

## TIME BROKERAGE AGREEMENT

This TIME BROKERAGE AGREEMENT ("**Agreement**") is entered into as of July 7, 2014, by and between Caroline Smith ("**Licensee**") and Viva Media, LLC, a Texas limited liability company ("**Programmer**". and Licensee and Programmer together shall be identified as the "**Parties**").

WHEREAS, Licensee owns and is licensed by the Federal Communications Commission ("**FCC**") to operate radio station KAMT(FM), Channel 286C2, 105.1 megahertz, Channing, Texas (FCC Facility ID Number 183356, the "**Station**"); and

WHEREAS, the principals of Programmer are experienced in radio station operation and wish to provide programming for the Station that is in conformity with the Licensee's programming policies, the FCC rules, regulations and policies, and the provisions of this Agreement; subject to Licensee's ultimate authority to manage and control the operation of the Station;

NOW, THEREFORE, in consideration of the above recitals and the mutual promises and covenants contained herein, the Parties, intending to be bound legally, agree as follows:

### Section 1

#### **Effective Date and Program Services**

1.1 Effective Date. This Agreement shall be effective on August 1, 2014 (the "**Effective Date**").

1.2 Term. This Agreement shall remain in effect from the Effective Date for a period of thirty-six (36) months, unless terminated earlier in accordance with this Agreement.

1.3 Program Services. Licensee shall make available to Programmer on an exclusive basis broadcast time on the Station as set forth in this Agreement. Subject to Licensee's reasonable approval, Programmer shall provide programming of its selection complete with commercial matter, news, public service announcements and other suitable programming for up to one hundred sixty-eight (168) hours per week. Notwithstanding the foregoing, Licensee may preempt Programmer's programming and use of the Station as Licensee may determine in its sole discretion if necessary in order to Licensee to comply with its obligations and responsibilities under the FCC's rules and policies, or to ensure that the Station serves the needs and interests of the public.

1.4 Consideration. As consideration for the air time made available during the term hereof Programmer shall make payments as set forth in Attachment 1.4 hereto. The Parties agree that Attachment 1.4 contains proprietary and confidential information and each agrees to take all steps reasonably necessary to maintain such confidentiality, including redacting such confidential information from any copy of this Agreement that is filed with the FCC.

1.5 Programming Expenses and Revenues. Programmer shall be solely responsible for all expenses attributable to its programming on the Station, including but not limited to any expenses incurred in the origination and/or delivery of its programming to the Station's studio and transmitter site, for all costs associated with the acquisition, music licensing, clearance and production of its own programming, and for the salaries, taxes, insurance and related costs for all personnel employed by Programmer under this Agreement. Programmer shall retain all revenues from the sale of commercial time during its programming on the Station.

1.6 Use of Station's Facilities. Licensee agrees to provide Programmer with access to and use of the Station's complete facilities including any office, studio and transmitter sites and equipment located thereon to the extent required by Programmer in providing programming for the Station. Subject to the overall supervision by Licensee and its employees, Programmer shall have full use of the Station's facilities, studios and equipment free from any hindrance from any person or persons whomsoever claiming by, through or under Licensee. Unless otherwise permitted by Licensee and subject to the overall supervision of Licensee, Programmer shall use the studios and equipment only for the purpose of fulfilling its obligations under this Agreement. In the event that Programmer maintains its own studio facilities at Programmer's own cost and expense, Licensee shall have the right to use Programmer's studio facilities as the main studio for the Station, at no cost to Licensee.

1.7 Contracts. Programmer will not assume any of Licensee's existing contracts, agreements or leases under this Agreement. Notwithstanding the foregoing, Programmer shall cooperate with Licensee to fulfill as agent for Licensee all contracts, agreements and leases in effect on the Effective Date that involve the operation of the Station, including but not limited to agreements for the sale of advertising time. Programmer will not enter into any third-party contracts, leases or agreements which will bind Licensee in any way after the termination of this Agreement in the event this Agreement is terminated without a closing on the Purchase Agreement except with Licensee's prior written approval, or except for agreements for the sale of broadcast time for cash entered into in the normal course of business and that may be canceled without penalty on no more than thirty (30) days prior notice.

