to the public interest; *provided, however*, that Licensee shall use its best efforts to give Programmer prior notice of Licensee's objection to Programmer's proposed programming, including the basis for such objection, and a reasonable opportunity to substitute acceptable programming. Notwithstanding the generality of the foregoing, Programmer may not make any change in a Station's format or technical equipment without the Licensee's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.



### **5.3 Preemption of Programming**

In the event Licensee pre-empts programming from the Programmer pursuant to the terms of this Agreement, then Programmer shall be entitled to a deduction from the Monthly Fee as provided in this Agreement (the "Deduction") for each hour that is preempted by Licensee, but not including the Reserved Time. The Deduction under this Section 5.3 shall be in an amount equal to the product of: (i) the Monthly Fee, multiplied by (ii) the result of dividing the number of hours preempted by six hundred eighty-eight (688).

### **5.4 Failures to Broadcast**

If the broadcasts of any of the Stations are interrupted or discontinued after the Commencement Date, other than as a result of a force majeure that causes an interruption or discontinuance of broadcasting for less than twelve (12) consecutive hours or as a result of circumstances or events attributable to Programmer, Programmer shall be entitled to deduct from the Monthly Fee a fee as determined in this Agreement (the "Deduction") for each hour for which broadcasting is interrupted. The Deduction under this Section 5.4 shall be computed in the same manner as the Deduction under Section 5.3 of this Agreement, except that the hours under part (ii) of the formula shall be those that are interrupted. Notwithstanding the foregoing, Licensee shall have the right to interrupt broadcasting to take any or all of the Stations off the air for up to four (4) hours per week for regular maintenance, which shall not constitute a preemption of broadcasting for purposes of Section 5.3 during the hours of 1:00 a.m. to 5:00 a.m. Monday through Sunday, without reduction of the Monthly Fee.

### **5.5 Interruption of Normal Operations**

Programmer shall notify Licensee if either of the following (a "Specified Event") shall occur: (i) the regular broadcast transmissions of any Station in the normal and usual manner is interrupted or discontinued (except for regular maintenance pursuant to Section 5.4) or (ii) any Station is operated at less than fifty percent (50%) of its authorized effective radiated power. If a Specified Event persists for more than ninety-six (96) consecutive hours, other than due to circumstances or events attributable to Programmer, during any period of thirty (30) consecutive days, then Programmer may, at its option, terminate this Agreement by written notice given to Licensee not more than five (5) days after the expiration of such thirty (30)-day period; *provided, however,* that if Licensee is making good faith efforts to correct promptly such Specified Event and a period of more than thirty (30) days is reasonably required to correct the same, then Programmer may not terminate this Agreement if Licensee is diligently proceeding with such correction. In the event of termination of this Agreement by Programmer pursuant to this Section 5.5, the parties shall be released and discharged from any further obligation under this Agreement.

## **6. Termination**

### **6.1 Circumstances Permitting Termination**

In addition to other remedies available at law or equity, this Agreement may be terminated as set forth below by either Licensee or Programmer by written notice to the other, if the party seeking

to terminate is not then in material default or breach of this Agreement, upon the occurrence of any of the following:

**6.1.1** This Agreement is declared invalid or illegal in whole or substantial part by an order or decree of an administrative agency or court of competent jurisdiction, if such order or decree has gone into effect and has not been stayed, and if the parties are unable, after negotiating in good faith pursuant to Section 4.5 for a period of at least thirty (30) days, to modify this Agreement to comply with applicable law.

**6.1.2** The other party is in breach of its obligations under this Agreement and has failed to cure such breach: (i) within five business days after receipt of written notice from Licensee of Programmer's failure to pay any amount due pursuant to the provisions of this Agreement, or Programmer's breach of the Guidelines or any of the FCC Rules concerning the material broadcast by Programmer over the Stations, provided, however, that Licensee shall not be required to give such notice more than twice during any four (4)-month period, such that the second such delay in payment shall trigger a default by Programmer without need for notice by Licensee; or (ii) within ten (10) days after receiving written notice from the non-breaching party in the case of any other breach; *provided, however*, that, with respect to clause (ii), if the breach is one that cannot be cured with reasonable diligence within ten days, but could be cured within an additional thirty (30) days and the breaching party is diligently attempting to cure the breach, then the non-breaching party may not terminate this Agreement on account of such breach until such additional thirty (30)-day period has elapsed without a cure; and provided further that with respect to the interruption of normal operations, Section 5.5 shall apply and not this subsection 6.1.2.

