

PROGRAMMING AGREEMENT

This **PROGRAMMING AGREEMENT** (this "Agreement") is made as of January 1, 2017 by and among **RIVERFRONT BROADCASTING, LLC**, a South Dakota Limited Liability Company ("Licensee" or "Riverfront"), and **NEDVED MEDIA, LLC**, a South Dakota limited liability company ("Programmer" or "Nedved").

RECITALS

A. Licensee is the licensee of broadcast radio stations KORN-FM (FCC Facility No. 15267), KORN AM (FCC Facility No. 35420), and KQRN FM (FCC Facility No. 35503) licensed to Mitchell, South Dakota (the "Stations") pursuant to licenses issued by the Federal Communications Commission ("FCC");

B. Programmer and Licensee are parties to that certain Asset Sale Agreement (the "Sale Agreement") of even date herewith, whereby Licensee has sold to Programmer certain assets owned or held by Licensee in connection with the operation of the Stations pending FCC approval and the satisfaction of other closing contingencies;

C. The parties are aware of and have considered carefully the FCC's policies on time brokerage and intend that this Agreement complies fully with all such policies;

D. Licensee desires to obtain a regular source of programming and income which will sustain the operation of the Stations pending closing of the Sale Agreement; and

E. Programmer desires to provide substantially all of the Stations' broadcast time for the broadcast of programming on the Stations and for the sale of advertising time included in that programming pending closing of the Sale Agreement.

F. Unless otherwise stated in this Agreement, capitalized terms used in this Agreement which are not otherwise defined in this Agreement shall have the meanings assigned to them in the Sale Agreement as applicable.

NOW, THEREFORE, in consideration of the foregoing, and of the mutual promises set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensee and Programmer agree as follows:

1. **Term.** The term of this Agreement shall commence on January 1, 2017 (the "Effective Date") and shall continue in full force and effect until either the earlier to occur of (a) closing on the Sale Agreement; or (b) termination of the Sale Agreement for a reason other than closing (the "Term"). "Cut-Off Time" shall mean 12:01 a.m., local time, on the Effective Date.

2. **Property.** As part of its provision of programming under this Agreement, Programmer shall also have use of all of the equipment and personal property shown on Schedule 2 which is attached hereto and incorporated herein. It shall be Programmer's responsibility to replace any equipment or property that is damaged or otherwise becomes unusable during the course of this Agreement at Programmer's sole expense. Upon termination of this Agreement for any reason other than closing under

the Sale Agreement, the property shown on Schedule 2, including any replacements of that property, shall revert to full ownership and control of Licensee. In the event of termination resulting from closing of the Sale Agreement, all property shown on Schedule 2, including any replacements of that property, shall transfer to Programmer.

3. Payments.

- a. Programmer shall pay to Licensee the sum of THIRTY SIX THOUSAND DOLLARS (\$36,000.00) on the first day of each month hereafter during the Term. In addition, Programmer shall reimburse Licensee on a monthly basis for all reasonable amounts expended by Licensee and incurred in the operation of the Stations, including operational, engineering, maintenance, administrative and other general expenses incurred by Licensee which are reasonable and customary in nature (the "Expense Reimbursement"). Licensee shall submit to Programmer a schedule of such reasonable expenditures, and accompanying documentation, not later than fifteen (15) days after the end of each month. Programmer, within ten (10) days of receipt of such schedule, shall thereafter reimburse Licensee for the Expense Reimbursement.
- b. Additionally, on the Effective Date, Programmer shall pay to Licensee the sum of \$120,000.00 in cash and, in exchange, Licensee shall assign all of its outstanding accounts receivable via a Bill of Sale to Programmer. Programmer shall thereafter collect such receivables and retain those funds collected. In the event that the Sale Agreement fails to close and this agreement is therefore terminated, Licensee will repurchase the outstanding accounts receivable from Programmer for the actual value of the then-outstanding accounts receivable capped at \$120,000. Licensee represents and warrants that each accounts receivable constitutes a bona fide receivable resulting from a bona fide sale to a customer in the ordinary course of business, the amount of which was actually due on the date thereof and has been or will be collected in the ordinary course of business.
- c. Programmer agrees to pay Licensee the amounts specified in paragraphs (a) and (b) above for the right, from and after the Effective Date, to broadcast the Programming on the terms and conditions herein provided. Payments of the Monthly Fee are due and payable in full on the first day of each calendar month for which such payment is intended to be applied and shall be prorated for any partial calendar month at the beginning or end of the term hereof. The failure of Licensee to demand or insist upon prompt payment in accordance herewith shall not constitute a waiver of its right to do so. Programmer shall receive a payment credit for any Programming not broadcast by a Station (a "Credit"), such Credit to be determined by multiplying the monthly payment by the ratio of the amount of time preempted or not accepted to the total number of hours of Programming for all of the Stations each month provided, however, that no credit shall be given for time used to broadcast Licensee Programming, as described in paragraph 4 hereof.

4. Broadcast of Programming. Subject to the terms of this Agreement, and to the Communications Act of 1934, as amended, and the published rules, regulations and policies of the FCC (collectively, the "Communications Laws"), Licensee shall broadcast the programming, including commercial announcements, provided by Programmer without interruption, deletion or addition of any kind, subject to Licensee's exercise, as set forth in Section 6, of its right to refuse to transmit any of the programming which Licensee, in its sole discretion, deems appropriate.

