

LOCAL PROGRAMMING AND MARKETING AGREEMENT

THIS LOCAL PROGRAMMING AND MARKETING AGREEMENT (this “**Agreement**”) is made on September 10, 2020, between Auburn Network, Inc. (the “**Licensee**”), and Auburn Networks, LLC (the “**Programmer**”).

Recitals

WHEREAS, Licensee owns and operates the following radio Stations pursuant to licenses issued by the Federal Communications Commission (“**FCC**”): Station WGZZ(FM), fac id 15283, Waverly, Al; Station WANI(AM), fac id 63796, Opelika, AL; FM translator Stations W254AY, fac id 138347, W294AR, fac id 141199, W242AX, fac id 146140 [Note: unbuilt construction permits are not included, however if later constructed and on-air, will be included.] (collectively the “**Stations**”);

WHEREAS, Licensee desires to obtain programming for the Stations, and Programmer desires to provide programming for broadcast on the Stations on the terms set forth in this Agreement (the “**Programs**” or “**Programmer’s Programming**”); and

WHEREAS, Licensee and Programmer earlier entered into an Asset Purchase Agreement (the “**Purchase Agreement**”) relating to the Stations whereby the Programmer is purchasing the Stations from the Licensee and the parties are filing an assignment application (“**Assignment Application**”) with the Federal Communications Commission (“**FCC**”) seeking FCC approval for assignment of the Stations’ licenses, construction permits and other authorizations (the “**Licenses**”) to the Programmer.

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, hereby agree as follows:

1. Term. Programmer's programming rights and obligations hereunder shall begin as soon as practicable but no later than October 1, 2020 (the “**Effective Date**”). This Agreement shall continue in force (i) until the Closing Date as defined in the Purchase Agreement, or, (ii) if the Purchase Agreement is terminated without a Closing, until the last day of the second month following the month in which the Purchase Agreement is terminated, or, (iii) until twenty-four (24) months from the Effective Date, or (iii) until terminated as otherwise provided herein in Section 13 or in other provisions.

2. Programming Time Available to Programmer. During the term of this Agreement, Licensee shall make available to Programmer broadcast time upon the Stations as set forth in this Agreement. Programmer shall deliver such programming, at its sole cost and expense, to the Stations' transmitter facilities. Subject to Licensee's reasonable approval, as set forth in this

Agreement, Programmer shall provide programming of Programmer's selection complete with commercial programming to the Licensee. Notwithstanding the foregoing, Licensee may designate such time as it may require up to two hours per week, or more as subject to increase under Section 6 if necessary for the broadcast of programming required for the Stations to broadcast news, public affairs, religious and non-entertainment programming as required by the FCC, or as otherwise determined by the Licensee to be in the public interest. All program time not reserved by or designated for Licensee shall be available for use by Programmer and no other party.

3. **Broadcasting.** In return for the payments to be made by Programmer hereunder, during the Term, Licensee shall broadcast the Programs, subject to the provisions of Section 6 below.

4. **Advertising.** During the Term, Programmer will be exclusively responsible for the sale of advertising on the Stations during Programmer's Programming and for the collection of accounts receivable arising therefrom, and Programmer shall be entitled to all such collections. In addition, Programmer shall be entitled to the proceeds from collection of any of the Stations' existing accounts receivable of any type for broadcast material broadcast collected on or after the Effective Date. Similarly, during the Term, Programmer will undertake sale of advertising in East Alabama Living, a local magazine published by the Licensee, and shall be entitled to all collections from such advertising.

5. **Consideration.** For the broadcast of the Programs and the other benefits made available to Programmer pursuant to this Agreement, during the Term, Programmer will reimburse certain expenses of the Stations as consideration to Licensee as set forth on ***Schedule A***.

6. **Control by Licensee.** Notwithstanding anything to the contrary in this Agreement, Licensee shall have full authority, power and control over the operation of the Stations and over all persons working at the Stations during the Term. Without limiting the generality of the foregoing, Licensee will: (1) designate its Office Manager, Tracy Ledbetter, as its full-time Manager for the Stations, who will direct the day-to-day operations of the Stations on behalf of the Licensee and in its discretion, other Licensee's employees who will report and be solely accountable to the Manager, and (2) retain control over the policies, programming and operations of the Stations. Nothing contained herein shall prevent Licensee from (a) rejecting or refusing 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 served by the Stations. Programmer shall cooperate with Licensee to ensure that EAS transmissions are properly performed in accordance with Licensee's instructions.

7. **Music Licenses and Performance Fees.** During the Term, Programmer shall be solely responsible for any expense incurred in its origination and/or delivery of programming from any remote location and for any publicity or promotional expenses incurred by Programmer, including, without limitation, ASCAP, SESAC, BMI, GMR and Sound Exchange fees, if applicable, for all programming and payments of performance rights as to programming provided by Programmer over the air, streaming on the Internet, or otherwise.

