



KWES-AM

NASH

### FORMAT AFFILIATION AGREEMENT

This Format Affiliation Agreement, dated December 6th, 2017 (this "Agreement") is made and entered into by and between Westwood One, Inc. ("Network" or "WWO"), having offices at 220 West 42<sup>nd</sup> Street, New York, NY 10036 and Walton Stations ("Broadcaster"), the owner and/or operator of radio broadcast station KWES-AM ("Station"), whose business address is 1096 Mechem Dr., Ste. 230 Ruidoso, NM 88345-7071. For purposes hereof, the "parties" shall mean Broadcaster and Network.

#### I. BROADCAST OF FORMAT.

A. Subject to the terms and provisions hereof, Network hereby grants to Broadcaster the right to publicly perform Network's NASH ICON radio programming, inclusive of in-content sponsorship billboards and live sponsor mentions (the "Format") by means of broadcasting over the air from the Station's present transmitting facilities, in analog or digital format, including on an "HD Radio" multicast channel.

i. This agreement shall include 25 customized breaks per week within the time periods that localizations are offered on a schedule agreed upon by both parties so long as Broadcaster submits custom content.

B. Exclusive Area: Network will not grant the right to broadcast the Format to any other radio station whose transmitter/antenna is within Station's primary coverage contour. If Station is an FM station, its primary coverage contour, for purposes of this sub-paragraph, shall be its predicted 1.0 mV/m contour, as computed pursuant to Section 73.313 of the FCC's rules [47 C.F.R. § 73.313]. If Station is an AM station, its primary coverage contour, for purposes of this sub-paragraph, shall be its predicted 2 mV/M daytime groundwave contour, as computed in accordance with Section 73.183 of the FCC's rules [47 C.F.R. § 73.183]. Network may provide the Format to stations whose transmitters are located outside Station's primary coverage contour.

C. Except as otherwise specified in this Agreement, Broadcaster shall be solely responsible for the construction, operation and maintenance of all technical and other facilities necessary or appropriate to receive and broadcast the Format and Network Commercials (defined below). Upon Network's request, Broadcaster shall install and maintain the necessary equipment so that Station's signal will include the encoding necessary for Station to be monitored by Nielsen's "Portable People Meter" system (or any other comparable technology). At its sole option, Network may provide Broadcaster with equipment by which Broadcaster may receive the Format by satellite. If Network provides Broadcaster with such equipment, Broadcaster will: (i) install and maintain the equipment; (ii) maintain a continuous broadband Internet connection for the equipment; and (iii) hold title to the equipment and own it. Upon termination of this Agreement for any reason, Broadcaster shall return such equipment to Network.

D. Broadcaster shall not transmit the Format by a translator, booster or synchronous transmitter station without Network's prior written approval, unless such is for the sole purpose of simulcasting the Format on an HD channel or translator. Broadcaster shall notify Network of any change in Station's transmitter location, antenna height, power, frequency, and/or usage of translator or booster stations. Except as set forth in Section 4 below, Broadcaster shall not authorize, cause, permit or enable any Format or Network Commercial supplied to Station to be used for any purpose other than broadcasting by Station in a manner solely intended for reception by the general public in places where no admission charges are made. Broadcaster shall not cause or permit any reproduction, duplication, recording, rebroadcasting or any other copying of any portion of the Format, nor may Broadcaster create derivative works of the Format or make any other use of the Format except as otherwise expressly provided in this Agreement. Broadcaster shall not alter or remove any copyright management information from the Format.

E. Broadcaster represents and warrants that it shall acquire and maintain for Station all FCC and intellectual property licenses necessary for Station to lawfully broadcast the Format and the Network Commercials supplied by Network and to publicly perform any copyrighted work embodied in the Format, including, but not limited to, performing rights licenses. Broadcaster acknowledges that the Format is a collective work of which Network is the author and owner and in which the copyright shall inure solely to Network without Broadcaster acquiring any rights therein. Notwithstanding Network's transmission or other distribution of the Format to Broadcaster, Network shall retain and own all right, title and interest in and to the Format, including, without limitation, any copyright in the Format as a compilation separate from any copyrights in any pre-existing material embodied in the Format, and including all service marks, trademarks and other proprietary rights relating to the Format, subject only to Broadcaster's license to broadcast the Format as provided in this Agreement. Broadcaster agrees to take all actions necessary or requested by Network to protect and preserve Network's copyright in the Format and Network's service marks, trademarks and other proprietary rights with regard to the Format.

## II. TERM.

A. The term of this Agreement shall be for 12 months, beginning on 3/15/2018. This Agreement shall automatically renew for successive terms of 0 months unless either party gives the other at least ninety (90) days' prior written notice prior to the expiration of the then current Term that it elects not to renew this Agreement.