**6.1.3** As provided in Section 5.5.

**6.1.4** The Closing as defined in, and in accordance with the terms of, the Purchase Agreement.

**6.1.5** Upon termination of the Purchase Agreement without the Closing.

**6.1.6** By the mutual consent of both parties.

## **6.2 Liabilities Upon Termination**

Upon any termination of this Agreement other than by the Closing, Licensee shall cooperate reasonably with Programmer to the extent permitted to enable Programmer to fulfill advertising or other programming contracts then outstanding upon termination of this Agreement, and Programmer shall extend its full cooperation to ensure a smooth transition of the programming and related activities pursued by Programmer under this Agreement back to Licensee. All

revenues generated by such programming broadcast after the date of termination, and all expenses incurred with respect thereto, shall be prorated between Programmer and Licensee as of the date of termination. Thereafter, neither party shall have any liability to the other except as provided by this Agreement and the Purchase Agreement.

### **6.3 Employees Upon Termination**

Upon termination of this Agreement other than under subsection 6.1.4 of this Agreement, Licensee shall have the right to hire or engage any of Programmer's employees or other persons engaged by Programmer to provide programming and related activities for the Stations, whereupon Programmer shall terminate such employees or persons and extend its full cooperation to ensure a smooth transition from Programmer to Licensee. Programmer further agrees that for a period of twelve months after termination of this Agreement other than under subsection 6.1.4 of this Agreement, neither it nor any of its affiliates shall solicit or hire or otherwise engage any of such former employees or other persons who have been hired or engaged by Licensee.

## **7. Indemnification**

### **7.1 Programmer's Indemnification**

Programmer shall indemnify, defend, and hold harmless Licensee from and against any and all claims, losses, costs, liabilities, damages, FCC forfeitures, and expenses (including reasonable legal fees and other expenses incidental thereto) of every kind, nature, and description, arising out of: (i) Programmer's broadcasts under this Agreement; (ii) Programmer's use of Licensee's equipment or other property; (iii) any misrepresentation or breach of any warranty of Programmer contained in this Agreement; and (iv) any breach of any covenant, agreement, or obligation of Programmer contained in this Agreement.

### **7.2 Licensee's Indemnification**

Licensee shall indemnify, defend, and hold harmless Programmer from and against any and all claims, losses, costs, liabilities, damages, FCC forfeitures, and expenses (including reasonable legal fees and other expenses incidental thereto) of every kind, nature and description, arising out of: (i) Licensee's broadcasts under this Agreement; (ii) any misrepresentation or breach of any warranty of Licensee contained in this Agreement; and (iii) any breach of any covenant, agreement or obligation of Licensee contained in this Agreement.

### **7.3 Procedure for Indemnification**

The party seeking indemnification under this Section ("Indemnitee") shall give the party from whom it seeks indemnification ("Indemnitor") prompt notice, pursuant to Section 8.6, of the assertion of any such claim, provided, however, that the failure to give notice of a claim within a reasonable time shall only relieve the Indemnitor of liability to the extent it is materially prejudiced thereby. Promptly after receipt of written notice, as provided in this Agreement, of a claim by a person or entity not a party to this Agreement, the Indemnitor shall assume the defense of such claim; *provided, however*, that if the Indemnitor fails, within a reasonable time

after receipt of written notice of such claim, to assume the defense, compromise, and settlement of such claim on behalf of and for the account and risk of the Indemnitor, the Indemnitee shall have the right to undertake the defense, compromise and settlement of such claim on behalf of and for the account and risk of Indemnitor.

#### **7.4 Dispute Over Indemnification**

If upon presentation of a claim for indemnity under this Agreement, the Indemnitor does not agree that all, or part, of such claim is subject to the indemnification obligations imposed upon it pursuant to this Agreement, it shall promptly so notify the Indemnitee. Thereupon, the parties shall attempt to resolve their dispute, including where appropriate, reaching an agreement as to that portion of the claim, if any, which both concede is subject to indemnification. If either Licensee or Programmer initiates any legal action or lawsuit against the other involving this Agreement, the prevailing party in such action or suit shall be entitled to receive reimbursement from the other party for all reasonable attorney's fees and other costs and expenses incurred by the prevailing party in respect of that litigation, including, any appeal, and such reimbursement may be included in the judgment or final order issued in such proceeding. Any award of damages following judicial remedy as a result of the breach of this Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum rate of interest allowed by law.

### **8. Miscellaneous**

#### **8.1 Assignment; Benefit and Binding Effect**

Neither party shall be allowed to assign any of its rights, title, obligations and/or interests under this Agreement without the prior written consent of the other party except that Programmer, without Licensee's consent, may assign this Agreement to any entity affiliated with, controlled by, or under common control with, Programmer, provided Programmer remains fully obligated hereunder. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

#### **8.2 Counterparts**

This Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

#### **8.3 Entire Agreement**

This Agreement, the Purchase Agreement and the attachments to such agreements embody the entire agreement and understanding of the parties and supersede any and all prior agreements, arrangements, and understandings relating to the matters provided for in this Agreement. No amendment, waiver of compliance with any provision or conditions of this Agreement, or consent pursuant to this Agreement, will be effective unless evidenced by an instrument in writing signed by the party against which such amendment, waiver or consent is sought to be enforced.

