

TIME BROKERAGE AGREEMENT

This Time Brokerage Agreement (the "**Agreement**") is made on this 17 day of August 2021, by and between Elk River Broadcasting, Inc., a Tennessee corporation ("**Licensee**"), and Elk River Media, LLC, a Tennessee limited liability company ("**Programmer**"). Seller and Buyer are sometimes individually referred to in this Agreement as a "Party" and collectively as the "Parties."

WITNESSETH

WHEREAS, Licensee holds the licenses and authorizations from the Federal Communications Commission ("**FCC**") for broadcast radio Station (the "**Station**"), WEKR(AM), 1240 kHz, Fayetteville, TN (FCC Fac. ID 32199). Licensee is also the permittee of an outstanding construction permit for FM translator W253CX, 98.5 MHz, Fayetteville, TN (FCC Fac. ID 202987). In the event, the foregoing construction permit is built and the station begins on-air operation during the term of this Agreement, it shall rebroadcast the programming of the Station and accordingly be included in this Agreement as a station along with the Station with no additional consideration due from Programmer to Licensee;

WHEREAS, Programmer and Licensee have entered into that certain Asset Purchase Agreement (the "**Purchase Agreement**") executed concurrently with this Agreement, pursuant to which Licensee has agreed to sell to Programmer certain of the assets of the Station as provided therein. Unless otherwise defined, all capitalized terms in this Agreement shall have the meaning provided for in the Purchase Agreement;

WHEREAS, Programmer desires to have access to time to present programming on the Station pursuant to the provisions hereof and pursuant to and in accordance with the Communications Act of 1934, as amended (the "**Communications Act**") and applicable regulations of the FCC until the closing date under the Purchase Agreement, or the expiration of the term hereof, whichever occurs first; and

WHEREAS, Licensee desires to accept Programmer's programming and transmit the programming supplied by Programmer on the Station while maintaining control over Licensee's finances, personnel matters and programming.

NOW, THEREFORE, in consideration of these premises and the mutual promises, undertakings, covenants and agreements of the parties contained in this Agreement, the parties hereto do hereby agree as follows:

ARTICLE 1 **PROGRAMMING AGREEMENT**

During the term of this Agreement, and subject to the limitations in this Agreement and the FCC's requirements, Programmer hereby agrees to provide and Licensee agrees to transmit on the Station twenty-four (24) hours per day, seven (7) days per week, excluding the period from 5:00 a.m. to 6:00 a.m. each Sunday morning, programming and associated advertising (the

“Programmer’s Programming”). Further, as set forth in **Schedule 1**, certain of Licensee’s existing network and syndicated programming may continue to be broadcast along with Programmer’s Programming. Licensee acknowledges that it is familiar with the type of programming Programmer produces and has determined that the broadcast of such programming on the Station would serve the public interest. Notwithstanding anything herein to the contrary, (a) Programmer may (but shall not be obligated to) stream the Station’s programming on any of the Station’s internet websites, and Programmer shall be entitled to all revenue therefrom, and (b) Licensee shall not include any programming furnished by Programmer hereunder in any internet streaming unless requested to do so by Programmer.

ARTICLE 2 **PROGRAMMING OBLIGATIONS**

2.1 **Rights and Obligations of Licensee.** Licensee shall remain responsible for the control of the day-to-day operations of the Station and serving the needs of the Station’s community of license and service area in conformance with its FCC licenses, permits and authorizations. Further, Licensee’s President, Wanda Young, will supervise the operations of the Station pursuant to this Agreement to ensure the due exercise of Licensee’s responsibilities. Without limiting the generality of the foregoing, Licensee shall retain the following rights and obligations with respect to programming and technical operations of the Station:

2.1.1 **Licensee’s Absolute Right to Reject Programmer’s Programming.** Licensee shall retain the absolute right to accept or reject any Programmer’s Programming that Licensee in its reasonable discretion deems contrary to the public interest. In all such cases, Licensee will give Programmer reasonable advance notice of its intention to reject any scheduled programming and will provide Programmer the opportunity to substitute programming in lieu of the rejected programming. Licensee expressly agrees that its right of rejection shall not be exercised in an arbitrary manner. Programmer shall be relieved of making payments under Article 4 on a pro rata basis for any hours or days in which rejections are made.

