

LOCAL PROGRAMMING AND MARKETING AGREEMENT

THIS LOCAL PROGRAMMING AND MARKETING AGREEMENT (this "Agreement") is made and entered into as of May 8, 2007, between **RADIOACTIVE, LLC**, an Ohio limited liability company ("Licensee") and **RADIO RANCH, LTD**, a Texas limited partnership ("Programmer").

RECITALS

WHEREAS, Licensee, as the winning bidder for the permit in Auction No. 37, was issued by the Federal Communications Commission ("FCC") on March 10, 2005, a construction permit, FCC File No. BNPH-20050103ACN (the "Original Permit") authorizing the construction of a new FM radio station to operate on Channel 243A, 96.5 MHz, serving Ingram, Texas, FCC Facility ID No. 164252, call sign KAKI (the "Station"); and

WHEREAS, Licensee has pending before the FCC an application on FCC Form 301 for the minor modification of the Original Permit, FCC File No. BMPH- 20050815AEK (the "Modification Application"), upon grant of which the FCC will issue a construction permit authorizing construction of the facilities specified in the Modification Application (the "Modified Permit" and, together with the Original Permit, the "Permit"); and

WHEREAS, following the construction of the Station in accordance with the Permit, and upon the filing by Licensee with the FCC of an acceptable application for a license to cover the Permit (the "License Application"), the FCC shall in due course issue a license to Licensee for the Station (the "Station License"); and

WHEREAS, Licensee and Programmer, simultaneously with the execution of this Agreement, have entered into an Option and Asset Purchase Agreement dated as of the date hereof (the "Purchase Agreement"), pursuant to which Licensee has agreed to sell to Programmer, and Programmer has agreed to buy from Licensee, the Station and associated assets as described therein under the terms and conditions set forth in the Purchase Agreement; and

WHEREAS, Licensee and Programmer, simultaneously with the execution of this Agreement, have entered into an Equipment and Studio Lease Agreement (the "Lease Agreement"), pursuant to which Programmer shall lease to Licensee audio delivery, broadcast transmission system, program delivery and telephone equipment and studio space as described therein under the terms and conditions set forth in the Lease Agreement; and

WHEREAS, Programmer has available and is producing radio programs that it desires to have broadcast on the Station, and therefore desires to purchase airtime from Licensee for the broadcast of such programs; and

WHEREAS, Licensee has agreed, beginning on the date the Station commences operations pursuant to program test authority (the "PTA Date"), to make available to Programmer airtime on the Station and accept for broadcast the programs of Programmer on the terms and conditions set forth in this Agreement; and

NOW, THEREFORE, taking the foregoing recitals into account, and in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. **Agreement Term.** The term of this Agreement (the "Term") begins on the date of hereof and, unless terminated earlier pursuant to the provisions of this Agreement, shall end on the earliest of: (a) the Closing Date; (b) the date of termination of this Agreement in accordance with Section 13; (c) the date of termination of the Lease Agreement in accordance with its terms; and (d) if the Purchase Agreement is terminated in accordance with its terms, at the option of Licensee, at any time upon sixty (60) days written notice to Programmer.

2. **Programmer's Brokerage of Airtime and Provision of Programming.** Beginning on the PTA Date, Programmer agrees to broker time on the Station, and Licensee agrees to broadcast, or cause to be broadcast, on the Station, according to the terms hereof, programming designated and provided by Programmer (the "Program" or "Programs") for broadcast on the Station twenty-four (24) hours per day, seven (7) days per week, excluding the period from 6:00 a.m. to 8:00 a.m. each Sunday morning for non-commercial broadcasting intended to serve the needs and interests of the communities served by the Station (the "Broadcasting Period"). Programmer shall transmit, at its own cost, its Programs to the Station's transmitting facilities.

3. **Broadcasting Obligations.** In return for the payments to be made by Programmer hereunder, during the Term, Licensee shall broadcast the Programs delivered by Programmer during the Broadcasting Period specified in Section 2 above, subject to the provisions of Section 6 below. Notwithstanding anything herein to the contrary, (a) Programmer may (but shall not be obligated to) stream programming furnished hereunder 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.

4. **Advertising Sales; Accounts Receivable.** Programmer shall be exclusively responsible for the sale of advertising on the Station and for the collection of accounts receivable arising therefrom, and Programmer shall be entitled to all revenues of the Station during the Term. All contracts for advertising on the Station which may be entered into by Programmer shall terminate upon the termination of this Agreement.

