



# TERMS AND CONDITIONS

The advertiser and any agency and/or media placement service (collectively, "CUSTOMER") purchasing broadcast time for commercial announcements and/or programs (sometimes collectively referred to as "Programs"), and BRAZOS COMMUNICATIONS WEST, LLC d.b.a. West Texas Radio Group ("WTRG") agree: that these terms (the "CONTRACT") and the conditions set forth on the accompanying order form constitute the agreement between CUSTOMER and "WTRG":

## 1. PAYMENT AND BILLING

(a) West Texas Radio Group will bill CUSTOMER monthly using the Final Sunday Fiscal Month (also known as the "Broadcast Month"), unless otherwise stated on the face of this Contract. Payment is due within 20 days following the end of the Broadcast Month. Customers not meeting credit requirements shall pay in advance of the order deadline.

(b) Invoices will contain the Program's duration and cost, and the date and time of broadcast according to the log of the radio station ("STATION") on which the Program is broadcast. Invoices are deemed correct absent manifest error brought to the attention of West Texas Radio Group within seven (7) days of the broadcast complained of. After seven (7) days, West Texas Radio Group will NOT be responsible..

(c) West Texas Radio Group may assess the following late charges on any portion of the unpaid balance of an invoice outstanding thirty (30) days after the due date: (i) one and one-half percent (1.5%) per month of such overdue balance.

(d) All amounts payable are net to West Texas Radio Group. Notwithstanding to whom invoices are sent, CUSTOMER, its agency and media placement service (jointly and severally) are obligated to pay West Texas Radio Group within the time specified and until West Texas Radio Group receives payment in full. Payment by the advertiser to its agency or media placement service, or payment by the agency to its media placement service, does not constitute payment to West Texas Radio Group. The party (or parties) executing this contract acknowledges that it has express authority to contract and order the requested Programs on behalf of the CUSTOMER. If an agency has ordered the Programs and has indicated that the CUSTOMER is responsible for payment to West Texas Radio Group, agency shall be responsible unless expressly agreed in writing otherwise by West Texas Radio Group.

## 2. TERMINATION

(a) Programs may be canceled by either West Texas Radio Group or CUSTOMER on thirty (30) days' prior written notice or by West Texas Radio Group immediately upon non-payment as provided in the Contract, or in the sole discretion of West Texas Radio Group if CUSTOMER fails to broadcast a minimum of **twenty-five percent (25%)** of the contracted Programs within each quarter year period of the contract term. CUSTOMER'S verbal cancellation will not be accepted under any circumstances.

(b) If CUSTOMER cancels or fails to fulfill all of its obligations under this Contract, the amount due shall be calculated at the "earned rate" from the rate card then in effect at time of broadcast for the quantity of Programs actually broadcast. If West Texas Radio Group cancels this Contract, the amount due shall reflect the discounts which CUSTOMER would have earned had this Contract been completed; or at the sole discretion of West Texas Radio Group, an amount of no less than One Thousand Five Hundred Dollars (\$1,500.00) to be determined at termination.

(c) West Texas Radio Group may terminate all of CUSTOMER'S rights hereunder if CUSTOMER fails to pay any invoices when due or breaches any other provision of this Contract. Termination shall not in any way release CUSTOMER from its obligation to pay in full the amount due for Programs broadcast before termination. On termination, all amounts owed shall become immediately due and payable at earned rates.

(d) If CUSTOMER fails to pay any invoice in full within **thirty (30) days** of its due date and West Texas Radio Group refers the account for collection, CUSTOMER agrees, for itself and its principal (if any), to pay all collection costs, including reasonable attorneys' fees and court costs.

(e) Upon a material breach by West Texas Radio Group, CUSTOMER'S exclusive remedy against West Texas Radio Group shall be credited for substituted commercial or programming time of substantially equal value. In no event shall West Texas Radio Group or STATION be liable for any consequential or incidental damages or for monetary damages of any type whatsoever.

## 3. FAILURE TO BROADCAST

(a) If STATION does not advertise part or all of any Program in substantial compliance with any stipulated time(s) according to the Contract, STATION may advertise the Program at subsequent times. If the Program is not advertised, CUSTOMER is not required to pay for the Program, or is entitled to a refund of any amount already paid for the Program.

(b) STATION may substitute for any Program any matter that STATION deems, in its sole discretion, to be of greater local or national importance. In such an event, West Texas Radio Group will notify CUSTOMER in advance if reasonably possible or within a reasonable time after the substitution, and the provisions of Paragraph 3(a) shall apply.