2.1.2 **Licensee’s Right to Preempt Programmer’s Programming for Special Events.** Licensee shall have the right, in its reasonable discretion, to preempt the Programmer’s Programming in order to broadcast a program deemed by Licensee to be of national, regional or local interest, and to use part or all of the hours of operation of the Station for the broadcast of events of special importance. Licensee agrees that its right of preemption shall not be exercised in an arbitrary manner and that prior notice will be given to Programmer. Programmer shall be relieved of making payments under Article 4 on a pro rata basis for any hours or days in which preemptions are made.

2.1.3 **Licensee’s Compliance with FCC Requirements.** Licensee shall continue the operation of the Station consistent with past practices, in compliance with all FCC rules and regulations and policies which may be applicable to the operation of the Station during the term of this Agreement.

2.2 **Rights and Obligations of Programmer.** Programmer agrees as follows:

2.2.1 Compliance with Laws and Station Policies. All Programmer's Programming shall conform in all material respects to the Communications Act and all applicable rules, regulations and policies of the FCC, and all other laws or regulations applicable to the broadcast of programming by the Station.

2.2.2 Cooperation with Licensee. Programmer, on behalf of Licensee, shall include within the Programmer's Programming all Station identification announcements required by the FCC's rules, and shall, upon the reasonable request by Licensee, provide information with respect to any of the Programmer's Programming which is responsive to the public needs and interests of the area served by the Station so as to assist Licensee in the preparation of any required programming reports, and will provide upon request other information to enable Licensee to prepare other records, reports and logs required by the FCC or other local, state or federal governmental agencies as to Programmer's Programming. Programmer shall also comply with all FCC and Communications Act requirements as to political broadcasts, whether as to candidates, or other entities, and supply Licensee with the necessary information for the political files of the Station.

2.2.3 Copyrights and Other Rights. All music and programming of any type or nature, supplied by Programmer shall be (i) licensed by the appropriate program provider or by a music licensing agent, such as ASCAP, BMI, SESAC, GMR, and Sound Exchange (ii) in the public domain, or (iii) cleared at the source of the programming by Programmer. As ASCAP, BMI, SESAC, GMR, and Sound Exchange customarily do not establish separate licenses for programmers under time brokerage, Licensee will pay the fees to such entities for the Station, and Programmer shall reimburse Licensee in connection with the Programmer's Programming broadcast on the Station as set forth in **Schedule 4**. Programmer shall be responsible for ensuring its compliance under (i), (ii) and (iii) above.

2.2.4 Insurance. Programmer shall maintain broadcast libel, general liability insurance each in amounts no less than that presently carried by the Licensee and as required by law, workers' compensation insurance.

ARTICLE 3 **OPERATIONS**

3.1 Programmer Feed. Programmer agrees to provide an audio feed to the Station's transmitter. Programmer's technical personnel shall be responsible for the Station's broadcast transmission system and for switching the signal to air at the appropriate time, under the direction and supervision of the Licensee. To enable Programmer to fulfill its obligations hereunder, Licensee shall make Licensee's existing facilities, relays and repeaters (if any), antennas, tower, transmitter building, transmitter site and space in Licensee's studios (collectively the "Facilities"), available to Programmer.

3.2 Responsibility for Transmission Facilities. Subject to payments to be made by Programmer as set forth in Article 4 and **Schedule 4** below, Licensee shall maintain the Station's Facilities as specified in the Purchase Agreement according to customary practices, and consistent with any lease agreements and ensure Programmer normal access, ingress and egress

over the transmission site real property. Provided however, notwithstanding the foregoing, Licensee is not responsible for maintaining any of Programmer's equipment and property.

