

## TIME BROKERAGE AGREEMENT

This Time Brokerage Agreement (this "Agreement") is made as of the 16th day of May, 2000, by and between East Mississippi Broadcasters, Inc., with an address at P.O. Box 5797, Meridian, Mississippi 39302 ("Licensee") and New South Communications, Inc., a Mississippi corporation, with an address at P.O. Box 5797, Meridian, Mississippi 39302 ("Time Broker").

### RECITALS

- A. Licensee operates radio stations WMMZ(FM), Meridian, MS, WMLV(FM), Stonewall, MS and WJXM(FM), Dekalb, MS (the "Stations"), pursuant to licenses issued by the Federal Communications Commission ("FCC").
- B. The parties wish to enter into this Agreement to provide for the sale of substantially all of the broadcast time of the Stations to Time Broker, subject to the rules and policies of the FCC.

Accordingly, in consideration of the foregoing and of the mutual promises, covenants, and conditions set forth below, the parties agree as follows:

### ARTICLE I

#### SALE OF TIME

- 1.1 Broadcast of Programming. Effective as of May 16, 2000 (the "Commencement Date"), Licensee shall broadcast on the Stations, or cause to be broadcast on the Stations, programs which are presented to it by Time Broker as described in greater detail on Schedule 1.1 (the "Programming").
- 1.2 Payment. Time Broker shall pay Licensee for broadcast of the Programming the monthly rate of \$41,000 (the "Monthly Payment"), subject to adjustment as set forth in Section 2.4 below. In the event that the Commencement Date occurs on a day other than the first day of a month, the initial monthly payment made by Time Broker shall be an amount equal to the Monthly Payment as determined above multiplied by a ratio, the numerator of which is the number of days between the Commencement Date and the end of the month in which the Commencement Date occurs and the denominator of which is the number of days in the month in which the Commencement Date occurs; and in the event the termination date of the Agreement occurs other than on the last day of a month, the Monthly Payment for the month in which such termination occurs shall be similarly prorated. The initial monthly payment shall be due upon execution hereof, and each successive payment is due on the first day of each month thereafter.
- 1.3 Licensee's Programming. Licensee shall present programming responsive to the needs of the Stations' communities of license, as set forth in Schedule 1.1.
- 1.4 Term. Unless terminated earlier in accordance with the express provisions hereof, this Agreement shall continue for a period of two (2) years from the Commencement Date. The term may be extended by mutual written agreement of the parties.

## ARTICLE 2

### PROGRAMMING AND OPERATING STANDARDS AND PRACTICES

- 2.1 Compliance with Standards. All Programming delivered by Time Broker and all programming supplied by Licensee during the term of this Agreement shall be in accordance with applicable state and federal statutes and FCC requirements, including but not limited to requirements governing the broadcast of lottery information, contest, fraudulent programming or false or misleading advertising. Licensee reserves the right to refuse to broadcast any Programming containing matter which the Licensee reasonably believes is not in the public interest or may be violative of any right of any third party, or which may constitute a "personal attack" as that term is and has been defined by the FCC or which Licensee reasonably determines is, or in the reasonable opinion of Licensee may be deemed to be, indecent or obscene by the FCC or any court or other regulatory body with authority over Licensee or the Stations. If Time Broker does not adhere to the foregoing requirements, Licensee may suspend or cancel any specific program not so in compliance, without any reduction or offset in the payments due Licensee under this Agreement.
- 2.2 Political Broadcasts.
- (a). Time Broker's sale or use of time on the Stations shall conform to all federal and state laws governing the sale of political advertising on radio stations. Time Broker shall consult with Licensee and adhere to all applicable statutes and the rules, regulations and policies of the FCC, as announced from time to time with respect to the carriage of political advertisements and programming (including, without limitation, the rights of candidates and, as appropriate, others to "equal opportunities" and the carriage of contrasting points of view as mandated by any "fairness" rule with respect to such "issue-oriented" advertising or programming as may be broadcast) and the charges permitted therefor. Time Broker shall provide to Licensee such documentation relating to such programming as Licensee shall reasonably request.
- (b). When required by laws, Time Broker shall sell such political advertising time only at the Stations' lowest unit rates. Within seven (7) days after the broadcast of political advertising, Time Broker shall review the commercial spots that have aired on the Stations, so as to insure that each political candidate was charged the lowest unit rates. In the event a refund or credit is due, Time Broker shall pay such refund or provide such credits within seven (7) days. The Time Broker recognizes candidates' need to maximize their campaign funds, and thus will provide such rebates or credits on a more expeditious basis as the election day approaches.
- (c). Time Broker shall maintain and deliver to Licensee all records and information required by the FCC to be placed in the public inspection files of the Stations pertaining to the broadcast of political programming and advertisements, in accordance with the provisions of Sections 73.1940 and 73.3526 of the FCC's rules and agrees to broadcast sponsored programming addressing political issues or controversial subjects of public importance, in accordance with the provisions of Section 73.1212 of the FCC's rules.
- (d). In the event that Time Broker fails to provide adequate broadcast time for the broadcast of paid political programming or advertising by political candidates, Licensee shall have the right to preempt commercial announcements supplied by Time Broker to make time available to these political candidates.