5. **Payments.** In consideration of the execution of this Agreement by Licensee, and for the broadcast of the Programs and the other benefits made available to Programmer pursuant to this Agreement, during the Term, Programmer shall pay Licensee: (a) an LMA Monthly Payment as set forth on Schedule A attached hereto; and (b) Reimbursement Payments as set forth on Schedule B attached hereto.

6. Operation, Ownership and Control of the Station. Notwithstanding anything to the contrary in this Agreement, as long as Licensee remains the permittee or licensee of the Station, it shall have full authority, power and control over the operation of the Station and over all persons working at the Station during the Term and shall retain control over the policies, programming and operations of the Station. Licensee shall bear the responsibility for the Station's compliance with all applicable provisions of the rules and policies of the FCC and all other applicable laws. Licensee shall employ two full-time employees, whose work shall be undertaken consistent with FCC rules and regulations, who shall be located at the main studio of the Station, which location shall be designated by Programmer. One of Licensee's employees shall be the manager of the Station. Licensee's employees shall report to and be accountable to Licensee and shall be ultimately responsible for the day-to-day operation of the Stations (the "Station Employees"). Programmer shall be entitled to utilize the services of the Station Employees during such times, during the Station Employees' regular working hours, that they are not performing work for Licensee. Nothing contained herein shall prevent Licensee from (a) rejecting or refusing, in good faith, programs which Licensee believes to be contrary to the public interest, or (b) substituting programs which Licensee believes to be of greater local or national importance or which are designed to address the problems, needs and interests of the local communities. Licensee reserves the right to refuse to broadcast any Program containing matter which knowingly violates any right of any third party. Licensee also reserves the right to refuse to broadcast any Program which does not meet the requirements of the rules, regulations, and policies of the FCC or the regulations and restrictions set forth in Section 10. Licensee further reserves the right to preempt any Program in the event of a local, state, or national emergency. If Licensee preempts, rejects or otherwise refuses to broadcast any Program, then Licensee shall broadcast, on a non-commercial basis, substitute programming of equal or greater value. Licensee represents and covenants that preemption pursuant to this Section 6 shall only occur to the extent Licensee deems necessary to carry out its obligations as an FCC licensee and Licensee expressly agrees that its right of preemption shall not be exercised for the commercial advantage of Licensee or others. Programmer agrees to cooperate with Licensee to ensure that Emergency Alert System transmissions are properly performed in accordance with Licensee's instructions. Licensee reserves the right to delete any commercial announcements that do not comply with the requirements of the FCC's sponsorship identification policy. Programmer shall immediately serve Licensee with notice and a copy of any letters of complaint it receives concerning any Program for Licensee review and inclusion in its public inspection file.

7. Authorizations and Signal; Call Signs. During the Term, Licensee shall hold all licenses and other permits and authorizations necessary for the operation of the Station as contemplated by the Permit (including licenses, permits and authorizations issued by the FCC), and such licenses, permits and authorizations shall be in full force and effect for the entire Term hereunder, unimpaired by any acts or omissions of Licensee, its principals, employees or agents. During the Term, Licensee shall retain all rights to the call letters of the Station or any other call letters which may be assigned by the FCC for use by the Station, and shall ensure that proper station identification announcements are made with such call letters in accordance with FCC rules and regulations. Licensee shall give due consideration to any request by Programmer to change the Station's call letters, provided Programmer agrees to reimburse Licensee for any out-of-pocket expenses incurred by Licensee attendant thereto. Programmer shall include in the Programs it delivers for broadcast an announcement at the beginning of each hour of such

Programs to identify such call letters, as well as any other announcements required by the rules and regulations of the FCC. Programmer is specifically authorized to use such call letters in its Programs and in any promotional material, in any media, used in connection with the Programs.

8. Section 73.3555, Note 2(j)(3) Certifications.

8.1 Licensee Control. Licensee hereby verifies that for the Term of this Agreement it shall maintain ultimate control over the Station's facilities, including specifically control over the Station's finances, personnel and programming, and nothing herein shall be interpreted as depriving Licensee of the power or right of such ultimate control.

8.2 Compliance with 47 C.F.R. § 73.3555. Programmer hereby verifies that the execution and performance of this Agreement complies with the Commission's restrictions on ownership set out in 47 C.F. R. Section 73.3555.

9. Public Performance Licenses. During the Term, Programmer shall obtain and maintain in full force and effect in its own name all licenses necessary for the public performance of music on the Station ("Music Licenses") as are required for the Programs and as shall be required by the licensor of those Music Licenses. In the event that Licensee is required by the licensor of such Music Licenses to obtain in its name Music Licenses for Programmer's programming, such Music Licenses fees during the Term shall be reimbursed by Programmer. Licensee shall secure its own public performance licenses for any music that it broadcasts on the Station.