3.3 Advertising Revenue. Programmer shall have the right to sell advertising to be placed in all Programmer Programming broadcast on the Station and shall retain all advertising revenues associated with the Programmer Programming. In addition, as of the Commencement Date, the Station's accounts receivable still outstanding for advertising aired prior to the Commencement Date shall be delivered by Licensee to Programmer (the "Licensee Accounts Receivable"). Programmer shall have the right, after the Commencement Date, to collect the Licensee Accounts Receivable, with the proceeds thereof solely for the account of and benefit to Programmer. Licensee covenants that between the execution of this Agreement and the Commencement Date, it shall continue its customary collection practices and shall not accelerate the collection of its Licensee Accounts Receivable.

ARTICLE 4 **CONSIDERATION**

As consideration of the brokerage of airtime on the Station for the broadcast of the Programmer's Programming pursuant to the terms and conditions of this Agreement, Programmer shall pay Licensee a monthly fee (the "Monthly Fee") and reimburse Licensee certain operating expenses set forth in Schedule 4.

ARTICLE 5 **TERM AND REGULATORY REQUIREMENTS**

5.1 Term. Subject to the provisions for early termination contained herein, the term of this Agreement shall commence at 12:01 am Station local time on September 1, 2021 (the "Commencement Date") and shall terminate on the earlier of (i) the closing date of the transaction contemplated by the Purchase Agreement, or (ii) the termination of the Purchase Agreement pursuant to its terms, or (iii) earlier if mutually terminated by the Parties, or (iv) twelve (12) months from the Commencement Date, or (v) other termination as provided herein (the "Term").

5.2 Early Termination for Breach and Nonperformance. Should either Party be in breach of this Agreement for the nonperformance of a material obligation, the non-breaching party may, in addition to pursuing any other remedies available at law or in equity, terminate this Agreement if such breach shall continue for a period of twenty (20) days following the receipt of written notice from the non-breaching party, which notice shall indicate the nature of such breach, except if the breaching party has commenced a cure of such breach within said twenty (20) day period, the breach is capable of cure and the breaching party acts in good faith to cure the breach within a reasonable time the breaching party shall not be deemed to be in breach.

5.4 FCC Action.

5.4.1 Should a change in FCC policy or rules make it necessary to obtain FCC consent for the continuation or further effectuation of any element of this Agreement, both Parties shall use their best efforts to diligently prepare, file and prosecute before the FCC all commercially reasonable waivers and/or amendments and other related documents necessary to secure and/or retain FCC approval of all aspects of this Agreement. Notwithstanding anything in this Agreement to the contrary, except as required by FCC rules or applicable law, it is understood that no filing shall be made with the FCC with respect to this Agreement unless both parties hereto have reviewed said filing and consented to its submission.

5.4.2 If the FCC determines that this Agreement is inconsistent with Licensee's license obligations or is otherwise contrary to FCC policies, rules and regulations, or if regulatory or legislative action subsequent to the Commencement Date alters the permissibility of this Agreement under the FCC's rules or the Communications Act, the Parties shall renegotiate this Agreement in good faith and take commercially reasonable steps to recast this Agreement in terms that are likely to cure the defects perceived by the FCC and return a balance of benefits to both Parties comparable to the balance of benefits provided by the Agreement in its current terms. If, after such good faith negotiations, either Party reasonably determines that recasting this Agreement to meet the defects perceived by the FCC is not commercially reasonable or is impossible, either Party may terminate this Agreement without further liability upon twenty (20) days prior written notice. If termination shall occur pursuant to this Section, such termination shall extinguish and cancel this Agreement.

ARTICLE 6

REPRESENTATIONS AND WARRANTIES; COVENANTS

6.1 Licensee's Representations and Warranties. Licensee represents and warrants to Programmer as follows:

6.1.1 Compliance With Law. Subject to the terms of the Purchase Agreement, Licensee has substantially complied with and is now in substantial compliance with all laws, rules and regulations governing the business, ownership and operations of the Station that are material in any way to this Agreement, including, but not limited to, those of the FCC. Except as to provisions set forth in the Purchase Agreement or as otherwise stated herein, no consent, approval or authorization by or filing by Licensee with any governmental authorities is required in connection with the transactions contemplated herein, and the carrying out of this Agreement will not result in any violation of or be in conflict with Licensee's organizational documents, or any existing judgment, decree, order, statute, law, rule or regulation of any governmental authority.