## 4. RATES AND ACCEPTANCE

(a) CUSTOMER agrees to pay the rates and all other charges set out herein. Rates are not subject to change except in the event of default or cancellation. Any additional program time purchases during the term shall be at the rates and conditions in effect at the time of such additional purchases or as accepted by West Texas Radio Group.

(b) All Programs may be preempted unless otherwise stated herein. **All commercial rates are subject to preemption by higher price commercial rates and may be rescheduled to another comparable day and/or daypart unless purchased as a non-preemptible fixed rate.** Acceptance of any order is contingent on final credit approval by West Texas Radio Group. Acceptance of this Contract is contingent on approval and signature by an authorized West Texas Radio Group representative.

## 5. PROGRAM AND COMMERCIAL MATERIAL

(a) CUSTOMER shall furnish all Program material at CUSTOMER'S expense. CUSTOMER shall deliver Program material and broadcast scheduling instructions to West Texas Radio Group before the Stations' established deadlines and **no less than two (2) full business days before the scheduled broadcast.** If CUSTOMER fails to meet these deadlines or to use the time contracted for, West Texas Radio Group may substitute another program or announcement at CUSTOMER'S expense. CUSTOMER shall remain liable for the full amount contracted for herein.

(b) All Programs are subject to the approval (before, during or after the scheduled run of any Programs) of West Texas Radio Group and STATION on which the Program is to be broadcast. West Texas Radio Group reserves the right to refuse at any time to broadcast a Program that any such party determines, in its sole discretion, to be illegal, unsatisfactory, unsuitable, contrary to the public interest, or contrary to its best business interests.

(c) This Contract does not obligate West Texas Radio Group to broadcast any Program, sound recordings or material in a manner inconsistent with the policies or practices of West Texas Radio Group or STATION. If any Program is unsatisfactory, West Texas Radio Group shall notify CUSTOMER. Unless CUSTOMER or its agency (if any) furnishes satisfactory material 72 hours before the scheduled broadcast time, West Texas Radio Group may at its option:

(i) substitute its own program at no penalty to CUSTOMER, (ii) terminate this Contract without penalty to either party, or (iii) hold CUSTOMER liable for all time reserved.

(d) This Contract in no way guarantees available Programs to CUSTOMER. CUSTOMER must provide West Texas Radio Group with reasonable advance notice of desired scheduling of Programs. West Texas Radio Group is not required to broadcast Programs for any product or service other than those specified herein.

(e) **This Contract is not exclusive as to CUSTOMER'S business, products or services. West Texas Radio Group may solicit and broadcast programs or announcements in competition with Customers business, products, or services.**

(f) Commercial tapes provided by CUSTOMER will not be returned unless: (i) CUSTOMER has requested their return on the face of this Contract, and (ii) CUSTOMER picks up the materials at its own expense within thirty (30) days of the original request. Otherwise, West Texas Radio Group may dispose of Program material at any time after 30 days following the last broadcast. Materials produced by West Texas Radio Group to complete a commercial will be recycled and will not be retained unless required on the face of this Contract.

(g) West Texas Radio Group and/or STATION may deliver copies of Program material to any third party pursuant to a subpoena, court order or similar judicial process.

## 6. INDEMNIFICATION

(a) CUSTOMER agrees to indemnify and hold West Texas Radio Group and STATION harmless against any and all liability, loss or expense: (i) arising from any violations of law, claims for defamation, libel, plagiarism, unfair competition, unfair trade practice, violation of rights of privacy or of publicity, infringement of trademark, trade name, copyright or any other proprietary rights, or any other claims (at law or in equity), causes of action (statutory, common law, state or federal) or the like arising directly or indirectly from the broadcasting of any material furnished by CUSTOMER; and (ii) resulting from CUSTOMER'S breach of any representation or warranty hereunder. CUSTOMER agrees to pay all costs of any such actions, including expenses and reasonable attorneys' fees for counsel of West Texas Radio Group's selection.

(b) West Texas Radio Group agrees to indemnify and hold CUSTOMER harmless against all liability resulting from the broadcast of (i) program material except not furnished by CUSTOMER, and (ii) musical compositions licensed for broadcasting by a music licensing organization of which STATION and/or West Texas Radio Group is a licensee.

(c) Each party shall give the other prompt notice of the assertion of any claim or the commencement of any action that may expose the other to liability. **The provisions of this Paragraph 6, 7 and 10 shall survive any cancellation, termination or expiration of this Contract.**

## 7. REPRESENTATIONS AND WARRANTIES

CUSTOMER represents and warrants that (i) all Programs it supplies comply with all applicable governmental and industry codes, rules and regulations and with West Texas Radio Group's commercial and program standards available upon request by CUSTOMER; (ii) the Programs contain no defamatory matter and do not violate any right of privacy or publicity, or any other proprietary or other rights of any third persons; and (iii) the Programs do not violate any law or other governmental rule or regulation, or infringe upon any copyright, trademark, service mark or other intellectual property right, nor give rise to any product liability or other claim. By execution of this Contract, CUSTOMER voluntarily and knowingly waives any express or implied warranties related to any services provided by West Texas Radio Group and STATION to CUSTOMER including the implied warranties of merchantability, fitness for a particular purpose, and/or good & workmanlike performance.