## **Section 2**

### **Licensee's Duties and Obligations**

2.1 Licensee Authority. Licensee will have full authority, power and control over the management and operation of the Station during the term of this Agreement. Licensee shall remain responsible for compliance with all applicable provisions of the Communications Act of 1934, as amended (the "**Act**"), the rules, regulations and policies of the FCC and all other applicable laws. Licensee shall be solely responsible for and pay in a timely manner all operating costs of the Station, including but not limited to the expenses listed on Attachment 1.4, which shall include the salaries, taxes, insurance and related costs for all personnel employed by Licensee. Licensee shall maintain insurance consistent with its existing coverages, covering the Station's studios, offices and transmission facilities. Notwithstanding any other provision of this Agreement, Programmer

recognizes that Licensee has certain obligations to operate the Station in the public interest and to broadcast programming to meet the needs and interests of Channing, Texas and the surrounding service area. From time to time Licensee shall air, or shall require Programmer to air, programming on issues of importance to the local community. Nothing in this Agreement shall abrogate the unrestricted authority of Licensee to discharge its obligations to the public and to comply with the Act and the rules, regulations and policies of the FCC. Licensee shall also retain the right to interrupt Programmer's programming in case of an emergency or to substitute programming which, in the good faith judgment of Licensee, is of greater local or national public importance.

## 2.2 Additional Licensee Obligations.

(a) Station Identification. Licensee shall coordinate with Programmer to ensure that the Station's hourly station identification and any other required announcements are aired.

(b) Political Advertising. Programmer shall cooperate with Licensee to assist Licensee in complying with all rules of the FCC regarding political broadcasting. Licensee shall promptly supply to Programmer, and Programmer shall promptly supply to Licensee, such information, including all inquiries concerning the broadcast of political advertising, as may be necessary to comply with FCC rules and policies, including the lowest unit rate, equal opportunities, reasonable access, political file and related requirements of federal law. Licensee, in consultation with Programmer, shall develop a statement which discloses its political broadcasting policies to political candidates, and Programmer shall follow those policies in the sale of political programming and advertising. In the event that Programmer fails to satisfy the political broadcasting requirements under the Act and the rules, regulations and policies of the FCC and such failure inhibits Licensee in its compliance with the political broadcasting requirements of the FCC, then to the extent reasonably necessary to assure such compliance, Programmer shall either provide rebates to political advertisers or release advertising availabilities to Licensee.

(c) Emergency Alert System. Programmer agrees to cooperate with Licensee to ensure that all Emergency Alert System (“EAS”) transmissions are properly performed and logged in accordance with FCC requirements.

(d) Main Studio. Licensee shall (i) maintain and staff a main studio, as that term is defined by the FCC, within the Station's principal community contour, (ii) maintain a local public inspection file for the Station, and (iii) prepare and place in such inspection file in a timely manner all material required by Section 73.3526 of the FCC's rules, including without limitation the Station's quarterly issues/program lists. Programmer shall provide Licensee with timely information concerning Programmer's programs as is necessary to assist Licensee in the preparation of such lists.

(e) Employment Practices. Programmer shall provide to Licensee such information as Licensee may request concerning Programmer's recruitment, hiring or employment practices in connection with Programmer's provision of services to the Station.

2.3 Responsibility for Employees. Licensee will provide and be responsible for the Station's personnel necessary for the performance of Licensee's responsibilities (including, without limitation, the equivalent of at least one management and one other full-time employee). All employees of Programmer shall be subject to the overall supervision of Licensee's manager. Programmer shall be directly and solely responsible for the salaries, taxes, insurance and related costs for all personnel engaged in the operation of the Station by Programmer after the Effective Date except for Licensee's employees, whose salaries and other expenses shall be addressed in Attachment 1.4.