5. **Programming.** Programmer shall furnish or cause to be furnished the Programming, which shall be an entertainment format for each Station, and may include, without limitation, news, promotions (including on-air giveaways), contests, syndicated programs, barter programs, paid-for programs, locally-produced programs, advertising commercial matter, including that in both program or spot announcement forms, and public service information. On a regular basis, Licensee shall cause to be aired or shall require Programmer to air on the Stations, programming on issues of importance to the local communities as determined by Licensee (the "Licensee Programming"). Programmer shall provide Licensee's employees with such personnel and facilities as they reasonably require for the production and broadcast of Licensee Programming, which shall be aired in such amounts and at such times as Licensee shall reasonably determine, consistent with public service programming currently broadcast over the respective Stations. All actions or activities of Programmer under this Agreement, and all Programming provided by Programmer shall be in accordance with (i) the Communications Act of 1934, as amended; (ii) Federal Communications Commission (the "FCC") rules, requirements and policies, including, without limitation, the FCC's rules on plugola/payola, lotteries, station identification, minimum operating schedule, sponsorship identification, political programming and political advertising rates; (iii) all applicable federal, state and local regulations and policies; and (iv) generally accepted quality standards consistent with Licensee's past practices. Programmer agrees that, if in the sole, good faith judgment of Licensee, Programmer does not comply with the standards of this paragraph, Licensee may suspend or cancel any Programming not in compliance. The right to use the Programming and to authorize its use in any manner and in any media whatsoever shall be, and remain, vested solely in Programmer, subject in all events to the rights, if any, of others in such Programming.

6. **Programming Discretion.** Licensee reserves the right in its discretion, and without liability, to preempt, delay or delete any of the broadcasts of the Programming and to substitute programming which in Licensee's judgment is of greater local, regional or national importance. In all such cases, Licensee shall use its best efforts to give Programmer reasonable notice of its intention to preempt such Programming, and, in the event of such preemption, Programmer shall receive a Credit for the Programming so omitted.

7. **Advertising and Programming Revenues.** Programmer shall retain all advertising and other revenues, and all accounts receivable, with respect to Programming broadcast during the Term, and relating to the Programming it delivers to the Stations for broadcast during the Term, including without limitation, promotion-related revenues. Licensee and Programmer each shall have the right, at their own expense, to seek copyright royalty payments for their own programming.

8. **Station Facilities.** Subject to the qualifications set forth in this Agreement, throughout the term of this Agreement, Licensee shall use its best efforts to make the facilities of the Stations available to Programmer for operation and broadcast with the maximum authorized facilities twenty-four (24) hours a day, seven (7) days a week, except for downtime occasioned by either (i) emergency maintenance or (ii) routine maintenance not to exceed two (2) hours each week, and except for Licensee Programming. Programmer shall not be entitled to a Credit for Programming not broadcast over the Stations for periods specified in clause (i) or (ii) of this Section 8 or due to Licensee Programming. To the extent practicable, any maintenance work affecting the operation of the Stations at full power shall be scheduled upon at least forty-eight (48) hours prior notice to Programmer.

9. **Right of Access.** Licensee shall provide Programmer reasonable access to the Stations to perform its duties in connection with the production and transmission of the Programming over the facilities of the Stations. Licensee will allow Programmer to install at Licensee's and/or Programmer's premises, and to maintain throughout the term of this Agreement, at Programmer's expense, any microwave studio/transmitter relay equipment, telephone lines, transmitter remote control, monitoring devices or any other equipment necessary for the proper transmission of the Programming on the Stations,

and Licensee and Programmer shall take all steps necessary in their control to prepare and file any applications with the FCC to effectuate such proper transmission. Licensee shall have the right to enter and inspect the Stations and the facilities and records associated with the Stations to reasonably monitor the terms of this Agreement, the operation of the Stations and Programmer's obligations hereunder.

10. **Force Majeure.** Any failure or impairment of facilities or any delay or interruption in broadcasting the Programming, or failure at any time to furnish facilities, in whole or in part, for broadcasting, due to acts of God, strikes, or threats thereof, force majeure, or due to causes beyond the control of Licensee, shall not constitute a breach of this Agreement, and Licensee shall not be liable to Programmer, except to the extent of allowing in each such case an appropriate Credit for Programming not broadcast by the Stations based upon a pro rata adjustment to amounts due calculated upon the length of time during which the interruption or failure exists or continues.

11. **Licensee Control of Stations.**

- a. Notwithstanding anything to the contrary in this Agreement, Programmer acknowledges that Licensee is the licensee of the Stations and shall have full authority, control and power over the operation of the Stations during the period of this Agreement. Licensee shall retain control over the policies, programming and operations of the Stations, including, without limitation, the right to decide in its sole discretion whether to accept or reject any Programming or advertisements, the right to preempt any Programming in order to broadcast a program deemed by Licensee to be of greater national, regional, or local interest, and the right to take any actions necessary for compliance with the laws of the United States; the laws of the relevant states; the rules, regulations, and policies of the FCC (including without limitation the prohibition on unauthorized transfers of control); and the rules, regulations and policies of other federal governmental authorities, including without limitation the Federal Trade Commission and the Department of Justice. Licensee shall be responsible for ensuring that FCC requirements are met with respect to ascertainment of the problems, needs and interests of the community, public service programming, main studio staffing, maintenance of public inspection files and the preparation of quarterly issues/programs lists. Programmer shall, upon request, provide Licensee with information with respect to such of Programmer's programs which are responsive to the problems, needs and interests of the community, so as to assist Licensee in the determination of the need for Licensee Programming and the preparation of required quarterly issues/programs lists, and shall 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.
- b. Nothing contained herein shall prevent Licensee from rejecting or refusing programs which Licensee or Licensee believes to be contrary to the public interest, or fail to meet the requirements of the rules, regulations, and policies of the FCC. Nothing contained herein shall prevent Licensee from substituting programs (i) which Licensee believes to be of greater local or national importance or to better address the problems, needs and interests of the residents of the Station's community of license, or (ii) in the event of a local, state, or national emergency. Programmer will serve Licensee with notice and a copy of any letters of complaint it receives concerning any program broadcast on the Stations.

