

Time Brokerage Agreement

WDNY-AM, WDNY-FM Dansville, NY

This Time Brokerage Agreement (“Agreement”), dated as of the 1st day of September 2017 by and between Dansville Media, Inc. (“Broker”), and Genesee Media Corporation (“Licensee”), licensee of radio Stations WDNY-AM, Dansville, NY (FCC Facility ID No. 15369) and WDNY-FM, Dansville, NY (FCC Facility ID No. 15370) (“Stations”). WHEREAS, Licensee is engaged in the business of radio broadcasting on Stations pursuant to the authority granted by the Federal Communications Commission; and

WHEREAS, Licensee desires to make programming time available to Broker; and

WHEREAS, Broker desires to provide programming, and other services to Stations and Licensee;

NOW THEREFORE, for and in consideration of the mutual covenants herein contained, the parties hereto have agreed and do agree as follows:

WITNESSETH:

1. **Programming.** Subject to the preemption provisions contained in Section 6, Licensee agrees to make up to twenty-four (24) hours per day of its programming time on Stations available to air certain programming and advertising provided to it by Broker. Licensee will neither air nor sell nor barter any other programming time on the Stations during the term of the Agreement, except as provided otherwise in Section 7 of this Agreement.
2. **Term.** The term of this Agreement shall commence as of the Effective Date and shall continue until Closing on the Purchase of the Stations by Broker, unless terminated sooner pursuant to Section 11 hereof (the “Initial Term”).
3. **Fee.** In consideration of the Stations provided herewith, Broker agrees to pay Licensee the sum of **Six Thousand (\$6,000.00) per month**. The Fee is due on or before the first day of each calendar month during the Term hereof. If any such Fee payment is not received on or before the tenth day of any month during the term hereof it shall be considered late. Licensee shall then notify Broker in writing of the failure to receive timely payment of the Fee. Broker shall then have ten (10) days to remit payment of the Fee plus a five percent (5%) late charge. If a Fee payment is received after the tenth day of any month more than twice during the Term hereof, this Agreement may be terminated by Licensee upon 30 days’ written notice to Broker. Failure of Broker to remit the Fee plus late charge within ten (10) days of written notice shall constitute Default. Pro-rata payments shall be made for any month in which the first day or last day of the Term occurs on other than the first day or the last day of a calendar month. The fee paid by Broker during the first month will be \$3,000 payable by the 15th day of this Agreement. Broker will pay an additional \$3,000 fee at the time of the last payment at the conclusion of the Agreement.
- 3a. **Fee paid by Licensee.** In consideration for traffic and billing services provided to Licensee, Licensee agrees to pay Broker the sum of Six Hundred Dollars (\$600) per month in the form of a reduction in the Fee outlined in paragraph 3.
4. **Effective Date.** For purposes of this Agreement, the “Effective Date” shall be the date that broadcasting on the Stations by Broker commences. Broker shall notify Licensee in writing of this date within three (3) days of the commencement of broadcasting.
5. **Program Delivery.** Broker shall use Licensee’s studios located at 195 Main Street in Dansville, NY inclusive of its automation system and satellite receivers.

Broker shall have as a minimum access to its Equipment to inspect and make repairs by notification of and by appointment with Licensee technical staff. All costs associated with monitoring the operation of the Equipment, including without limitation those of the Internet Service provider, be they primary or in addition to existing services, shall be borne exclusively by Broker. Notwithstanding anything herein to the contrary, all technical arrangements in relation to use of the Stations shall be made by Broker in coordination with Licensee and in accordance with Licensee's technical specifications.