2.4 Regulatory Disputes. In the event of a dispute between Licensee and Programmer as to whether any aspect of the Station's operation violates the Act, or any applicable rule, regulation or policy of the FCC, Licensee and Programmer will employ the services of Jeffrey L. Timmons, Esquire, to mediate the dispute. Programmer and Licensee will each pay one-half of the fees of such mediator. The views of such mediator are merely advisory and Licensee retains the ultimate decision-making authority over regulatory compliance matters. Licensee retains the right to require that Programmer cure any violation of the Act, the rules, regulations and policies of the FCC, or the Licensee's Policy Statement, at the earliest practical opportunity. Disputes arising under this Section 2.4 shall not be subject to arbitration pursuant to Section 7.7 hereof.

### **Section 3** **Licensee's Programming Policies**

3.1 Programming Policy Statement. Licensee has adopted a programming Policy Statement (the "Policy Statement"), a copy of which has been provided to Programmer, and which may be amended from time to time by Licensee upon written notice to Programmer. Programmer shall comply in all material respects with the Policy Statement, with all rules and regulations of the FCC, and with all changes subsequently made by Licensee or the FCC. If Licensee determines that a program, commercial announcement or promotional material supplied by Programmer is unsatisfactory or unsuitable or contrary to the public interest, or does not comply with the Policy Statement it may, upon written notice to Programmer (to the extent time permits such notice), suspend or cancel such program, commercial announcement or promotional material and substitute its own programming or require Programmer to provide suitable programming, commercial announcement or other announcement or promotional material.

3.2 Licensee Control of Programming. Programmer recognizes that Licensee retains authority to control the operation of the Station. The Parties agree that Licensee's authority includes but is not limited to the right to reject or refuse such portions of the Programmer's programming which Licensee believes to be contrary to the public interest. Programmer shall give Licensee at least twenty-four (24) hours notice of substantial and material changes in its scheduled programming. Licensee and Programmer will cooperate in an effort to avoid conflicts regarding programming on the Station. Notwithstanding any other provision in this Agreement, Programmer shall not change the Station's entertainment format or make any other substantial changes in the Station's programming without the prior written approval of Licensee.

3.3 Compliance with Copyright Act. Programmer represents, warrants and covenants to Licensee that Programmer has full authority to broadcast its programming on the Station, and that Programmer shall not broadcast any material in violation of the Copyright Act. Licensee will be responsible for all copyright clearances for its programming and shall maintain the Station's copyright licenses in full force and effect.

3.4 Payola. With respect to its programming on the Station, Programmer agrees that it will not accept, and will not permit any of its employees to accept, any consideration, compensation, gift or gratuity of any kind whatsoever, regardless of its value or form, unless the payer is identified in the program for which consideration was provided as having paid for or furnished such consideration, in accordance with the Act and FCC requirements.

3.5 Cooperation on Programming. Programmer and Licensee mutually acknowledge their interest in ensuring that the Station serves the needs and interests of the residents of Channing, Texas and the surrounding service area and agree to cooperate in doing so. Licensee and Programmer shall, on a regular basis, assess the issues of public concern and address those issues in its public service programming. Programmer shall assist Licensee in describing those issues and responsive programming and place issues/programs lists in the Station's public inspection file on a quarterly basis as required by FCC rules. Further, Programmer shall provide Licensee with information concerning such of Programmer's programs as are responsive to community issues in order to assist Licensee in meeting its public service programming obligations. Programmer shall also provide Licensee upon request such other information as necessary to enable Licensee to prepare records and reports required by the Commission or other local, state or federal government entities.

#### **Section 4** **Indemnification**

4.1 Programmer's Indemnification. Programmer shall indemnify and hold harmless Licensee from and against any and all claims, losses, costs, liabilities, damages, expenses, including any FCC fines or forfeitures (including reasonable legal fees and other expenses incidental thereto) of every kind, nature and description, including but not limited to slander or defamation or otherwise (hereinafter "Claims"), arising out of Programmer's broadcasts and/or sale of advertising time under this Agreement, and the actions or conduct of Programmer's employees.