12. **Responsibility for Employees and Expenses.**

- a. Programmer acknowledges that Licensee shall have the right to employ the minimum

number of employees at each main studio of the Stations as may be required by the FCC to maintain a "meaningful managerial and staff presence" at the Stations' main studios. Licensee shall employ the program director and the front office manager for the Stations on a full time basis during the term of this Agreement, or such other employees as may be required by the FCC from time to time. These employees shall work for and be solely answerable to Licensee. The names of the two employees who will work exclusively for Licensee are JP Skelly and Andi Demaranville (the "Licensee Employees"). Licensee will terminate the employment of all of its other employees at the Mitchell Stations effective January 1, 2017. Programmer acknowledges that Licensee shall be directly responsible for paying the salaries, taxes insurance and related costs for the Licensee Employees in addition to legal fees, FCC fees and janitorial expenses (the "Licensee Expenses"). Licensee is also responsible for paying directly (i) transmitter site and main studio rent and/or mortgage for the Stations; and (ii) transmitter site and main studio utilities for the Stations ("Licensee Transmitter Expenses"). Licensee shall be responsible for paying directly its respective income taxes relating to Licensee's earnings from this arrangement. Programmer shall employ and be responsible for the salaries, taxes, insurance and related costs for all personnel used in the production of the Programming (including, without limitation, salespeople, traffic personnel, administrative and programming staff). Excluding those expenses for which Licensee is making direct payments as set forth in this Section 12, during the Term, Programmer shall be responsible for paying all other expenses reasonably and directly related to the continued operation of the Stations subject to the covenants of the parties to this Agreement, and further subject to the ultimate authority, control and power of Licensee.

- b. The parties acknowledge and agree that Programmer shall offer employment as a Programmer employee to all employees of Licensee employed at any of the Stations as listed on Schedule 12 hereto (which shall not include those employees whom Licensee employs) on initial employment terms substantially similar to those in effect by Licensee immediately prior to the Effective Date. Licensee shall be responsible for the payment of all compensation and accrued employee benefits payable to all employees of Licensee at the Stations through the Effective Date even if payable after the Effective date. For each Station employee that is offered and accepts an offer of employment from Programmer (a "Transferred Employee"), Programmer shall be responsible for all liabilities and obligations arising on or after the Effective Date with respect to such Transferred Employees' salaries, commissions, vacation, or other pay, and for insurance or other employee benefits. (ADDRESSED ABOVE) Nothing contained herein shall obligate Programmer to employ a Transferred Employee for any specific period beyond the Effective Date other than to the extent required to maintain adequate staffing at the Stations in order to fulfill Programmer's obligations under this Agreement. All salaries, commissions, vacation or other pay, and for insurance or other employee benefits, due to each Transferred Employee shall be pro-rated as of the Effective Date between Programmer, on the one hand, and Licensee, on the other hand. Without limiting the generality of the foregoing, during the Term, Programmer shall offer any Transferred Employees medical insurance or other medical benefits from the date of hire and shall offer such medical insurance to the Licensee Employees
- c. Licensee will cooperate with Programmer with respect to the transfer of Licensee's worker's compensation and unemployment compensation ratings with the State of South Dakota relative to these Stations only to the extent possible.

13. Station Agreements.

- a. On the Effective Date, Licensee hereby assigns to Programmer, and Programmer hereby assumes, subject to the provisions of this Section 13, the obligations of Licensee arising or to be performed on and after the Effective Date (except to the extent such obligations represent liabilities for activities, events or transactions occurring, or conditions existing, on or prior to the Effective Date) under: (i) all of the contracts necessary and material in the business and operation of each Station, excluding (A) contracts and agreements relating to the Licensee Expenses and (B) contracts and agreements relating to the Licensee Transmitter Expenses; (ii) all agreements for the sale of advertising time on the Stations for cash and at prices consistent with Licensee's ordinary course of business pricing policies ("Time Sales Agreements") and (iii) all contracts entered into by Licensee which are for consideration other than (or in addition to) cash, such as merchandise, services or promotional consideration ("Trade Agreements") arising in the ordinary course of business consistent with the past practices of Licensee. All of the foregoing liabilities and obligations under (i), (ii) and (iii) hereof shall be referred to herein collectively as the "Station Agreements" or individually as a "Station Agreement." Schedule 13 hereto contains a good faith list of the Station Agreements known to Licensee's executive management as of the Effective Date. Except as otherwise indicated on Schedule 13, Licensee represents and warrants that the Station Agreements are freely assignable, or, if consent of the other contracting party to the assignment is required, Licensee covenants to use its reasonable efforts to obtain (or to use reasonable efforts to cause Licensee to obtain) such consent as promptly as practicable. Licensee further represents and warrants that neither Licensee nor any other party to the Station Agreements is in default under any term or condition of such Station Agreement.
- b. To the extent that any Station Agreement is not capable of being sold, assigned, transferred, delivered or subleased without the waiver or consent of any third person (including a government or governmental unit), or if such sale, assignment, transfer, delivery or sublease or attempted sale, assignment, transfer, delivery or sublease would constitute a breach thereof or a violation of any law or regulation, this Agreement and any assignment executed pursuant hereto shall not constitute a sale, assignment, transfer, delivery or sublease or an attempted sale, assignment, transfer, delivery or sublease thereof. In those cases where consents, assignments, releases and/or waivers have not been obtained at or prior to the Effective Date to the transfer and assignment to Programmer of any Station Agreement, this Agreement and any assignment executed pursuant hereto, to the extent permitted by law, shall constitute an equitable assignment by Licensee to Programmer of all of Licensee's rights, benefits, title and interest in and to the Station Agreements, and where necessary or appropriate, Programmer shall be deemed to be Licensee's agent for the purpose of completion, fulfilling and discharging all of Licensee's rights and liabilities arising after the Effective Date under such Station Agreements. In the event that a Station Agreement is not assigned, which is material to the business and operation of the Stations, Licensee shall use its reasonable efforts to provide Programmer with the financial and business benefits of such Station Agreements (including, without limitation, permitting Programmer to enforce any rights of Licensee arising under such Station Agreements), and Programmer shall, to the extent Programmer is provided with the benefits of such Station Agreements, assume, perform and in the course pay and discharge all debts, obligations and liabilities of Licensee under such Station Agreements to the extent that Programmer was to assume those obligations pursuant to the terms hereof. In the event that this Agreement is terminated for reasons other than the execution and closing by Programmer under the Sale Agreement, all