#### 8.4 Headings

The headings are for convenience only and will not control or affect the meaning or construction of the provisions of this Agreement.

#### 8.5 Governing Law

The obligations of Licensee and Programmer are subject to applicable federal, state and local law, rules and regulations, including, but not limited to, the Communications Act and the FCC Rules. The construction and performance of the Agreement will be governed by the laws of the State of Oregon except for the choice of law rules used in that jurisdiction.

#### 8.6 Notices

All notices, requests, demands, and other communications pertaining to this Agreement shall be in writing and shall be deemed duly given when delivered personally or mailed by certified mail, return receipt requested, postage prepaid, or by an overnight carrier that provides a written confirmation of delivery, addressed as follows:

To Programmer:

Michael R. Wilson, President  
KPOD, LLC  
1 Blackfield Dr., #333  
Tiburon, CA 93920  
Email: [mike@bicoastal.media](mailto:mike@bicoastal.media)

With copies (which shall not constitute notice to:

Robert E. Schwartz, Esq.  
Sherman, Silverstein, Kohl, Rose & Podolsky, PA  
308 Harper Drive, Suite 200  
Moorestown, NJ 08057  
Email: [rschwartz@shermansilverstein.com](mailto:rschwartz@shermansilverstein.com)

To Licensee:

Brian Papstein, President  
Eureka Broadcasting Co., Inc.  
1101 Marsh Road  
Eureka, CA 95501  
Email: [brian@eurekaradio.com](mailto:brian@eurekaradio.com)

With copies (which shall not constitute notice) to:

Greg Skall, Esq.  
Womble Bond Dickenson, LLC  
1200 19<sup>th</sup> Street, NW, Fifth Floor

Washington, DC 20036  
Email: greg.skall@wbd-us.com

Either party may change its address for notices by written notice to the other given pursuant to this Section 8.6. The providing of notice to any of the persons designated above to receive copies shall not constitute notice to any party.

### **8.7 Attorneys' Fees**

In the event of a default by either party which results in an arbitration or other proceeding for any remedy available under this Agreement, the prevailing party or parties shall be entitled to reimbursement from the other party or parties of each such prevailing party's or parties' legal fees and expenses, in amounts decided by the arbitrator or other trier of fact.

### **8.8 No Partnership or Joint Venture Created**

Nothing in this Agreement shall be construed or interpreted to make Licensee and Programmer partners or joint venturers, or to make one an agent or representative of the other, or to afford any rights to any third party other than as expressly provided in this Agreement. Neither Programmer nor Licensee is authorized to bind the other to any contract, agreement or understanding. Except as contemplated by this Agreement or the Purchase Agreement, Programmer and Licensee acknowledge that call letters, trademarks and other intellectual property shall at all times remain the property of the respective parties, and that neither party shall obtain any ownership interest in the other party's intellectual property by virtue of this Agreement.

### **8.9 Severability**

If any provision of this Agreement or the application of any provision in this Agreement to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected, and shall be enforced to the greatest extent permitted by law.


### **8.10 Date of Agreement**

This Agreement shall be dated and effective as of the date first entered above.

**LICENSEE  
EUREKA BROADCASTING CO., INC.**

By:   
Brian Papstein, President

**PROGRAMMER  
KPOD, LLC**

By:   
Michael R. Wilson, President

## **Attachment A GUIDELINES**

Programmer agrees to cooperate with Licensee in the broadcasting of programs of the highest possible standard of excellence and for this purpose to observe the following regulations in the preparation, writing and broadcasting of its programs:

I. **RELIGIOUS PROGRAMMING.** The subject of religion and references to particular faiths, tenets, and customs shall be treated with respect at all times. Programs shall not be used as a medium for attack on any faith, denomination, or sect or upon any individual organization.

II. **CONTROVERSIAL ISSUES.** Any discussion of controversial issues of public importance shall be reasonably balanced with the presentation of contrasting viewpoints in the course of overall programming; no attacks on the honesty, integrity, or like personal qualities of any person or group of persons shall be made during the discussion of controversial issues of public importance; and during the course of political campaigns, programs are not to be used as a forum for editorializing about individual candidates. If such events occur, Licensee may require that responsive programming be aired.

III. **NO PLUGOLA OR PAYOLA.** The mention of any business activity or "Plug" for any commercial, professional, or other related endeavor, except where contained in an actual commercial message of a sponsor, is prohibited.