4.2 Licensee's Indemnification. Licensee shall indemnify and hold harmless Programmer from and against any Claims arising out of broadcasts originated by Licensee pursuant to this Agreement, and for the actions or conduct of Licensee's employees.

4.3 Time Brokerage Challenge. If this Agreement is challenged at the FCC or in another administrative or judicial forum, whether or not in connection with the Station's license assignment application, counsel for Licensee and Programmer shall jointly defend the Agreement and the parties' performance hereunder throughout all such proceedings. If portions of this Agreement do not

receive the approval of the FCC, then the Parties shall reform the Agreement, consistent with the provisions of Section 7.6 below, as necessary to satisfy the FCC's concerns.

4.4 Insurance, and Certificate of Insurance. Programmer, at its own expense, shall obtain and keep in full force and effect at all times during the Term of this Agreement an insurance policy (or policies) written by a company reasonably acceptable to Licensee, in a coverage amount of not less than One Million Dollars (\$1,000,000.00) and naming Licensee as an additional insured, against liability for personal injury or death, property damage, errors and omissions, and general business claims. The insurance policy must require at least thirty (30) days written notice to Licensee prior to any modification or termination of the policy, and Programmer must provide to Licensee prior to the Effective Date, and annually thereafter on the anniversary of the Effective Date or upon request, a certificate of insurance showing that such an insurance policy is in effect.

## **Section 5**

### **Access to Programmer Materials and Correspondence**

5.1 Confidential Review. Prior to the Effective Date, Programmer shall acquaint Licensee, upon request, with the nature and type of the programming to be provided. Licensee shall be entitled to review at its discretion from time to time on a confidential basis any of Programmer's programming material it may reasonably request. Programmer shall promptly provide Licensee with copies of all correspondence and complaints received from the public (including any telephone logs of complaints called in). However, nothing in this section shall entitle Licensee to review the internal corporate or financial records of Programmer.

## **Section 6**

### **Termination**

6.1 Right of Termination. In addition to other remedies available at law or equity, this Agreement may be terminated by either Licensee or Programmer by written notice to the other if the party seeking to terminate is not then in material default or breach hereof, upon the occurrence of any of the following:

(a) this Agreement is declared invalid or illegal in whole or substantial part by an order or decree of an administrative agency or court of competent jurisdiction and such order or decree has become final and no longer subject to further administrative or judicial review;

(b) the other party (i) has filed a petition in bankruptcy, is insolvent, or has sought relief under any law related to the party's financial condition or its ability to meet its payment obligations, or (ii) if any involuntary petition in bankruptcy has been filed against the other party, or any relief under any such law has been sought by any creditor(s) of such party, unless such involuntary petition is dismissed, or such relief is denied, within thirty (30) days after it has been filed or sought;

(c) the other party is in material breach of its obligations hereunder and has failed to cure such breach within ten (10) days of receipt of written notice from the non-breaching party;

(d) the written mutual consent of the Parties; or

(e) there has been a material change in FCC rules, policies or precedent that would cause this Agreement to be in violation thereof and such change is in effect and not the subject of an appeal or further administrative review, provided that in such event the Parties shall first negotiate in good faith and attempt to agree on an amendment to this Agreement consistent with Section 7.6 below.

6.2 Force Majeure. Any failure or impairment of the Station's facilities or 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 or Programmer, shall not constitute a breach of this Agreement or create liability to the other party.

## **Section 7** **Miscellaneous**

7.1 Assignment. Neither party may assign its rights or delegate its obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, that Licensee may assign this Agreement without the prior written consent of Programmer to any party acquiring all or substantially all of the assets and business of the Station.

7.2 Entire Agreement. This Agreement and any Attachments hereto embody the entire agreement and understanding of the parties and supersede any and all prior agreements and understandings relating to matters provided for herein. No amendment to this Agreement will be effective unless evidenced by an instrument in writing signed by the Parties.