8. Programs.

(a) Programmer shall ensure that the contents of the Programs conform to all FCC rules, regulations and policies, including content responsive to issues of public concern as those issues are made known to Programmer. On or before January 10, April 10, July 10 and October 10 of every year during the Term, Programmer shall provide to Licensee's Manager a list of significant community issues addressed in the Programs during the preceding quarter and the specific Programs that addressed such issues to enable uploading to the FCC's Online Public File in accordance with FCC rules.

(b) 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 with such responsibility and shall supply such information promptly to Licensee as may be necessary to comply with FCC's rules for the Political File. Programmer shall release advertising availabilities during the Broadcasting Period as necessary to permit Licensee to comply with the political broadcast rules of the FCC with Programmer, such as reasonable opportunities for candidates for federal offices. Programmer shall be entitled to the revenues as a result of any such release of advertising time by Programmer.

9. Expenses. During the Term, Programmer will be responsible for the salaries, taxes, insurance and other costs for all its personnel used in the production of its Programs and advertising included in its Programs, and the costs of delivering its Programs to Licensee. In accord with FCC policy, Licensee will pay for its own employees, the fees arising from its own programming, maintenance of all studio and transmitter equipment and all other operating costs in accordance with FCC rules and policies and applicable law, and all utilities supplied to its main studios and transmitter sites, with certain expenses reimbursed as provide in Schedule A. Any equipment owned by Programmer or purchased by Programmer for use in production or broadcast of its programing shall remain the property of the Programmer.

10. Call Signs. During the Term, Licensee will retain all rights to the call letters of the Stations or any other call letters which may be assigned by the FCC for use by the Stations, and will ensure that proper Stations identification announcements are made with such call letters in accordance with FCC rules and regulations. Programmer shall include in the Programs 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.

11. Facilities. During the Term, Licensee shall provide Programmer access to and the use of designated space at Licensee's studios and offices for the Stations without additional cost. When on Licensee's premises, Programmer's personnel shall be subject to the direction and control of Licensee's management personnel.

12. Representations. Programmer and Licensee each represent and warrant to the other that (i) it has the power and authority to enter into this Agreement and to consummate the

transactions contemplated hereby, (ii) it is qualified to do business in all jurisdictions where the nature of his business requires such qualification, (iii) it has duly authorized this Agreement, and this Agreement is binding upon it, and (iv) 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.

13. Events of Default.

(a) The occurrence of any of the following will be deemed an Event of Default by Programmer under this Agreement, if after Notice and the Cure Period: (i) Programmer fails to make any material payment required under Section 5 of this Agreement; (ii) Programmer fails to observe or perform any other obligation contained in this Agreement in any material respect; or (iii) Programmer materially breaches any representation or warranty made by it under this Agreement.

(b) The occurrence of the following will be deemed an Event of Default by Licensee under this Agreement, if after Notice and the Cure Period: (i) Licensee fails to observe or perform any obligation contained in this Agreement in any material respect; or (ii) Licensee breaches any representation or warranty made by it under this Agreement in any material respect.

(c) Notwithstanding the foregoing, any non-monetary Event of Default will not be deemed to have occurred until thirty (30) days ("Cure Period") 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. Upon the occurrence of an Event of Default, and in the absence of a timely cure pursuant to this Section, the non-defaulting party may terminate this Agreement, effective immediately upon written notice to the defaulting party. If this Agreement is terminated, the parties agree to cooperate with one another and to take all actions necessary to to accommodate advertising time sold with the goal of a smooth transition.

15. Indemnification. Programmer shall indemnify and hold Licensee harmless against any and all liability arising from Programmer's activities and those of its employees and agents, the broadcast of the Programs on the Stations, including without limitation all liability for indecency, 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 including without limitation ASCAP, SESAC, BMI, GMR, and Sound Exchange fees for all programming and payments of performance rights as to programming provided by Programmer over the air, streaming on the Internet, or otherwise; and any liability arising from violation of FCC rules or other applicable law by Programmer. The obligations under this Section shall survive any termination of this Agreement. (b) Programmer shall maintain broadcast libel, general liability insurance each in with reasonable limits in amounts no less than that presently carried by the Programmer for its principal's other stations and as required by law, workers' compensation insurance.

16. Assignment. Neither party may assign this Agreement without the prior written consent of the other party hereto. The terms of this Agreement shall bind and inure to the benefit of the parties' respective successors and any permitted assigns, and no assignment shall relieve

any party of any obligation or liability under this Agreement. 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.

17. **Severability.** If any court or governmental authority holds any provision in this Agreement invalid, illegal, or unenforceable under any applicable law, then so long as no party is deprived of the benefits of this Agreement in any material respect, 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. The obligations of the parties under this Agreement are subject to the rules, regulations and policies of the FCC and all other applicable laws.