10. Programs.

10.1 Production of the Programs. Licensee acknowledges that it is familiar with the type of programming Programmer currently produces and has determined that the broadcast of such programming on the Station would serve the public interest. Programmer agrees that the contents of the Programs it transmits to Licensee shall conform to all FCC rules, regulations and policies. Programmer agrees that it shall consult with Licensee in the selection of the Programs it transmits to Licensee to ensure that the Programs' content contains matters responsive to issues of public concern in the local communities, as those issues are made known to Programmer by Licensee. Licensee acknowledges that its right to broadcast the Programs is non-exclusive and that ownership of the Programs, and all parts thereof, and the right to authorize their use in any manner and in any media whatsoever, shall be and remain vested in Programmer.

10.2 Political Time. Licensee shall oversee and take ultimate responsibility with respect to the provision of equal opportunities, lowest unit charge and reasonable access to political candidates, and compliance with the political broadcast rules of the FCC. During the Term, Programmer shall cooperate with Licensee as Licensee complies with its political broadcast responsibilities, and shall supply such information promptly to Licensee as may be necessary to comply with the political time record keeping and lowest unit charge requirements of federal law. Programmer shall release advertising availabilities to Licensee during the Broadcasting Period as necessary to permit Licensee to comply with the political

broadcast rules of the FCC; provided, however, that revenues received by Licensee as a result of any such release of advertising time shall promptly be remitted to Programmer. Licensee shall give due consideration to any request by Programmer not to provide time for candidates for offices other than federal offices.

11. Expenses. During the Term, Programmer shall be responsible for: (a) the salaries, taxes, insurance and related costs for all personnel used in the production of the Programs supplied to Licensee; and (b) the costs of delivering the Programs to Licensee. Licensee shall be responsible for paying directly: (i) the salaries, taxes, insurance and related costs for the Station Employees (the "Licensee Employee Expenses"); (ii) lease payments pursuant to the Lease Agreement ("Lease Expenses"); and (iii) expenses reasonably incurred to obtain and maintain the FCC licenses for the Station ("License Expenses"). Licensee shall be responsible for paying directly all income taxes relating to Licensee's earnings from this arrangement as well as the expenses of its lawyers, accountants, professional advisers, and all expenses not related to the Station. Excluding those expenses for which Licensee is making direct payments as set forth in this Section 11, during the Term, Programmer shall be responsible for paying all other expenses reasonably and directly related to the continued operation of the Station, subject to the covenants of the parties to this Agreement, and further subject to the ultimate authority, control and power of Licensee. Expenses incurred by Programmer shall be consistent with the costs of goods and services, including wage rates, in the Kerrville, Texas area.

12. Subcarrier and Digital FM Rights. Licensee and Programmer acknowledge and agree that any subsidiary communications services transmitted on a subcarrier within the FM baseband signal of the Station ("Subcarrier"), any uses of the Subcarrier authorized by the FCC ("Subcarrier Uses"), and any multicasting by digital FM transmissions using the Station's broadcast signal are subject to the terms and conditions of this Agreement. Licensee hereby agrees: (a) 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 or digital FM uses; and (b) that Programmer has the sole and exclusive right, subject to the terms and conditions hereof, to make use of any Subcarrier Uses or digital FM uses and collect the revenues therefrom. Programmer hereby agrees to reimburse Licensee for Licensee's reasonable expenses incurred in carrying out Licensee's obligations and expenses incurred attendant thereto pursuant to this Section 12, including reasonable attorneys' and engineering fees and expenses.

13. Events of Default; Termination.

13.1 Programmer's Events of Default. The occurrence of any of the following shall be deemed an Event of Default by Programmer under this Agreement: (a) Programmer fails to make timely payments as provided for in Section 5 of this Agreement; (b) Programmer fails to observe or perform its other obligations contained in this Agreement in any material respect; or (c) Programmer breaches the representations and warranties made by it under this Agreement in any material respect.

13.2 Licensee Events of Default. The occurrence of the following shall be deemed an Event of Default by Licensee under this Agreement: (a) Licensee fails to observe or perform its obligations contained in this Agreement in any material respect; or (b) Licensee breaches the representations and warranties made by it under this Agreement in any material respect.