7.3 Headings. The headings are for convenience only and will not control or affect the meaning or construction of the provisions of this Agreement.

7.4 Governing Law. The obligations of Licensee and Programmer are subject to applicable federal, state and local law, rules and regulations, including, but not limited to, the Act and the rules, regulations and policies of the FCC. The construction and performance of the Agreement will be governed by the laws of the State of Texas.

7.5 Notices. Any notice, demand or request required or permitted to be given hereunder shall be given in accordance with the address and contact information set forth below and shall be

given in writing, by first class U.S. mail, postage prepaid, or by courier, or hand delivery, and shall be deemed effective upon receipt, or as evidenced by a postal or courier receipt:

If to Licensee: Mrs. Caroline Smith  
155 Middle Plantation Lane  
Gulf Breeze, Florida 32561

If to Programmer: Viva Media, LLC  
Attention: Maria Cenicerros, Managing Member  
2601 Teckla Boulevard  
Amarillo, Texas 79106

7.6 Invalidity. If any provision of this Agreement or the application thereof to any person or circumstances shall be held valid or unenforceable to any extent, the parties shall negotiate in good faith and attempt to agree on an amendment to this Agreement that will provide the parties with substantially the same rights, economic benefits and obligations, to the greatest extent possible, as the original Agreement in valid, binding and enforceable form.

7.7 Arbitration. Subject to Section 2.4 and the last sentence of this Section, in the event of any dispute arising out of or related to this Agreement that Licensee and Programmer are unable to resolve between themselves, the Parties expressly consent, agree and submit to commercial arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. Judgment on the arbitration award, if it is not paid within thirty days, may be entered in any court having jurisdiction over the matter. No action at law or in equity based upon any claim arising out of or related to this Agreement shall be instituted in any court by Licensee or Programmer against the other except: (i) an action to compel arbitration pursuant to this Section; (ii) an action to enforce the award of the arbitration panel rendered in accordance with this Section; or (iii) subject to the regulatory authority of the FCC (including but not limited to the authority to invalidate or prohibit the enforcement of any contract provision which conflicts with the Act or the rules, regulations or policies of the FCC), a suit for specific performance, injunctive relief or a temporary restraining order to enforce the provisions of this Agreement.

7.8 Certifications. Licensee certifies that it shall maintain ultimate control over the Station's facilities, including but not limited to control over the finances, personnel and programming relating to its operation of the Station. Licensee and Programmer certify that this Agreement complies with Sections 73.3555(a), (c) and (d) of the FCC's rules, 47 C.F.R. §73.3555(a), (c)-(d).

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

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

LICENSEE:

**CAROLINE SMITH**



Caroline Smith, Individually

PROGRAMMER:

**VIVA MEDIA, LLC**

By:   
\_\_\_\_\_  
Maria Ceniceros  
President and Managing Member

## Attachment 1.4

### Consideration, Station Operating Expenses, and Option to Purchase

#### I. Consideration.

(a) As consideration for permitting Programmer to air its Programming on the Station, Programmer shall pay to Licensee on a monthly basis compensation (the “**Monthly Payment**”), prorated for any partial month during the Term, in the amount of: (i) \_\_\_\_\_ Dollars (\$\_\_\_\_\_) per month for the first six (6) months of the Term (August 1, 2014 through January 31, 2015); and (ii) \_\_\_\_\_ Dollars (\$\_\_\_\_\_) per month for the remainder of the Term (February 1, 2015 through July 31, 2017).