6.1.2 Authority. Subject to the same qualifications and restrictions as set forth in the Purchase Agreement, all requisite resolutions and other authorizations necessary for the execution, delivery, performance and satisfaction of this Agreement by Licensee have been duly adopted and complied with.

6.2 Programmer's Representations and Warranties. Programmer represents and warrants to Licensee as follows:

6.2.1 Compliance With Law. Subject to the terms of the Purchase Agreement, Programmer has substantially complied with and is now in substantial compliance with all laws, rules and regulations that are material in any way to this Agreement. Except as to provisions in the Purchase Agreement or as otherwise stated herein, no consent, approval or authorization by or filing by Programmer with any governmental authorities is required in connection with the transactions contemplated herein, and the carrying out of this Agreement will not result in any violation of or be in conflict with Programmer's formation documents, or any existing judgment, decree, order, statute, law, rule or regulation of any governmental authority.

6.2.3 Authority. Subject to the same qualifications and restrictions as set forth in the Purchase Agreement, all requisite resolutions and other corporate authorizations necessary for the execution, delivery, performance and satisfaction of this Agreement by Programmer have been duly adopted and complied with.

6.3 Affirmative Covenants.

6.3.1 Licensee covenants and agrees that it will comply in all material respects with all applicable federal, state and local laws, rules and regulations (including, without limitation, all FCC rules, policies and regulations) and pertinent provisions of all permits and licenses relating to the Station or this Agreement.

6.3.2 Programmer covenants and agrees that it will comply in all material respects with all applicable federal, state and local laws, rules and regulations (including, without limitation, all FCC rules, policies and regulations) in the provision of the Programmer's Programming to Licensee or in connection with Programmer's performance of obligations hereunder.

6.4 Negative Covenants. Licensee covenants that during the term of this Agreement, Licensee shall not, without the prior written consent of Programmer, which consent shall not be unreasonably withheld or delayed, seek FCC consent to modification of facilities which would specify a frequency change or have a material effect upon the presently authorized coverage contour of the Station.

6.5 Limitations. The representations, warranties and covenants of the Parties in this Agreement are subject to the representations, warranties and covenants of the parties in the Purchase Agreement.

ARTICLE 7 **MISCELLANEOUS**

7.1 Force Majeure. Notwithstanding anything contained in this Agreement to the contrary, neither Party shall be liable to the other for failure to perform any obligation under this Agreement if prevented from doing so by reason of fires, strikes, labor unrest, embargoes, civil commotion, rationing or other orders or requirements, acts of civil or military authorities, acts of God, equipment failures or other events, actions or contingencies beyond its reasonable control

(each an event of "***Force Majeure***"), and all requirements as to notice and other performance required hereunder within a specified period shall be automatically extended to accommodate the period of pendency of such Force Majeure event which interferes with such performance.

7.2 Limitation of Liability; Rights and Remedies. Notwithstanding any provision in this Agreement to the contrary, each Party hereby waives the right to recover punitive, exemplary and similar damages and the multiplied portion of damages. Except as otherwise provided in this Agreement, the rights and remedies provided in this Agreement are cumulative and are not exclusive of any other rights or remedies which a Party may otherwise have.

7.3 Confidentiality and Press Releases.

7.3.1 No press release or public disclosure, either written or oral, of the existence or terms of this Agreement or the transactions contemplated hereby shall be made by either Party without the consent of the other, and each Party shall furnish to the other advance copies of any release which it proposes to make public concerning this Agreement or the transactions contemplated hereby and the date upon which such party proposes to make public such press release.

7.3.2 This Section shall not, however, be construed to prohibit any party from (i) making any disclosures to any governmental authority or other entity that it is required to make by law, or (ii) disclosing this Agreement or its terms to its attorneys, accountants, agents or advisors.