6. **Broker's Rights and Obligations.** Broker shall retain 100% of any revenue it may collect pursuant to the sale of any advertising sold by Broker or under its direction and which airs over the Stations during the Term. All advertising programming provided for broadcast over the Stations shall be in good taste compatible with Stations' format and in accordance with good broadcast standards. All entertainment and non-entertainment programming, as well as advertising spots and advertiser promotional announcements supplied by Broker shall comply with all applicable federal, state and local regulations and policies and shall be produced at the direction of Broker. During the term of this Agreement, the Broker shall be responsible for, and shall maintain and deliver to the Licensee, such records and information in its possession which may be required by the Federal Communications Commission ("Commission") to be placed in the public inspection files of the Stations pertaining to the broadcast of political programming and advertisements which Broker has sold, in accordance with the provisions of Sections 73.1940 and 73.3526 of the Commission's rules, and to the broadcast of sponsored programming addressing political issues or controversial subjects of public importance, in accordance with the provisions of Section 73.1212 of the Commission's rules. The Broker shall also consult with the Licensee and adhere strictly to the rules, regulations and policies of the Commission, as announced from time to time, with respect to the carriage of political advertisements and programming (including, without limitation, the rights of candidates and, as appropriate, others to "equal opportunities", and the carriage of contrasting points of view with respect to such "issue-oriented" advertising as may be broadcast) and the charges permitted therefor. Broker will provide to the Licensee such documentation relating to such programming which it has sold as the Licensee shall reasonably request. Broker indemnifies and holds the Licensee harmless for any claim, demand, cost, fine, or expense (including reasonable attorneys' fees) arising from the broadcast of any such commercial or programming material which Broker has sold or provided the Stations during the Term. This includes the broadcast of any obscene, profane, or indecent programming or commercial content. Licensee shall indemnify Broker for any claim, demand, cost, fine, or expense (including reasonable attorney's fees) arising from the broadcast of any such material broadcast by the Broker before the Effective Date and/or during the term of this Agreement. Broker shall be responsible (1) for the salaries, taxes, insurance and related costs for all of its personnel utilized in the production of programming supplied to the Stations as well as in the sale of all advertising included with that programming; and (2) for all costs incurred in program and commercial production, to the extent said production is done by Broker. Music license fees shall be paid by the Broker, and Broker indemnifies and holds Licensee harmless with respect to liability for such fees that are attributable to Broker's programming. In accordance with contract requirements to Music rights organizations, Licensee shall notify each Music rights organization of this Agreement as required by each Music rights organization's contract and Licensee shall be responsible for any and all damages incurred for the failure to do so as required. In accordance with this requirement, Licensee shall provide to Broker written documentation of the status of all license fees owed to Music rights organizations and documentation that all required licenses are active, including, but not necessarily limited to: ASCAP, BMI, and SESAC. Licensee shall hold Broker harmless with respect to liability for such fees incurred prior to the Effective Date of this Agreement.

7. **Licensee's Rights and Obligations.** Notwithstanding anything herein to the contrary, Licensee shall maintain complete control over programming on the Stations in compliance with all of the rules and regulations of the Commission and, shall be solely responsible for meeting all of the Commission's requirements with respect to Licensee's local service obligations, including, but not limited to, Licensee's right in its absolute discretion to preempt Broker's programming, broadcast programming of interest to the listeners in the Stations' service contours, covering local community issues for Licensee's issues/programs lists and maintaining the public inspection file. Licensee shall be responsible for insuring that qualified control operators monitor and control the Stations transmissions at all times, in full conformity with FCC requirements. All equipment necessary for transmitting the signal by the Stations shall be maintained by Licensee in a condition consistent with good

Comment [ET1]: The reason for this is because we're going to work it out in the APA. I can't get stuck with extra fees during the LMA as it's going to be a period of trying to build business and cash flow will be tight during the initial two months. In other words, paying current charges is what I'm looking at. Also, the ASCAP/BMI/SESAC licenses remain with the licensee per each rights org's contracts.