B. Notwithstanding the foregoing, Network may terminate this Agreement: (i) upon sixty (60) days' prior written notice to Broadcaster if it ceases to produce and/or distribute the Format or (ii) immediately upon written notice if at any time Station or Broadcaster comes into public disrepute, contempt or scandal or shocks or offends a substantial portion of the community and such disrepute negatively impacts Network's reputation or causes Network advertisers or partners to request disassociation with Station or Broadcaster. Additionally, either party may terminate this Agreement upon ten (10) days' written notice to the breaching party if the other party breaches any provision hereof in any material respect and the breaching party fails to cure such breach within ten (10) days thereof. Breaches may include a failure to run Network Commercials, provide Affidavits, or changing its transmitter or antenna which results in a degradation in signal, expansion of coverage that conflicts with another station's signal or market exclusivity or creates a similar business issue for Network.

C. In case of any termination of this Agreement or service suspension, Broadcaster shall immediately cause Station to cease broadcasting the Format and any other Network material related to the Format. If Network terminates this Agreement because of Broadcaster's breach of or default under any provision of this Agreement, Broadcaster shall remain liable for fees due or broadcast of Network Commercials through the remainder of the Term.

## III. CONSIDERATION.

A. As consideration for the Format, Station shall broadcast 2 minute(s) of commercial time per hour ("Network Commercials") in accordance with a log or schedule provided by Network via the Internet (unless Station's broadcasts are licensed for daytime only and Station does not achieve nighttime broadcasts in which case Station need only broadcast Network Commercials during hours Station broadcasts). Network will deliver the Network Commercials to Broadcaster in a generally accepted format at least three (3) business days prior to their scheduled air date.

B. Notwithstanding the foregoing, Station may preempt Network Commercials on an occasional, non-regular basis for a program of special national, state or local significance and/or importance to the public interest; provided that it shall provide notice thereof to Network and broadcast make goods in a substantially similar daypart within the same broadcast week as the original (preempted) Network Commercial unless the advertising flight thereof is shorter, in which case the make good shall be aired within such advertising flight.

C. Broadcaster also shall pay Network \$0.00 per month, due on the first day of each calendar month. Any amount not paid within fifteen (15) days of the due date shall accrue interest at the rate of one and a half percent (1.5%) per month. Network reserves the right to conduct a credit check of Broadcaster. If Broadcaster lacks an adequate credit history or Broadcaster does not meet Network's standards of credit worthiness, Network reserves the right to change the terms of payment.

## IV. INTERNET STREAMING.

Broadcaster may include the Format as part of its full-time Internet live simulcast of Station's broadcasts on Station's primary website, including any stream of such website accessible by mobile device (provided such accessibility does not provide any ability to the user to download the Format or archive any Format), conditioned on Broadcaster's compliance with all applicable laws with regard to said Internet streaming, including royalties for sound performances fees, talent fees and/or union fees. Such use must be free of charge to and for the personal, non-commercial use of visitors to the website, and must not be re-distributed in any manner. Broadcaster will cover and preempt Network Commercials included in the Format unless Network delivers substitute commercials to Station for such simulcast. Any fee charged to or action taken against Network in connection with Station's failure to cover and preempt Network Commercials as specified by Network shall be the sole responsibility of Broadcaster to pay and/or defend.

V. **AFFIDAVITS.** Within ten (10) days after each standard broadcast week, Broadcaster shall deliver to Network complete and accurate reports and affidavits ("Affidavits") with respect to Station's broadcasting and/or Internet streaming of the Format and/or Network Commercials during the immediately preceding broadcast week. Upon request, Broadcaster shall submit an additional affidavit provided by Network, which will be used to generate ratings information for RADAR Surveys or other ratings services. Broadcaster shall maintain for one year records noting the exact date and time when Network Commercials were broadcast by Broadcaster. Upon Network's request, Broadcaster shall install and maintain an AM/FM

antenna to each port of its satellite receiver and connect the receiver to the Internet (and maintain such connection) to allow the automatic transmission of Affidavits to Network.

**VI. FORCE MAJEURE.** Except as specifically described herein, neither Broadcaster nor Network shall incur any liability to the other hereunder because of Network's inability to deliver, or Station's inability to broadcast, any or all of the Format and/or Network Commercials due to an act of God, force majeure, failure of facilities, labor disputes, governmental or court order, or any other causes beyond the reasonable control of the party so failing to broadcast or deliver Format. Broadcaster shall nonetheless be responsible for maintaining the Station as fully operational in accordance with the Station's FCC authorizations and shall notify Network in writing of any omitted broadcast or significantly reduced or impaired broadcast transmissions within five (5) days of said event.