7.4 Notices. Any notice pursuant to this Agreement shall be in writing and shall be deemed delivered on the date of personal delivery or confirmed delivery by a nationally recognized overnight courier service, or on the third (3rd) day after prepaid mailing by certified U.S. mail, return receipt requested, and shall be addressed as follows (or to such other address as any party may request by written notice):

If to Licensee:

Elk River Broadcasting, Inc.
P.O. Box 717
Fayetteville, TN 37334
Attention: Wanda Young

with a copy (which shall not constitute notice):

Fletcher, Heald & Hildreth, PLC
1300 North 17th Street, 11th Floor
Arlington, VA 22209
Attention: Matthew H. McCormick, Esq.

If to Programmer :

Elk River Media, LLC
1702 White Fern Avenue SE
Huntsville, AL 35801
Attention: John Malone, Managing Member

with a copy (which shall not constitute Notice):

Smithwick & Belendiuk, PC
5028 Wisconsin Avenue, NW
Suite 301
Washington, DC 20016
Attention: M. Scott Johnson, Esq.

7.5 Duty to Consult. Each Party agrees that it will use commercially reasonable efforts not to take any action that will unreasonably interfere, threaten or frustrate the other Party's purposes or business activities, and that it will keep the other Party informed of, and coordinate with the other Party regarding, any of its activities that may have a material effect on such Party.

7.6 Assignability. This Agreement shall inure to the benefit of and be binding upon the Parties, and their respective successors and assigns. Other than as permitted in the Purchase Agreement, neither Party shall assign or transfer its rights, benefits, duties or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed.

7.7 Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remainder of this Agreement shall not be affected thereby, and the Parties agree to use commercially reasonable efforts to negotiate a replacement article that is valid, legal and enforceable.

7.8 Entire Agreement and Modification. This Agreement supersedes all prior agreements between the Parties with respect to its subject matter, and constitutes (along with the recitals hereto and the schedules and documents referred to in this Agreement) a complete and exclusive statement of the terms of the agreement between the Parties with respect to its subject matter. This Agreement may not be amended except by a written agreement signed by all Parties.

7.9 Further Assurances. From time to time after the date of execution hereof, the Parties shall take such further action and execute such further documents, assurances and certificates as either Party reasonably may request of the other to effectuate the purposes of this Agreement.

7.10 Counterparts. This Agreement may be executed in separate counterparts, including by facsimile, pdf, or other electronic reproduction, each of which will be deemed an original and all of which together will constitute one and the same agreement.

7.11 Headings; Schedules. The headings in this Agreement are for the sole purpose of convenience of reference and shall not in any way limit or affect the meaning or interpretation of any of the terms or provisions of this Agreement. Unless the context otherwise requires, all references to Articles, Sections or Schedules are to Articles, Sections or Schedules of or to this Agreement.

7.12 Dealings With Third Parties; No Beneficiaries. Neither Party is nor shall hold itself out to be vested with any power or right to bind contractually or act on behalf of the other as its contracting broker (other than Programmer's rights in connection with Programmer's Programming), agent or otherwise for committing, selling, conveying or transferring any of the other party's assets or property, contracting for or in the name of the other party, or making any representations contractually binding such party. Nothing in this Agreement expressed or implied is intended or shall be construed to give any rights to any person or entity other than the parties hereto and their successors and permitted assigns.

7.13 Attorneys' Fees. The prevailing party in any proceeding relating to the enforcement or interpretation of this Agreement may recover from the unsuccessful party all reasonable and prudent out-of-pocket costs, expenses and out-of-pocket attorneys' fees (including expert witness and other consultants fees and costs) relating to or arising out of (i) such proceeding, and (ii) any post-judgment or post-award proceeding including, without limitation, one to enforce or collect any judgment or award resulting from such proceeding. All such judgments and awards shall contain a specific provision for the recovery of all such subsequently incurred costs, expenses and actual attorney's fees.

7.14 Governing Law. This Agreement will be governed by the laws of the State of Tennessee, without giving effect to principles of conflicts of laws that may direct the application of the laws of another jurisdiction, and, as applicable, the Communications Act and rules and regulations of the FCC, with venue in state and federal courts having jurisdiction in Fayetteville, Tennessee.