IV. **ELECTION PROCEDURES.** At least ninety (90) days before the start of any primary or regular election campaign, Programmer will clear with Licensee the rate Programmer will charge for the time to be sold to candidates for public office and/or their supporters to make certain that the rate charged conforms to all applicable laws and Stations policy.

V. **REQUIRED ANNOUNCEMENTS.** Programmer shall broadcast: (a) an announcement in the form satisfactory to Licensee at the beginning of each hour to identify each Station; (b) announcements as required by law to indicate that program time has been purchased by Programmer; and (c) any other announcement that may be required by law, regulation, or Station policy.

VI. **CREDIT TERMS ADVERTISING.** Pursuant to rules and regulations of the Federal Trade Commission, any advertising of credit terms shall be made over each Station in accordance with all applicable federal and state laws.

VII. **NO ILLEGAL ANNOUNCEMENTS.** No announcement or promotion prohibited by federal or state law or regulation or any lottery or game shall be made over the Stations. Any game, contest, or promotion relating to or to be presented over the Stations must be fully stated and explained in advance, and such explanation be presented to Licensee, which reserves the right, in its sole discretion to reject any game, contest or promotion.



VIII. LICENSEE DISCRETION PARAMOUNT. In accordance with the Licensee's responsibility under the Communications Act and the FCC Rules, notwithstanding anything to the contrary herein, Licensee reserves the right to reject or terminate any programming or advertising proposed to be presented or being presented over the Stations which is in conflict with Stations policy or which in the judgment of Licensee or the Stations' General Manager would not serve the public interest.

IX. PROGRAMMING IN WHICH PROGRAMMER HAS A FINANCIAL INTEREST. Programmer shall advise Licensee with respect to any programming including commercial(s) concerning goods or services in which Programmer has a material financial interest. Any announcements for such goods and services shall clearly identify Programmer's financial interest.

X. PROGRAMMING PROHIBITIONS. Programmer shall not knowingly and intentionally broadcast any of the following programs or announcements:

- A. False Claims. False or unwarranted claims for any product or service.
- B. Unfair Imitation. Infringements of another advertiser's rights through plagiarism or unfair imitation or either program idea or copy, or any other unfair competition.
- C. Commercial Disparagement. Any unlawful disparagement of competitors or competitive goods.
- D. Profanity. Any programs or announcements that are slanderous, obscene or profane, either in theme or treatment.
- E. Descriptions of Bodily Functions. Any continuity which describes in a repellent manner internal bodily functions, excretory functions or symptomatic results or internal disturbances.
- F. Conflict Advertising. Any advertising matter or announcement that may, in the reasonable opinion of Licensee, be injurious or prejudicial to the interests of the public, the Stations, or honest advertising and reputable business in general.
- G. Fraudulent or Misleading Advertisement. Any advertising matter, announcement, or claim which Programmer knows to be fraudulent, misleading, or untrue.
- H. Programmer shall cause to be included on all advertising or sponsorship contracts certification substantially as follows: "NON-DISCRIMINATION POLICY: [Insert name of broadcaster] and its station[s] do not discriminate in underwriting or sponsorship

contracts on the basis of race or ethnicity. Any provision in any order or agreement for underwriting or sponsorship that purports to discriminate on the basis of race or ethnicity, even if handwritten, typed, or otherwise made a part of a particular contract, is hereby rejected."

Licensee may waive any of the foregoing regulations in specific instances if, in its reasonable opinion, good broadcasting in the public interest will be served thereby.

**Attachment B**  
**PROGRAMMING**

See attached one-page "KURY Radio Programming Contracts"

**Attachment C**  
**AM ADVERTISEMENTS**

See attached "KURY AM Orders"

**Attachment D**  
**FM ADVERTISEMENTS**

See attached "KURY FM Orders"

**Schedule 1**  
**Expenses to Be Reimbursed by Programmer**

1. All electricity, gas, water and other utility payments relating to the studios, towers and transmitter sites for the Station;
2. The music license fees and any other copyright costs attributable to programming broadcast on the Station, including, but not limited to, ASCAP, BMI, and SESAC license fees, to the extent not directly assumed by Programmer;
3. Insurance premiums paid by Licensee with respect to the Station;
4. The lease payments for the studios, towers and transmitter sites for the Station;
5. All costs attributable to telephone expenses, including equipment leasing payments;
6. Other necessary programming expenses as may be incurred through the normal conduct of business, to the extent not directly assumed by Programmer, including leases, and any applicable broadcast programming fees;
7. Expenses incidental or necessary to the servicing and maintaining of tangible personal property used by Programmer in the operation of the Station, to the extent not paid directly by Programmer ;
8. Engineering expenses; and
9. Costs associated with maintaining the web sites for the Station.
10. Costs associated with certain key employees.