Station Agreements will be reassigned to Licensee as of such termination date and Programmer shall have (i) no further liability under any such Station Agreements, except that Programmer shall remain liable to Licensee regarding any breach by Programmer under any such Station Agreement on or prior to such termination date, and (ii) no further contact with the other party to any such Station Agreement without the prior written consent of Licensee.

- c. Except as set forth herein, Programmer expressly does not, and shall not assume or agree to pay, satisfy, discharge or perform and will not be deemed by virtue of the execution and delivery of this Agreement or any agreement, instrument or document delivered pursuant to or in connection with this Agreement or otherwise by reason of or in connection with the consummation of the transactions contemplated hereby or thereby, to have assumed or to have agreed to pay, satisfy, discharge or perform, any liabilities, obligations or commitments of Licensee of any nature whatsoever whether accrued, absolute, contingent or otherwise and whether or not disclosed by Programmer, other than the Station Agreements and other than as contemplated by the Sale Agreement or the Option Agreement. Licensee will retain and pay, satisfy, discharge and perform in accordance with the terms thereof, all liabilities and obligations of Licensee, other than the Station Agreements, including but not limited to, the obligation to assume, perform, satisfy or pay any liability, obligation, agreement, debt, charge, claim, judgment or expense incurred by or asserted against Licensee related to taxes environmental matters, pension or retirement plans or trusts, profit-sharing plans, employment contracts, employee benefits, severance of employees, product liability or warranty, negligence, contract breach or default, copyright, trademark, service mark, trade name and other intellectual property, or other obligations, claims or judgments asserted against Programmer as successor in interest to Licensee. All such liabilities, obligations and commitments of Licensee described in this Section 10(c) shall be referred to herein collectively as the "Retained Liabilities." The Retained Liabilities do not include any liabilities of Licensee assumed or to be assumed by Programmer pursuant to the Sale Agreement or Option Agreement.

14. Proration of Income and Expenses: Trade Agreements Adjustment.

- a. Except as otherwise provided herein, all deposits, reserves and prepaid and deferred income and expenses relating to the Station Agreements shall be prorated between Programmer and Licensee in accordance with general accepted accounting principles as of 11:59 p.m. Central time, on the date immediately preceding the Effective Date. Notwithstanding the foregoing, with respect to Trade Agreements as of the Effective Date under which Licensee or Licensee has agreed to provide commercial advertising time on one or more of the Stations after the Effective Date, the parties shall adjust for the difference between (i) the value, as of the Effective Date, of all advertising time required to be broadcast by the Stations after the Effective Date pursuant to Trade Agreements, and (ii) the value of all property or services to be received by the Stations after the Effective Date pursuant to Trade Agreements. After the Closing, Programmer shall arrange for and otherwise provide for the broadcast on the Stations of all advertisements and commercial matter required to be broadcast after the Effective Date under the Trade Agreements, and shall be entitled to all goods and services to be provided to the Stations after the Effective Date under the Trade Agreements during the Term.
- b. Except as otherwise provided herein, the prorations and adjustments contemplated by this

Section 14, to the extent practicable, shall be made on the Effective Date. As to those prorations and adjustments not capable of being ascertained on the Effective Date, an adjustment and proration shall be made within ninety (90) calendar days after the Effective Date.

- c. In the event of any disputes between the parties as to such adjustments, the amounts not in dispute shall nonetheless be paid at the time provided in Section 14(b) hereof and such disputes shall be determined by an independent certified public accountant mutually acceptable to the parties, and the fees and expenses of such accountant shall be paid one-half by Licensee and one-half by Programmer.

15. Indemnification.

- a. Programmer shall indemnify and hold Licensee and its members, owners, managers, directors, partners, members, officers, agents, employees, successors, and assigns harmless from and against any and all claims, expenses, causes of action and liability resulting from or relating to (i) the broadcast of Programming during the Term, (ii) any and all promotions, contests and on-air “give-aways” relating to the Stations during the Term, (iii) a material breach of Programmer’s representations, warranties, covenants or agreements contained in this Agreement, the Sale Agreement, (iv) any liability resulting from Programmer’s default under the Station Agreements following their successful assignment hereunder to Programmer, and (v) all other matters arising out of or related to Programmer’s activities involving the Stations or use of the Licensee Station facilities or relating to the obligations assumed by Programmer in connection with this Agreement.
- b. Licensee agrees to indemnify, defend, and hold harmless Programmer and its members, owners, managers, directors, members, officers, agents, employees, successors and assigns from and against any and all claims, expenses, causes of action and liability resulting from or relating to (i) material broadcast by Licensee, including, without limitation, the Licensee Programming, (ii) liabilities (including the loss of advertising revenue which is specifically tied to the particular programming being pre-empted, but not loss of general advertising revenue) that arise as a result of Licensee’s alteration of any and/or all Programming prior to broadcast by Licensee, (iii) a material breach of Licensee’s representations, warranties, covenants or agreements contained herein, (iv) the Retained Liabilities, (v) employment claims or other litigation related to Licensee’s employees, where the subject of such claims or litigation occurred prior to the Effective Date or which are based upon this transaction, and (vi) all other matters arising out of or related to Licensee’s operation of the Stations prior to January 1, 2017, or any of Licensee’s obligations under this Agreement..