18. **Notices.** Any notice pursuant to this Agreement shall be in writing and shall be deemed delivered on the date of personal delivery or confirmed facsimile transmission or confirmed delivery by a nationally recognized overnight courier service, or on the third 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:

Auburn Network, Inc.
Attn: Michael G. Hubbard
hubbard@aunetwork.com and
abuckner@afblegal.com
P.O. Box 950
Auburn, AL 36831-0950

If to Programmer:

Auburn Networks, LLC
Attn: Frank Lee Perryman
lperryman@radioalabama.net and
lperryman@gmail.com
P.O. Box 629
Sylacauga, AL 35150

19. **Miscellaneous.** This Agreement may be executed in separate counterparts, each of which will be deemed an original and all of which together will constitute one and the same agreement. No amendment or waiver of compliance with any provision hereof or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by the party against whom enforcement of such amendment, waiver, or consent is sought. This Agreement is not intended to be, and shall not be construed as, an agreement to form a

partnership, agency relationship, or joint venture between the parties. Neither party shall be authorized to act as an agent of or otherwise to represent the other party. The construction and performance of this Agreement shall be governed by the laws of the State of Alabama without giving effect to the choice of law provisions thereof and the parties agree to venue in the state and federal courts in Alabama with appropriate jurisdiction. This Agreement (including the Schedule hereto) constitutes the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings with respect to the subject matter hereof.

20. **Certifications.** Licensee certifies that it maintains ultimate control over the Stations' facilities including, specifically, control over the Stations' finances, personnel and programming. Programmer certifies that this Agreement complies with the provisions of 47 C.F.R. Sections 73.3555(a) and (c).

21. **Nondiscrimination.** In accordance with Paragraphs 49 and 50 of United States Federal Communications Commission Report and Order No. FCC 07-217, Programmer shall not discriminate in any contract for advertising on the Stations on the basis of race or ethnicity, and all such contracts shall be evaluated, negotiated and completed without regard to race or ethnicity. Programmer shall include a clause to such effect in all contracts for advertising on the Stations, and if requested shall provide written confirmation of compliance with such requirement.

22. **Force Majeure.** Any failure or impairment of the Stations's facilities or of Programmers equipment and property, any delay or interruption in the broadcast of programs, or failure at any time to furnish facilities, in whole or in part, for broadcast, due to Acts of God, strikes, lockouts, material, or labor restrictions by any governmental authority, civil riot, floods and any other cause not reasonably within the control of Licensee and Programmer, or for power reductions necessitated for maintenance of the Stations, shall not constitute a breach of this Agreement and neither party shall be liable to the other.

23. **Limitation of Liability.** Notwithstanding any provision in this Agreement to the contrary, neither party shall be liable to the other under any circumstances for loss of use, loss of advertising revenue, or any other consequential damages sustained by the other party and each party hereby waives the right to recover punitive, exemplary and similar damages and the multiplied portion of damages.

[The signature page with the signatures of the parties is the next page.]

[Signature page for Local Programming and Marketing Agreement.]

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

LICENSEE:

AUBURN NETWORK, INC.

By: _____



Michael G. Hubbard, President

PROGRAMMER:

AUBURN NETWORKS, LLC

By: _____



Frank Lee Perryman, Managing Member and President

SCHEDULE A

CONSIDERATION

Programmer shall reimburse Licensee for certain of Licensee's expenses in operation of the Stations. The reimbursable expenses, include, but are not limited to the following:

1. Customary costs in the ordinary course of business associated with the Tangible Personal Property arising from or during the times when Programmer is entitled to present Programmer's Programming; such as, tower and studio rent, electric power, telephone and other utilities, internet service, and trash collection.
2. Programmer will pay any maintenance fees, repair and/or replacement of any equipment owned by Programmer or Licensee's Tangible Personal Property made available to Programmer and customarily used by Licensee in operation of the Stations during times when Programmer is entitled to present Programmer's Programming;
3. Reimburse monthly salary payments to Licensee's management employee, Tracy Ledbetter, who will remain at the Stations as Licensee's Manager, during the Term at the same monthly rate she has received in the last year calendar year;
4. Programmer will reimburse Licensee for any ASCAP, BMI, SESAC, GMR and Sound Exchange fees (or other fees of any type or nature) arising from broadcast of Programmer's Programming or during the times when it is entitled to present Programmer's Programming, or if appropriate, pay directly to the foregoing any other companies as to Programmer's Programming;
5. Programmer will reimburse Licensee for the customary expenses experienced in the past for publishing the magazine East Alabama Living, published by Licensee, arising in the ordinary course of business which reimbursements shall not include any of salaries of Licensee's employees or principals, or other expenses or payments of the foregoing; and
6. Programmer will maintain its own general liability and other appropriate insurance customarily maintained for Programmer's principal's other radio stations, reasonably acceptable to Licensee, with respect to Programmer's Programming and its operations, and its property, and including without limitation, for Tangible Personal Property used by or available to Programmer and include Licensee as an additional insured entity;

Reimbursements to Licensee hereunder shall be paid by Programmer to Licensee within seven (7) days of receipt by Programmer of an itemized list from Licensee, via email or other means, evidencing the reimbursable expenses and the due dates for applicable payments.