7.15 Required Certifications.

7.15.1 By Licensee. Licensee hereby certifies that it has, and shall maintain ultimate control over the Station's facilities, including specifically control over the finances, personnel, and program content of the Station. Licensee represents and warrants that this certification may be relied upon by the FCC, as well as by Programmer.

7.15.2 By Programmer and Licensee. Programmer and Licensee both certify that the arrangement with Licensee as set forth in this Agreement and as contemplated in all aspects of operation is and shall remain in compliance with 47 C.F.R. § 73.3555, concerning such agreements, and that it will provide to the FCC any documents, exhibits, or other material necessary to demonstrate such compliance.

(The next page following is the signature page.)

Signature Page to Time Brokerage Agreement

IN WITNESS WHEREOF, the parties hereto have executed this Time Brokerage Agreement as of the date first above written.

Licensee:

ELK RIVER BROADCASTING, INC.

By: Wanda Young
WANDA YOUNG, PRESIDENT

Programmer:

ELK RIVER MEDIA, LLC
By: John Malone
JOHN MALONE, MANAGING MEMBER

SCHEDULE 1

LICENSEE'S EXISTING PROGRAMMING

Licensee and Programmer recognize that Licensee may have certain agreements with networks, syndicated entities or other entities to present certain programming, and has outstanding commitments to provide advertising and various other agreements as set forth in the Purchase Agreement in Schedule 1.1(d). For those Schedule 1.1(d) agreements that do not expire, or may not be terminated, during the Term, Programmer will honor the obligations thereunder during the Term, provided, further, that a specific Schedule 1.1(d) agreement that otherwise has not expired or have been terminated need not be honored by Programmer during the Term if both Licensee and Programmer concur it need not be continued.

SCHEDULE 4

CONSIDERATION

A. During the Term, Programmer shall pay Licensee a monthly fee of One Hundred Dollars (\$100.00) (the "**Monthly Fee**"). The Monthly Fee is due and payable by Programmer on the first day of the broadcast month. Should the Term end before the end of broadcast month, the Monthly Fee will be apportioned on a per diem basis.

B. In addition, Programmer shall reimburse Licensee for certain of Licensee's expenses incurred during the Term in the operation of the Station ("**Reimbursable Expenses**"). The Reimbursable Expenses are:

1. Programmer will reimburse Licensee for reasonable out-of-pocket expenses for maintaining the Station's equipment in operating condition, including any necessary minor equipment replacements;
2. In view of the Programmer's Programming broadcast over the Station during the Term in accord with Article 1, Programmer will reimburse Licensee for ASCAP, BMI, SESAC and GMR fees as well as utilities, telephone, internet, and certain insurance expense. To clarify the foregoing, attached to this Schedule 4 is a listing of average monthly expenses.
3. Programmer will reimburse Licensee for out-of-pocket expenses reasonably incurred to maintain the Station's FCC Licenses in compliance with FCC rules and regulations governing the operation of the Station, including, but not limited to, FCC application fees for call sign changes, auxiliary and studio-transmitter link applications, and the pro rata share of FCC regulatory fees reflecting the times in which Programmer is entitled to present Programmer's Programming.
4. The amounts due as reimbursements to Licensee hereunder shall be paid by Programmer to Licensee within ten (10) business days of receipt by Programmer of an itemized list, with back-up documentation, from Licensee, via email or other means, evidencing the reimbursable expenses and the due dates for applicable payments.

C. Programmer Direct Obligations

1. Programmer will pay for any expenses of any type or nature associated with and due for Programmer's Programming and for expenses relating to and due for equipment owned by Programmer.
2. Programmer will maintain its own necessary general liability and other appropriate insurance with sufficient coverage limits, consistent with the Licensee's coverage limits, with respect to Programmer's Programming and its operations.

**Expenses by Summary
Elk River Broadcasting WEKR
Monthly Expenses (averages)**

	<u>Total</u>
<u>Music Licensing Fees</u>	
ASCAP, BMI, SESAC	152.16
<u>Utilities, Phone</u>	
FPU	581.33
AT&T	358.24
<u>Business Insurance</u>	
Bagley & Bagley	400.00
Average Monthly Costs (excluding Payroll)	\$1,491.73