16. Events of Default, Cure Periods and Remedies.

- a. The following shall, after notice and the expiration of the applicable cure periods, constitute Events of Default under this Agreement:
 - i. Programmer's failure to timely pay the consideration provided for in Section 3. In such event, Programmer is referred to as the “defaulting party” hereunder with respect to such event.
 - ii. The default by either party in the observance or performance of any material covenant, condition or agreement contained in this Agreement which is not cured

within five (5) business days following notice, or if (A) either party shall make a general assignment for the benefit of creditors, (B) either party shall file or have filed against it a petition for bankruptcy, for reorganization or an arrangement, or for the appointment of a receiver, trustee or similar creditors' representative for the property or assets of such party under any federal or state insolvency law, which, if filed against such party, has not been dismissed or discharged within sixty (60) days thereof, or (C) specifically and without limitation, if Licensee's successors and assigns. The party to which an event described in this clause (ii) relates is referred to as the "defaulting party" hereunder with respect to such event.

- iii. If any representation or warranty herein made by either party in this Agreement, the Sale Agreement or in any certificate or document furnished by either party to the other pursuant to the provisions hereof, shall prove to have been false or misleading in any material respect as of the time made or furnished and is not cured within thirty (30) days following notice in accordance with Section 16(b) hereof. The party making the false or misleading representation or warranty is referred to as the "defaulting party" hereunder with respect to such event.
 - iv. The occurrence of any "Change of Control of Programmer" without the prior written consent of Licensee. In such event, Programmer is referred to as the "defaulting party" with respect to such event. The term "Change of Control of Programmer" means (a) any liquidation, dissolution or winding up of Programmer, whether voluntary or involuntary, (b) the merger or consolidation of Programmer with or into another corporation or entity or the merger or consolidation of any other corporation or entity with or into Programmer unless the equity holders of Programmer immediately prior to such transaction own (directly or indirectly) more than 50% of the voting power of the surviving entity in substantially the same proportions as immediately prior to such transaction, (c) any other transaction or series of related transactions, other than a financing transaction, which results in the equity holders of Programmer immediately prior to the transaction or transactions owning (directly or indirectly) 50% or less of the voting power of Programmer (or any successor entity in the transaction) immediately after the transaction or transactions, or (d) the sale, lease, license (on an exclusive basis) or other disposition, in one or a series of related transactions, of all or substantially all of the assets of Programmer (including the sale, lease, license (on an exclusive basis) or other disposition of assets of any subsidiary or subsidiaries that constitute all or substantially all of the assets of Programmer and the sale or other disposition of ownership (by merger, consolidation, sale of securities or otherwise) of any subsidiary or subsidiaries the assets of which constitute all or substantially all of the assets of Programmer) unless the equity holders of Programmer immediately prior to such transaction own (directly or indirectly) more than 50% of the voting power of the acquiring entity in substantially the same proportions as immediately prior to such transaction.
 - v. Failure of the Sale Agreement to close for any reason.
- b. An Event of Default shall not be deemed to have occurred until 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 and specifying the actions necessary to cure within twenty (20) days, unless otherwise stated herein or extended or

waived by the non-defaulting party. The Event of Default shall not be deemed to have occurred if actions necessary to cure are completed during the relevant cure period. For clarity, an Event of Default shall not be deemed to have occurred under this Agreement if the non-defaulting party has not provided the defaulting party with written notice specifying the default and declaring an Event of Default hereunder.

17. Termination.

- a. Upon the occurrence of an Event of Default, the non-defaulting party may terminate this Agreement provided that it is not also in material default hereunder, and may seek such remedies at law and/or equity as are available, including without limitation specific performance. Termination of this Agreement shall also result in the automatic termination of the Sale Agreement. If Programmer has defaulted in the performance of its obligations and any cure period has lapsed, Licensee shall be under no further obligation to make available to Programmer any further broadcast time or broadcast transmission facilities and, without limitation of remedies, all amounts accrued or payable to Licensee up to the date of termination which have not been paid, less any payment credits, shall immediately become due and payable.
- b. This Agreement shall terminate automatically upon the termination of the Sale Agreement.
- c. Upon termination of this Agreement, Programmer shall be responsible for all liabilities, debts and obligations of Programmer accrued from the purchase of air time and transmission services including, without limitation, accounts payable, barter agreements and unaired advertisements, but not for Licensee's federal, state and local tax liabilities associated with Programmer's payments to Licensee as provided for herein. With respect to Programmer's obligations to broadcast material over the Stations after termination hereunder, Programmer may propose compensation to Licensee for meeting these obligations, but Licensee shall be under no duty to accept such compensation or to perform such obligations. Upon termination, (i) Programmer shall return to Licensee any equipment or property of the Stations used, or purchased to replace original equipment by Programmer, its employees or agents, in substantially the same condition, location and function as such equipment existed on the date of this Agreement, ordinary wear and tear excepted, (ii) Programmer shall assign to Licensee (or at Licensee's direction to Licensee) and Licensee (or Licensee) shall assume the still outstanding Station Agreements that were assigned to Programmer pursuant to Section 12 hereof and (iii) Programmer shall assign to Licensee (or at Licensee's direction to Licensee) any new contracts entered into by Programmer relating to the Stations that Licensee or Licensee expressly agrees to assume. Notwithstanding anything in the foregoing to the contrary, termination shall not extinguish any rights of either party as may be provided by Section 15 hereof.