13.3 Cure Period. Notwithstanding the foregoing, an Event of Default shall not be deemed to have occurred until thirty (30) days after the non-defaulting party has provided the defaulting party with written notice specifying the Event of Default and such Event of Default remains uncured.

13.4 Termination in the Event of Default. Upon the occurrence of an Event of Default, and in the absence of a timely cure pursuant to Section 13.3, the non-defaulting party may terminate this Agreement, effective immediately upon written notice to the defaulting party.

13.5 Cooperation Upon Termination. If this Agreement is terminated for any reason, the parties agree to cooperate with one another and to take all actions necessary to rescind this Agreement and return the parties to the status quo ante.

14. Indemnification. Each party shall indemnify and hold harmless the other party against any and all liability for libel, slander, illegal competition or trade practice, infringement of trademarks, trade names, or program titles, violation of rights of privacy, and infringement of copyrights and proprietary rights resulting from the broadcast by that party of programming on the Station. Each party shall indemnify and hold the other harmless against any and all liability for libel, slander, illegal competition or trade practice, infringement of trademarks, trade names, or program titles, violation of rights of privacy, and infringement of copyrights and proprietary rights resulting from the broadcast of its programming on the Station. The obligations under this Section shall survive any termination of this Agreement.

15. Authority. Programmer and Licensee each represent and warrant to the other that: (a) it has the power and authority to enter into this Agreement and to consummate the transactions contemplated hereby; (b) it is in good standing in the jurisdiction of its organization and is qualified to do business in all jurisdictions where the nature of its business requires such qualification; (c) it has duly authorized this Agreement, and this Agreement is binding upon it; and (d) the execution, delivery, and performance by it of this Agreement does not conflict with, result in a breach of, or constitute a default or ground for termination under any agreement to which it is a party or by which it is bound.

16. Relationship of Parties. Neither the Programmer nor Licensee shall be deemed to be the agent, partner, or representative of the other party to this Agreement, and neither party is authorized to bind the other to any contract, agreement, or understanding.

17. **Force Majeure.** The failure of either party hereto to comply with its obligations under this Agreement due to acts of God, strikes or threats thereof or a force majeure or due to causes beyond such party's control, shall not constitute an Event of Default under Section 13 of this Agreement and neither party shall be liable to the other party therefore. Programmer and Licensee each agrees to exercise its best efforts to remedy the conditions described in this Section as soon as practicable.

18. **Subject to Laws.** The obligations of the parties under this Agreement are subject to the rules, regulations and policies of the FCC and all other applicable laws. The parties agree that Licensee and the Programmer may file a copy of this Agreement, with appropriate sections redacted, with the FCC and place a copy in the Station's public inspection file. If required, Programmer shall place a copy of the redacted Agreement in the public inspection file of any radio station it is the FCC licensee of.

19. **Certain Interpretive Matters and Definitions.** Unless the context otherwise requires: (a) all references to Sections, Schedules or Exhibits are to Sections, Schedules or Exhibits of or to this Agreement; (b) each term defined in this Agreement has the meaning assigned to it in this Agreement, provided however, if a term is not defined in this Agreement, the Purchase Agreement definition shall apply; (c) each accounting term not otherwise defined in this Agreement has the meaning assigned to it in accordance with generally accepted accounting principles as in effect on the date hereof; (d) "or" is disjunctive but not necessarily exclusive; (e) words in the singular include the plural and vice versa; and (f) all references to "\$" or dollar amounts will be to lawful currency of the United States of America.

20. **Assignability; No Third Party Rights.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns. Notwithstanding the foregoing, no party may assign its rights or obligations under this Agreement without prior written consent of the other party, which such consent shall not be unreasonably withheld, conditioned, or delayed, except: (i) Licensee may, without such consent, assign its rights and obligations under this Agreement to a person or entity that the FCC has approved to be the permittee or licensee of the Station pursuant to an application on FCC Form 316; and (ii) Programmer may, without such consent, assign its rights and obligations under this Agreement to an entity under common control with Programmer, i.e., an entity to which Programmer could assign or transfer an FCC radio station authorization using FCC Form 316, provided, however, such assignment shall not release Programmer from its liabilities hereunder. The covenants, conditions and provisions hereof are and shall be for the exclusive benefit of the parties hereto and their permitted assigns, and nothing herein, express or implied, is intended or shall be construed to confer upon or to give any person or entity other than the parties hereto and their permitted assigns any right, remedy or claim, legal or equitable, under or by reason of this Agreement.