broadcast engineering practices and in compliance in all material respects with the applicable rules and regulations of the Commission. All capital expenditures reasonably required to maintain the quality of the signal shall be made at the expense of Licensee in a timely fashion. Licensee shall be responsible for the salaries, taxes, insurance and related costs for all personnel utilized in the management and Licensee's operation of the Stations. Licensee shall also be responsible for all expenses related to its studios and broadcast transmissions, including, but not limited to, tower and studio rent, maintenance, utilities, telephone, insurance on its facilities, automobile expense, property taxes and income taxes relating to Licensee's earnings from this arrangement. Notwithstanding anything to the contrary in this Agreement, Licensee shall have full authority and power over the operation of the Stations during the term of this Agreement. Licensee's managerial employee(s) shall report solely to, and be accountable solely to, Licensee and shall supervise the day-to-day operation of the Stations. Licensee shall retain control in its absolute discretion over the financial operations of the Stations, including, without limitation, the right to reject or preempt any advertisements or other programming supplied by Broker. Licensee shall also have the right to take any other actions necessary for compliance with the laws of the United States, the State of New York, and rules, regulations, and policies of the FCC. Licensee shall keep current all debt payments to any and all lienholders of the Stations according to each lienholders' payment schedule and shall not allow those obligations to fall into default. Licensee shall provide written documentation demonstrating that any and all obligations to lienholders have been brought current at the time of this Agreement. Should a debt to a lienholder fall into arrears or to within 10 calendar days of default, Licensee shall notify Broker of such arrears or impending default in writing within 24 hours. If the Licensee defaults to any lienholders such that Broker no longer is able to operate the Stations under the terms of this Agreement, Licensee agrees to refund all payments made to Licensee under the terms of this Agreement.

8. **Insurance.** Throughout the Term and any Renewal Terms of this Agreement, Broker shall carry and maintain in full force and effect commercial general liability insurance covering Broker's activities with respect to the Stations with policy limits in an amount of not less than \$2,000,000.00, and a broadcaster's liability insurance policy with policy limits in an amount of not less than \$2,000,000. A certificate of insurance for each policy shall be provided to Licensee showing Licensee as an additional insured. Additional certificates of insurance shall be provided for any policy renewals occurring during the Term and any Renewal Terms of this Agreement. This shall be completed within 30 days of the Effective Date of this Agreement. In the interim, Licensee shall make every effort to include Broker under Licensee's general and broadcast liability insurance and Broker shall cover any expense to add Broker as an addendum to that policy.

9. **Licensee's Employees.** Licensee shall employ and be responsible for the payment of salaries, taxes, insurance, and all other costs related to at least one management-level employee to oversee operations of the Stations. Broker shall have no authority over and shall not supervise persons in the employ of Licensee.

10. **Default.** Should Stations be off air, operate in any other manner not generally considered technically appropriate for a period of ten (10) or more consecutive hours due to Licensee's negligence, Licensee shall be considered to be in default of its obligations under this Agreement; provided, however, that any failure or impairment of facilities or any delay or interruption in broadcasting due to acts of God, strikes or threats thereof or force majeure or due to causes beyond the control of Licensee, shall not constitute a breach of this Agreement and Licensee will not be considered in default nor will it be liable to Broker. If such default as described in this paragraph is not cured within thirty (30) days of written notification by Broker of such default, Broker shall have the immediate right to terminate this Agreement without penalty. The following shall, after the expiration of the applicable cure periods, constitute Events of Default under this Agreement: (i) Licensee or Broker shall default in the material observance or performance of any material covenant, condition, or agreement contained herein; (ii) any material representation or warranty herein made by Broker or Licensee to the other or in any certificate or document furnished by Broker or Licensee to the other pursuant to the provisions hereof, shall prove to be false or misleading in any material respect as of the time made or furnished; or (iii) failure of Broker to remit the Fee in a timely manner in accordance with Section 3 herein. Unless otherwise provided herein, an Event of Default shall not be deemed to have occurred until thirty (30) days after the non-defaulting party has provided the defaulting party with written notice specifying the event or events that if not cured would constitute an Event of Default. This period may be extended for a reasonable period of time if the defaulting party is acting in good faith to cure and such delay is not materially adverse to the non-defaulting party.

11. **Termination.** In the event of the occurrence of an Event of Default, the nondefaulting party may immediately terminate this Agreement provided said party is not then also in default. In the event that a dispute arises under this provision and litigation ensues, the prevailing party in said litigation shall be entitled to recover reasonable attorney's fees and the parties agree that New York law shall govern in any such dispute with the matter to be decided by the courts in the State of New York. This Agreement shall terminate in the event that Licensee's broadcast license to operate the Stations is not renewed or is revoked by a final order of the Commission. For purposes of this Agreement, a "final order" shall mean an order of the Commission which has not been reversed or stayed, and as to which no administrative or judicial appeal, reconsideration, or review is pending or has been requested, and with respect to which the time for the institution of any further appellate proceedings has expired. This agreement shall also terminate promptly should it be found in violation of FCC rules or policies. Should this Agreement be terminated for any reason other than the breach of this Agreement by Broker, Broker shall be entitled to one hundred percent (100%) of Broker's accounts receivable of the Stations which are outstanding at the date of termination.