18. Programmer Termination Option. Programmer (with the prior written consent of Licensee, which shall not be unreasonably withheld) may elect to terminate this Agreement at any time that Licensee preempts or substitutes other programming for that supplied by the Programmer during three percent (3%) or more of the total hours of operation of the Stations during any calendar month. In the event Programmer elects to terminate this Agreement pursuant to this provision, it shall give Licensee notice of such election at least twenty (20) days prior to the termination date. Upon termination, neither party shall have any further liability to the other except as may be provided by Sections 15 and 17 hereof. Termination of this Agreement pursuant to this paragraph 18 shall also result

in the termination of the Option Agreement and the Sale Agreement.

19. **Responsive Programming.** Programmer acknowledges its interest in ensuring that the Stations serve the needs and interests of the residents of each respective Station's community of license and service areas and agrees to cooperate in doing so. Programmer acknowledges that Licensee may, on a regular basis, assess the issues of concern to residents of the Stations' community of license and service areas and address those issues in its public service programming. Licensee may describe those issues and responsive programming and place issues/program lists in the Stations' public inspection files as required by FCC rules. Licensee may request, and Programmer shall provide information concerning such of Programmer's Programming that is responsive to community issues so as to assist Licensee in the satisfaction of its public service programming obligations. Programmer shall also provide to Licensee or Licensee upon request such other information necessary to enable Licensee to prepare records and reports required by the FCC or other local, state or federal government entities.

20. **Programming Agreement Compliance or Challenge.**

- a. It is the intention of Licensee and Programmer that this Agreement comply at all times with the rules, regulations and policies of the FCC. Licensee and Programmer recognize, however, that such rules, regulations and policies continue to evolve. Therefore, should Licensee or Programmer determine in good faith that any provision of this Agreement is or becomes inconsistent with FCC rules, regulations or policies as they may be in effect from time to time, Licensee and Programmer will negotiate in good faith substitute provisions that comply with then-current FCC rules, regulations and policies and which preserve, as closely as possible, their original intentions as expressed in this Agreement. If the parties are unable to reform this Agreement within thirty (30) days to comply with the rules, regulations and policies of the FCC, then this agreement shall terminate, and all sums owing to Licensee shall be paid and neither party shall have any further liability to the other except as may be provided by Sections 15 and 17 hereof.
- b. If this Agreement is challenged in whole or in part at or by a governmental authority or is challenged in whole or in part in a judicial forum, counsel for the Licensee and counsel for the Programmer shall jointly defend this Agreement and the parties' performance thereunder throughout all such proceedings. If this Agreement is declared invalid or illegal in whole or in substantial part by a ruling, order or decree of a governmental authority or court, and such ruling, order or decree has become effective, or in the event of a change in FCC rules, regulations or policies, then the parties shall endeavor in good faith to reform the Agreement as necessary. If the parties are unable to reform this Agreement within thirty (30) days of the effective date of such ruling, order or decree, or change of FCC rules, regulations or policies, then this Agreement and the Option Agreement shall terminate, and all sums owing to Licensee as of such termination date shall be paid and neither party shall have any further liability to the other except as may be provided by Sections 15 and 17 hereof.

21. **Representations, Warranties and Covenants of Licensee.** In addition to the representations and warranties made elsewhere in this Agreement, Licensee further makes the following further representations, warranties and covenants.

- a. Licensee shall maintain in full force and effect, subject to reimbursement by Programmer to Licensee, insurance in an amount typically maintained by Licensee for its other stations. Licensee shall name Programmer as an additional insured on such insurance policies. Any insurance proceeds received by Licensee in respect of damaged property

shall be used to repair or replace such property so that the operations of the Stations conform with this Agreement. In the event and to the extent that proceeds from any business interruption insurance is paid to Programmer with respect to the Stations, Programmer shall continue to make the Monthly Payment.

- b. Licensee shall comply with all laws and regulations applicable in the conduct of Licensee's business and Licensee acknowledges that Programmer has not urged, counseled, or advised the use of any unfair business practice.
- c. Licensee will use reasonable efforts to deliver all information, documents or further assistance necessary to complete the transactions contemplated hereby, including, without limitation the execution of all documents, assignments, conveyances, regulatory applications or other material or actions as may be reasonable requested by Programmer.
- d. Licensee hereby verifies that execution and performance of this Agreement complies with the Commission's restrictions on local radio ownership set out in Sections 73.3555(a) of the FCC Rules.
- e. Licensee covenants that its performance of its obligations under this Agreement and its furnishing of Programming shall be in compliance with, and shall not violate, any applicable laws or any applicable rules, regulations, or orders of the FCC or any other governmental agency and Licensee acknowledges that neither Programmer nor Programmer has urged, counseled, or advised the use of any unfair business practice.
- f. Licensee shall promptly advise Programmer of any public or FCC complaint or inquiry that Licensee receives concerning the Programming on the Stations.
- g.

22. **Representations, Warranties and Covenants of Programmer.** Programmer makes the following further representations, warranties and covenants.

- a. Programmer hereby verifies that execution and performance of this Agreement complies with the Commission's restrictions on local radio ownership set out in Sections 73.3555(a) of the FCC Rules.
- b. Programmer covenants that its performance of its obligations under this Agreement and its furnishing of Programming shall be in compliance with, and shall not violate, any applicable laws or any applicable rules, regulations, or orders of the FCC or any other governmental agency and Programmer acknowledges that neither Licensee nor Licensee has urged, counseled, or advised the use of any unfair business practice.
- c. Programmer shall promptly advise Licensee of any public or FCC complaint or inquiry that Programmer receives concerning the Programming on the Stations and shall cooperate with Licensee and take all actions as may be reasonably requested by Licensee in responding to any such complaint or inquiry.
- d. Programmer represents and warrants to Licensee that Programmer has and shall have throughout the term of this Agreement the full authority to broadcast the programming on the Stations and that Programmer shall not broadcast on the Stations any material in violation of the Copyright Act. All music supplied by Programmer shall be: (i) licensed

by ASCAP, SESAC or BMI; (ii) in the public domain; or (iii) cleared at the source by Programmer. Programmer will be responsible for the cost of all music licensing.