(b) All Monthly Payments due hereunder shall be due and payable and made to Licensee in advance by the first (1<sup>st</sup>) day of each calendar month and late if not received by Licensee by the sixth (6<sup>th</sup>) day of each month; once late, any such late Monthly Payment shall then also include a late fee or penalty in an amount equal to five percent (5%) of the Monthly Payment. Monthly Payments (and any late payment fee or penalty) shall be made by wire transfer of available funds in accordance with wiring instructions to be provided by Licensee. Failure of Programmer to timely pay the Monthly Payments shall be a material breach of this Agreement, subject to the termination provisions of Section 6.1(c) of this Agreement; provided, however, that in addition to Licensee’s termination rights and any other rights or remedies at law or in equity, if any Monthly Payment or reimbursement of expenses under Section 2(b) of this Attachment 1.4 are late, Licensee shall have the right to take Programmer’s programming off the Station until full payment of all Monthly Payments (including any late payment fees or penalties) are received, upon e-mail notification to Programmer.

#### 2. Station Operating Expenses.

(a) Licensee shall be responsible for and pay the following specific expenses of operating the Station: (i) the tower site lease rent and expenses, (ii) electricity for operating the Station’s transmission facilities, (iii) insurance for the tower site and transmission facilities, and (iv) the FCC annual regulatory fees.

(b) Licensee shall be responsible for and pay all other direct costs and expenses of operating the Station, but shall be promptly reimbursed by Programmer for such costs and expenses as incurred, including but not limited to the costs and expenses related to the following: (i) Licensee’s Station employees (ii) maintenance and repair of the Station’s transmission facilities (including any contract engineering fees), (iii) any other local, state or federal taxes, license fees or similar regulatory charges, and (iv) any and all other necessary Station operating costs or expenses not specifically the responsibility of Licensee under Section 2(a) of this Attachment 1.4. Programmer shall reimburse Licensee for any such costs and expenses under this Section 2(b) within ten (10) business days after Licensee gives notice by e-mail of same, by wire transfer of funds in accordance with wiring instructions to be provided by Licensee, and if not timely paid

then any such amounts shall also be subject to a late fee or penalty in an amount equal to five percent (5%) of any such amounts due.

(c) Programmer shall be responsible for and pay directly all of its own costs and expenses incurred in acquiring or producing and airing its programming and commercials, including for its programming, delivery of programming to the Station, and Programmer's own employees, contracts and office and studio space, including but not limited to under Sections 1.5 to 1.7 of this Agreement.

3. Option to Purchase.

(a) If not in material breach or default under the Agreement Programmer shall have an option during the Term of the Agreement to purchase the Station for a purchase price of \_\_\_\_\_ (\$\_\_\_\_\_), subject to the terms of a mutually agreeable asset purchase agreement ("APA") between the Parties containing such other covenants, representations, warranties, terms and conditions typical of such agreements, and subject to the prior consent of the FCC (the "**Option**"). Programmer may exercise the Option by giving written notice to Licensee during the Term of the Agreement; the Parties shall negotiate the APA and file an application for FCC consent to the assignment of the Station to Programmer within thirty (30) days after the Option exercise notice, and shall close on the assignment of the Station within ten (10) business days after the FCC grant of the assignment application and its consent becomes a final order (or close within such lesser period of time as the parties may mutually agree, the "**Closing**"). Notwithstanding any other provision of this Agreement, if Programmer does not close on its acquisition of the Station within six (6) months after the end of the Term of the Agreement, the Option terminates and becomes null and void with no further obligation by either party to the other.

(b) In the event of a Closing under Section 3(a) of this Attachment 1.4, Programmer shall receive a credit against the purchase price for the Station in the amount of (i) \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for each \$\_\_\_\_\_ Monthly Payment made during the first six (6) months of the Term of the Agreement, plus (ii) \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for each of the first twelve \$\_\_\_\_\_ Monthly Payments made during the seventh (7<sup>th</sup>) through eighteenth (18<sup>th</sup>) months of the Term of the Agreement, plus (iii) \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for each of the remaining \$\_\_\_\_\_ Monthly Payment made during the nineteenth (19<sup>th</sup>) through thirty-sixth (36<sup>th</sup>) months of the Term of the Agreement. Notwithstanding any other provision of the Agreement, if Programmer does not exercise the Option or there is no Closing, Programmer shall receive no credit nor any refund of any amount of any Monthly Payment.

11