21. **Remedies.** In addition to a party's rights of termination hereunder (and in addition to any other remedies available to it or provided under law), in the event of an uncured Event of Default with respect to either party, the other may seek specific performance of this Agreement, in which event the defaulting party shall waive the defense in any such suit that the other party has an adequate remedy at law and interpose no opposition, legal or otherwise, as to the propriety of specific performance as a remedy hereunder.

22. **Expenses and Attorneys' Fees.** The prevailing party in any litigation, arbitration, mediation, bankruptcy, insolvency or other proceeding (a "Proceeding") relating to the enforcement or interpretation of this Agreement may recover from the unsuccessful party all costs, expenses and actual attorneys' fees (including, by way of example only and without limitation, expert witness and other consultants' fees and costs) relating to or arising out of (a) the Proceeding (whether or not the Proceeding proceeds to judgment); and (b) any post judgment or post-award proceeding including, without limitation, one to enforce or collect any judgment or award resulting from the Proceeding. All such judgments and awards shall contain a specific provision for the recovery of all such subsequently incurred costs, expenses and reasonable attorneys' fees.

23. **Modification and Waiver; Remedies Cumulative.** No modification of any provision of this Agreement shall be effective unless in writing and signed by all parties. No failure or delay on the part of Programmer or Licensee in exercising any right or power under this Agreement shall operate as a waiver of such right or power, nor shall any single or partial exercise of any such right or power or the exercise of any other right or power. 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.

24. **Headings.** The headings set forth in this Agreement are for convenience only and will not control or affect the meaning or construction of the provisions of this Agreement.

25. **Governing Law.** The construction and performance of this Agreement shall be governed by the laws of the State of Ohio without giving effect to the choice of law provisions thereof.

26. **Notices.** Any notice, demand or request required or permitted to be given under the provisions of this Agreement shall be in writing, and shall be deemed to have been duly delivered and received on the date of personal delivery, on the third day after deposit in the U.S. mail if mailed by registered or certified mail, postage prepaid and return receipt requested, on the day after delivery to a nationally recognized overnight courier service if sent by an overnight delivery service for next morning delivery and shall be addressed to the following addresses, or to such other address as any party may request, in the case of Licensee, by notifying Programmer, and in the case of Programmer, by notifying Licensee:

To Licensee:

Radioactive, LLC
1717 Dixie Highway
Suite 650
Ft. Wright, KY 41011
Attention: Randy Michaels

with copies (which shall not constitute notice) to:

Hogan & Hartson L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109
Attention: Marissa G. Repp, Esq.

Paul F. Solomon, Esq.
4226 Bridgetown Road
Cincinnati, OH 45211

To Programmer:

Radio Ranch, Ltd.
1216 B Sidney Baker South
Kerrville, TX 78028
Attention: President

With a copy (which shall not constitute notice) to:

Thompson Hine LLP
1920 N Street, N.W., Suite 800
Washington, D.C. 20036-1600
Attention: Barry A. Friedman, Esq.

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

28. **Severability.** The parties agree that if one or more provisions contained in this Agreement shall be deemed or held to be invalid, illegal or unenforceable in any respect under any applicable law, this Agreement shall be construed with the invalid, illegal or

unenforceable provision deleted, and the validity, legality and enforceability of the remaining provisions contained herein shall not be affected or impaired thereby.

29. Entire Agreement. This Agreement and the schedules hereto embody the entire agreement and understanding of the parties hereto and supersede any and all prior agreements, arrangements and understandings relating to the matters provided for herein.


[SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE TO LOCAL PROGRAMMING AND MARKETING AGREEMENT

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

LICENSEE:

RADIOACTIVE, LLC

By: 

Name: Randy L. Michaels
Title: Member and President

PROGRAMMER:

RADIO RANCH, LTD

**Radio Ranch Management, L.C.,
General Partner**

By: _____
Name: Lyndell M. Grubbs
Title: President

SIGNATURE PAGE TO LOCAL PROGRAMMING AND MARKETING AGREEMENT

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

LICENSEE:

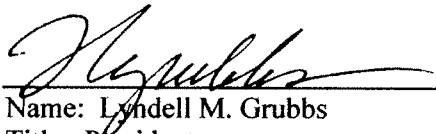
RADIOACTIVE, LLC

By: _____
Name: Randy L. Michaels
Title: Member and President

PROGRAMMER:

RADIO RANCH, LTD

**Radio Ranch Management, L.C.,
General Partner**

By:  _____
Name: Lyndell M. Grubbs
Title: President

Schedule A

LMA Monthly Payment

[REDACTED]

Schedule B

Reimbursement Payments

[REDACTED]

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