- e. Upon request by Licensee, Programmer shall provide in a timely manner any such information in its possession which shall enable Licensee to prepare, file or maintain the records and reports required by the FCC.
- f. Programmer covenants that it shall not accept, and shall instruct its employees not to accept, any consideration, compensation, gift or gratuity of any kind whatsoever, regardless of its value or form, including, but not limited to, a commission, discount, bonus, materials, supplies or other merchandise, services or labor, whether or not pursuant to written contracts or agreements between Programmer and merchants or advertisers, unless the payer is identified in the program as having paid for or furnished such consideration, in accordance with FCC requirements. Programmer agrees to annually, or more frequently at the request of Licensee, execute and provide Licensee with an affidavit regarding payola/plugola compliance.
- g. Programmer agrees to maintain in full force and effect, throughout the Term, insurance as may reasonably be required by Licensee, including commercial general liability with minimum limits of \$2,000,000, appropriate property and casualty insurance, and business interruption insurance. Programmer shall name Licensee as an additional insured on such insurance policies. Programmer shall cause any insurance proceeds received by Programmer in respect of damaged property associated with the Stations to be used to repair or replace such property so that the operations of the Stations conform with this Agreement. Programmer shall provide Licensee such certificates of insurance or binders as Licensee shall reasonably request in order to confirm the insurance coverage contemplated by this paragraph (g).
- h. During the Term, Programmer shall provide to Licensee the following reports on a monthly basis with each such report being (i) delivered to Licensee by the 25th day of each month with respect to the immediately preceding month and (ii) prepared based on Generally Accepted Accounting Principles consistently applied as in effect in the United States of America and on a basis consistent with the financials prepared by Licensee prior to the date hereof regarding the Stations: (A) an income and broadcast cash flow ("BCF") statement (for the current month and fiscal year to date) and balance sheet of Programmer regarding each of the Stations (and on a consolidated basis among all of the Stations), (B) a listing of accounts payable with respect to the operation of the Stations, (C) a listing of accounts receivable with respect to the operation of the Stations, and (D) such other financial reports regarding Programmer or the Stations as Licensee shall reasonably request. Programmer covenants that it will deliver all information, documents or further assistance necessary to complete the transactions contemplated hereby, including, without limitation the execution of all documents, assignments, conveyances, regulatory applications or other material or actions as may be reasonable requested by Licensee.
- j. Programmer agrees to perform all maintenance related to the day to day operations of the Stations.
- k. Programmer covenants that it shall not cause or permit any liens, encumbrances, foreclosures, contractual defaults or outstanding balances of any kind or nature whatsoever in respect of Licensee's or the Station's assets, except for (i) liens existing on

the Effective Date, (ii) statutory liens that were created in the ordinary course of business that do not materially affect the current use and enjoyment of the Assets, (iii) liens of materialmen, mechanics, workmen and repairmen for amounts not yet due and payable which are imposed by law and created in the ordinary course of business, and (iv) licenses of trademarks or other intellectual property rights granted by Programmer in the ordinary course of business and not interfering in any material respect with the operation of the Stations.

- I. At least 55 days before the start of any primary and 70 days before the start of any general election campaign, Programmer shall confirm in writing with Licensee the rates to be charged to political candidates for public office to be sure that the rates are in conformance with applicable laws. Programmer shall provide Licensee with access to all books and records regarding the pricing of advertising sold on the Stations in order to confirm that the political rates are consistent with applicable law and regulation. With respect to Programmer's programming, Programmer shall maintain and promptly deliver to Licensee all records and information required by the FCC to be placed in the public inspection file of the Stations pertaining to the broadcast of political programming, and advertisements, in accordance with the provisions of Section 73.1940 and 73.3526 of the FCC's rules, and agrees to identify the sponsor(s) of sponsored programming addressing political issues or controversial subjects of public importance, in accordance with the provisions of Section 73.1212 of the FCC's rules. Programmer shall consult with Licensee and comply with the Communications Laws, 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 as mandated by any "fairness" rule with respect to such "issue-oriented" advertising or programming as may be broadcast) and the charges permitted therefor. 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's programming to make time available to political candidates. Programmer shall provide to Licensee documentation relating to such programming as Licensee shall reasonably request and shall indemnify Licensee for any claim, cost or expense (including reasonable attorneys' fees) arising from the broadcast of any material by Programmer on the Stations during the Term.

23. **Intellectual Property.** As of the Effective Date, Licensee hereby licenses to Programmer the non-exclusive right to use all intellectual property owned by or licensed to Licensee and used solely in the operations of the Stations (including, but not limited to, logos, jingles, promotional materials, call signs, goodwill, trademarks, service marks, slogans, trade names, copyrights and any applications and registrations therefor) (the "IP License"). In the event of termination of the Agreement the IP License shall terminate.