**VII. GENERAL PROVISIONS.**

**A. FCC Rules; Confidentiality.** This Agreement is subject to all applicable rules and published policies of the FCC now or hereafter in force. The financial terms of this Agreement are confidential and shall not be disclosed by Broadcaster or Station to any third party, except to its financial or legal advisors.

**B. Assignment.** This Agreement will be binding on and inure to the benefit of Network and Broadcaster and their respective successors and permissible assigns. Neither this Agreement nor any of the rights and privileges granted to Broadcaster pursuant to this Agreement may be assigned by Broadcaster without Network's prior written consent, which shall not be unreasonably withheld or delayed. Broadcaster shall promptly notify Network at such time as any application is made to the FCC for consent to a transfer of control of the Station or any assignment of the Station's license, except for "pro forma" transfers or assignments for which FCC approval is required on FCC Form 316 (or any successor "short-form" procedure). A transfer of control shall not terminate Broadcaster's obligations hereunder and Broadcaster shall cause the transferee or assignee to assume and perform Broadcaster's obligations hereunder.

**C. Entire Agreement; Amendments; Severability.** This Agreement and any executed addenda attached hereto constitute the entire agreement between the parties with respect to the subject matter hereof, and supersede any and all prior agreements or understandings of any nature whatsoever between the parties with respect to such subject matter. No term or provision of this Agreement shall be amended, changed, modified, waived or discharged except by an instrument in writing signed by an authorized representative of each of the parties hereto. If any term or provision of this Agreement proves to be in violation of or unenforceable under applicable law, such term or provision shall be inoperative, but the remainder of this Agreement and the other terms and provisions hereof shall not become invalid and shall continue to be binding and in full force and effect.

**D. Governing Law; Venue; Service; Attorneys' Fees.** This Agreement shall, irrespective of the place of execution, be deemed to be a contract entered into and to be performed in the State of New York. Accordingly, this Agreement shall be a contract made under the laws of the State of New York and shall be governed by and construed in accordance with the laws of the State of New York without regard to any choice of law or conflicts of law principles, and in accordance with the laws of the United States, including without limitation federal copyright and trademark laws. With respect to any dispute arising hereunder or any action, suit, or proceeding relating, directly or indirectly, to this Agreement, Broadcaster hereby (i) consents to the exclusive jurisdiction of the Federal District Court for the Southern District of New York and the Courts of the State of New York in New York County, (ii) waives any objection of venue in any of the aforesaid courts or any right to claim that any such court constitutes an inconvenient forum, and (iii) agrees that service of process may be effected by mailing, prepaid postage, certified mail, return receipt requested, or any other means permitted by the rules of any of the aforesaid courts. In any action, suit or proceeding relating to this Agreement, the prevailing party shall be entitled to collect from the other party all of its costs and expenses in such action, suit or proceeding, including, without limitation, reasonable attorneys' fees and disbursements. Broadcaster shall be responsible for reimbursement of any fees incurred by Network to enforce payment provisions or other obligations of Broadcaster or Station hereunder.

**E. No Relationship; Counterparts.** Nothing contained in this Agreement shall create or be deemed to create any partnership, employer/employee relationship, association or joint venture, fiduciary or agency between the Parties. This Agreement may be executed in counterparts (and delivered via e-mail or facsimile transmission), each of which will be deemed an original, but such counterparts will together constitute one and the same instrument.

F. Notices. Notices hereunder shall be given in writing and duly given if delivered personally, by overnight courier, certified mail (return receipt requested), fax or email to such address/fax/email as noted below on the signature page or to such other address/fax/email as either party shall designate to the other. Notices shall be deemed given when received (i.e., upon delivery, signature or transmission by fax or email upon confirmation of receipt by recipient).

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

BROADCASTER  
Walton Stations

WESTWOOD ONE, INC.

By: Juanita Jones  
Name: Juanita Jones  
Title: Sales Manager  
Address: 1096 Mechem Dr., Ste. 230  
Ruidoso, NM 88345-7071

By: \_\_\_\_\_  
Name: Kirk Stirland  
Title: President, Programming

## ATTACHMENT 1

**Station Contact Information:**

**Station call sign and address:**

**KWES 1450/AM 94.7/FM**

1088 Mechem Ste: 230

**Ruidoso, NM 88345**

**Traffic:**

**Terri Mosley**

**traffic@kwes.net**

**575-258-2222**

**(include name, email address and telephone number)**

**Streaming Media (if different):**

**(include name, email address and telephone number)**

### Programming:

**(include name, email address and telephone number)**

**Engineering:**

**Cy Leland**

**cyleland@gmail.com**

**575-491-4778**

(include name, email address and telephone number)