This Agreement may also be terminated as follows:

By either party upon written notice to the other if a party is otherwise unable to provide transmission on the Stations under this Agreement due to loss of an FCC license or technical facilities, *bona fide* interference complaints, suspension order of the FCC or other reasons outside its reasonable control. In the alternative, Broker may, upon written notice to Licensee, suspend payment for up to six months under this Agreement until any signal quality or interference issue is resolved.

12. **Warranties.** Both Licensee and Broker materially represent and warrant that they are legally qualified, empowered, and able to enter into this Agreement. Licensee warrants that Stations is now transmitting as specified by its FCC license, and will be operated in such a fashion so as to transmit (except at such time where reduction of power is required for routine or emergency maintenance activities), at its maximum authorized power and antenna height set forth in its FCC license. Licensee certifies that it maintains ultimate control over Stations' facilities, including finances, personnel and programming. Broker certifies that this agreement complies with the provisions of Section 73.3555 of the Commission's rules.

13. **Modification and Waiver.** No modification or waiver of any provision of this Agreement shall in any event be effective unless the same shall be in writing, and then such waiver and consent shall be effective only for the purpose or purposes given. No failure or delay on the part of either party in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of Licensee and Broker herein provided are cumulative and are not exclusive of any right or remedies which it may otherwise have.

14. **Jurisdiction.** This Agreement shall be construed in accordance with the laws of the State of New York, and the obligations of the parties hereto are subject to all federal, state or municipal laws or regulation now or hereafter in force and to the regulations of the Commission and all other governmental bodies or authorities presently or hereafter to be constituted.

15. **Headings.** The headings contained in this Agreement are included for convenience only and no such heading shall in any way alter the meaning of any provision.

16. **Assignment.** This Agreement may be assigned with the express written consent of both parties.

17. **Counterpart Signatures.** This Agreement may be signed in one or more counterparts, each of which shall be deemed a duplicate original, binding on the parties hereto notwithstanding that the parties are not signatory to the original or the same counterpart.

18. **Notices.** Any notice required shall be in writing and any payment, notice or other communications shall be deemed given when delivered personally, by Federal Express, or mailed by certified mail, postage prepaid, with return receipt requested, and addressed as follows:

If to Broker:

Edwin W. Trefzger III

LEGALINC CORPORATE SERVICES INC. in care of Dansville Media, Inc.

Address:-1967 WEHRLE DRIVE

SUITE 1 #086

BUFFALO, NY 14221

42 Margaret Street

Rochester, NY 14619

If to Licensee:

Brian P. McGlynn

16 W. Main Street, Suite 757

Rochester, NY 14614

19. **Integration.** This Agreement embodies the entire agreement between the parties and there are no other agreements, representations, warranties, or understandings, oral or written, between them with respect to the subject matter hereof. No alteration, modification or change of this Agreement shall be valid unless by like written instrument executed by both parties.

20. **Validity.** In the event that any of the provisions contained in this Agreement is held to be invalid, illegal or unenforceable, such shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein.

21. **No Party Deemed Drafter.** No party shall be deemed the drafter of this Agreement, and this Agreement shall not be construed against either party as the drafter of the Agreement.

22. **Certifications.** Licensee hereby certifies that it shall maintain ultimate control over the Stations' facilities, including, specifically, control over the Stations' finances, personnel and programming. Broker hereby certifies that this Agreement complies with Section 73.3555(a) and (c) of the FCC's Rules.

23. **No Joint Venture.** This Agreement is not intended to be and shall not be construed as a partnership or joint venture between the parties. Except as otherwise specifically provided in this Agreement, no party to this Agreement shall be authorized to act as an agent of or otherwise represent any other party to this Agreement.

Executed this _____ day of _____, 2017 by:

Brian P. McGlynn – Genesee Media Corporation

Witness to Brian P. McGlynn

Edwin W. Trefzger III – Dansville Media, Inc.

Witness to Edwin W. Trefzger III