24. **Subcarrier Rights.** Licensee and Programmer acknowledge and agree that any subsidiary communications services transmitted on a subcarrier within the FM baseband signal of any of the Stations ("Subcarrier"), and any use of the Subcarrier authorized by the FCC ("Subcarrier Uses"), are subject to the terms and conditions of this Agreement. Licensee agrees to use reasonable efforts to cause Licensee to apply, at Programmer's expense, for any additional authorization from the FCC or any other governmental agency or entity that may be necessary in order to make use of any Subcarrier Uses. Licensee hereby agrees that Programmer has the sole and exclusive right, subject to the terms and conditions hereof to make use of any Subcarrier uses and collect the revenues therefrom. Programmer hereby agrees to reimburse Licensee for Licensee's reasonable expenses incurred in carrying out

Licensee's obligations pursuant to this Section 24, including reasonable attorney and engineering fees and expenses.

25. **Publicity.** Licensee and Programmer shall not issue any press release or otherwise make any public statement with respect to the transactions contemplated herein except as may be required by law or regulation or as agreed to by Licensee and Programmer.

26. **No Waiver; Remedies Cumulative.** No failure or delay on the part of Licensee or Programmer 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 Programmer herein provided are cumulative and are not exclusive of any right or remedies which it may otherwise have.

27. **Construction.** This Agreement shall be construed in accordance with the laws of the State of South Dakota, without giving effect to the choice of law provisions thereunder, and the obligations of the parties hereto are subject to all federal, state or municipal laws or regulations now or hereafter in force and to the regulations of the FCC and all other governmental bodies or authorities presently or hereafter to be constituted.

28. **Benefit and Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither Programmer nor Licensee may voluntarily or involuntarily assign its interest under this Agreement without the prior written consent of the other party. In the event that Licensee finds it necessary or is required to provide to a third party lender a collateral assignment of Licensee's interest in this Agreement and/or any related documents, Programmer shall cooperate with Licensee and any third party requesting such assignment including but not limited to Programmer signing a consent and acknowledgment of such assignment. All covenants, agreements, statements, representations, warranties and indemnities in this Agreement by and on behalf of any of the parties hereto shall bind and inure to the benefit of their respective successors and permitted assigns of the parties hereto.

29. **Notices.** All notices, demands, requests, or other communications which may be or are required to be given or made by any party to any other party pursuant to this Agreement shall be in writing and shall be hand delivered, mailed by first-class registered or certified mail, return receipt requested, postage prepaid, delivered by overnight air courier, or transmitted by email or facsimile transmission. Each notice, demand, request, or communication which shall be given or made in the manner described above shall be deemed sufficiently given or made for all purposes at such time as it is delivered to the addressee (with the return receipt, the delivery receipt, the affidavit of messenger or upon transmission if sent via facsimile or email. Notices, unless otherwise instructed in writing, should be delivered;

If to Licensee, to: Riverfront Broadcasting, LLC
3008 Mulligan Drive
Yankton, SD 57078
Attn: Carolyn L. Becker
carolynb@riverfrontbroadcasting.com

with a copy to: Johnson, Miner, Marlow, Woodward &
Huff Prof. LLC
200 West Third Street
P.O. Box 667

Yankton, SD 57078
Attn: Sheila Woodward
sheila@jmmwh.com

If to Programmer, to: NEDVED MEDIA, LLC
400 N. Rowley St
PO Box 921
Mitchell, SD 57301-2617

with a copy to: MorganTheeler LLP
1718 North Sanborn Boulevard
P.O. Box 1025
Mitchell, SD 57301
Attn: Trudy A. Morgan
tmorgan@morgantheeler.com

30. **Entire Agreement.** This Agreement, the Sale Agreement, and the Option Agreement and related documents embody 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 alterations, modifications or change of this Agreement shall be valid unless made in writing, and signed by the party adversely affected by the waiver, and then such waiver shall be effective only in the specified instance and for the purpose for which given.

31. **Severability.** In the event that any of the provisions contained in this Agreement is held to be invalid, illegal or unenforceable, such event 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.

32. **Counterpart/Electronic 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. This Agreement shall be binding and effective as of the date on which the executed counterparts are exchanged by the parties.

33. **Certifications - Licensee.** Licensee hereby certifies that it maintains ultimate control over the Stations' facilities, including, specifically, control over the Stations' finances, personnel and programming.

34. **Certifications – Programmer.** Programmer hereby certifies that this Agreement complies with the provisions of paragraph (a) of Section 73.3555 of the FCC's rules and regulations.

35. **Termination for Change in FCC Rules or Policies.** The parties believe that the terms of this Agreement and the performance contemplated thereunder meet all the requirements of current FCC policy for brokerage agreements and agree that they shall negotiate in good faith to meet any FCC concern with respect to it if they are incorrectly interpreting current FCC policy or in the event that FCC policy changes during the Term.

36. **No Agency.** No agency relationship between the parties shall be expressed or implied by the terms of this Agreement, nor shall this Agreement be construed to create a partnership between the parties. Licensee shall not hold itself out as an agent or partner with Programmer, and Programmer shall not hold itself out as an agent or partner with the Licensee. All contracts for the sale of airtime, purchase

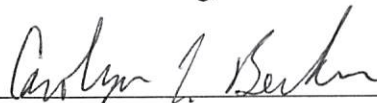
orders, agreements, sales materials and similar documents produced or executed by Programmer shall be executed in the name of Programmer, and not on behalf of Licensee or the Stations, and Programmer shall not represent that it is the licensee of the Stations.

37. No Joint Venture. The parties agree that nothing herein shall constitute a joint venture or partnership between Licensee and Programmer. The parties acknowledge that call letters, trademarks and other intellectual property shall at all times remain the property of the respective parties and that no party shall obtain any ownership interest in any other party's intellectual property by virtue of this Agreement.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed by a duly authorized officer as of the date first written above.

LICENSEE:

Riverfront Broadcasting, LLC

By 

Name: Carolyn Becker, Managing Member

BROKER:

NEDVED MEDIA, LLC

By 

Name