**8. DISPUTES.** Any discrepancy, dispute or disagreement by CUSTOMER with any broadcast, service or amount charged hereunder must be reported to West Texas Radio Group in writing within **ten (10) business days** from the invoice date, being of the essence. CUSTOMER 's failure to report such discrepancy, dispute or disagreement in writing within such time constitutes a waiver of any claim which CUSTOMER may have.

**9. AGENCY FEES.** West Texas Radio Group will extend a fifteen percent (15%) agency discount to recognized broadcast agencies. Recognized agencies are defined as those persons or entities doing business as an broadcast agency with a minimum of two (2) accounts, and presenting a written letter of representation from each client. The agency shall be a party to this contract in addition to the Customer it represents.

## 10. GENERAL

(a) West Texas Radio Group and STATION are not liable to CUSTOMER or any Agency representing a Customer of West Texas Radio Group an STATION for any loss, damage, or diminishment in value to CUSTOMER'S or Agency's program materials or property.

(b) CUSTOMER may not transfer or assign this Contract, including the rights hereunder, without first obtaining West Texas Radio Group's written consent. West Texas Radio Group is not required to broadcast a Program for any advertiser other than the CUSTOMER named herein.

(c) Failure of West Texas Radio Group or STATION to enforce any provisions hereof shall not be construed as a general relinquishment or waiver as to that or any other provision. The provisions of Sections 6 and 7 shall survive the expiration or termination of this Contract. This Contract (including all terms specified on its face) represents the entire agreement between the parties relating to the subject matter herein contained. No change or modification of any of its terms shall be effective unless made in writing and signed by both parties.

(d) This Contract shall be governed by the laws of the state where West Texas Radio Group's authorized representative maintains its office, without regard to the conflict or choice-of-law provisions thereof. CUSTOMER agrees, for itself and on behalf of its principal (if any), that the venue in any legal proceeding shall be in a court at law in **Midland or Ector County, Texas.**

(e) Under its Blanket Music Licensing Agreements with certain music licensing organizations, West Texas Radio Group is required to collect certain information regarding musical works in programming carried over the System. Within ten (10) days of a request by West Texas Radio Group, CUSTOMER must supply an accurate and complete listing of the following information regarding music in its programming: Title, Composer, Performing Artist, Publisher and Duration. If CUSTOMER fails to timely supply this information, West Texas Radio Group may at its option immediately terminate this Agreement and/or suspend the carriage of CUSTOMER'S programming.

## 11. GOVERNMENTAL NOTIFICATION

In accordance with Paragraphs 49 and 50 of the United States Federal Communications Commission Report and Order No. FCC 07-217, BRAZOS COMMUNICATIONS WEST, LLC d.b.a. West Texas Radio Group will not discriminate in any contract for advertising on the basis of race or ethnicity, and all such contracts will be evaluated, accepted, negotiated and completed without regard to race or ethnicity.

## 12. BLANKET CONTRACT

This Contract is intended to serve as a blanket contract covering all broadcast schedules placed by CUSTOMER. Unless another Contract is signed, this Contract, including the foregoing Terms and Conditions, will automatically govern CUSTOMER'S future broadcast schedules as if CUSTOMER and West Texas Radio Group had signed a new Contract for each new schedule, and will continue in effect until terminated pursuant to Section 2 above. CUSTOMER agrees that West Texas Radio Group may rely on CUSTOMER'S verbal, telephonic, written, and/or electronic instructions as authorization to modify or make revision to such broadcast schedules and/or Programs as if each were authorized with a new Contract.

CUSTOMER'S PLACEMENT OF ADVERTISING SCHEDULES, PROGRAMMING OR OTHER MATERIALS AND West Texas Radio Group'S BROADCASTING OF SAME CONSTITUTES CUSTOMER'S ACCEPTANCE OF ALL CONTRACT TERMS.

West Texas Radio Group Representative : \_\_\_\_\_

Signature: \_\_\_\_\_

Guarantor(s) Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Customer Representative: \_\_\_\_\_ Date: \_\_\_\_\_

Guarantor(s) Name(s): \_\_\_\_\_

Guarantor(s) Signature: \_\_\_\_\_ Date: \_\_\_\_\_