(e). No failure to comply with the provisions of this Section 2.2 shall constitute a material default of this agreement in the absence of an adverse determination by the Commission.

- 2.3 Handling of Communications. Time Broker shall receive and promptly respond to all mail, cables, telegrams or telephone calls directed to the Stations in connection with the Programming provided by Time Broker or any other matter relevant to its responsibilities hereunder. Time Broker shall provide copies of all such correspondence to Licensee. Time Broker shall promptly advise Licensee of any public or FCC complaint or inquiry known to Time Broker concerning such Programming, and shall provide Licensee with copies of any letters to Time Broker from the public, including complaints concerning such Programming. Notwithstanding the foregoing, Licensee shall handle all matters or inquiries relating to FCC complaints and any other matters required to be handled by Licensee under the rules and regulations of the FCC.
- 2.4 Preemption. Licensee may, from time to time, preempt portions of the Programming to broadcast emergency information or programs it deems would better serve the public interest, and may refuse to broadcast any program or announcement of Time Broker should Licensee deem, such program or announcement to be contrary to the public interest as set for in Section 2.1. Time Broker shall be notified at least on week in advance of any preemption of any of the Programming for the purpose of broadcasting programs Licensee deems necessary to serve the public interest unless such advance notice is impossible or impractical, then Licensee shall notify Time Broker promptly upon making such determination. In the event of any such preemption, Time Broker shall be entitled to deduct from the Monthly Payment (as described in Section 1.2) for the month in which such preemption occurs an amount equal to the percentage of the total programming hours per month brokered to Time Broker which were preempted during such month times the Monthly Payment. Licensee represents and covenants that preemption shall only occur to the extent Licensee deems necessary to carry out its obligations as an FCC licensee, and expressly agrees that its right of preemption shall not be exercised in an arbitrary manner or for the commercial advantage of Licensee or others. In the event that Licensee preempts more than three (3) hours in any calendar day, or more than seven (7) hours over any seven (7) calendar days, or more than thirty (30) hours over any consecutive thirty (30) day period, then Time Broker shall be entitled at its sole option to terminate this Agreement without further obligation to Licensee except for payments (if any) already due to Licensee and to pursue all other legal remedies available to it, provided, however, that Time Broker shall have no such right to terminate if Licensee preempts the Programming for periods in excess of those set forth above during the course of a local regional or national emergency, during which substantially all other stations in the Meridian market with formats similar to that of the Stations replace regular programming to provide emergency information and the Stations on which the preemption occurs has not provided reasonably similar emergency information.
- 2.5 Rights in Programs. All right, title and interest in and to the Programming, and the right to authorized the use of the Programming in any manner and in any media whatsoever, shall be and remain vested at all times solely in Time Broker.
- 2.6 "Payola" and "Plugola". Time Broker agrees that it will take steps, including the continuation of Licensee's system for periodic execution of affidavits, reasonably designed to assure that neither it nor its employees or agents will accept any gift, gratuity or other consideration, directly or indirectly, from any person or company for the playing of records, the presentation of any programming or the broadcast of any commercial announcement over the Stations without such broadcast being announced or sponsored. It is further understood and agreed that no commercial message, plugs, or undue reference shall be made in programming presented over the Stations to any business, venture, profit-making activity or other interest (other than non-commercial announcements for bona fide charities, church activities or other public service activities) without such broadcast being announced as sponsored.
- 2.7 Advertising and Programming. Beginning on the Commencement Date, Time Broker shall be entitled to all revenue from the sale of advertising or program time on the Stations. Licensee

- shall remain entitled to all revenue from the sale of advertising or program time on the Stations for all days prior to the Commencement Date.
- 2.8 Call sign Changes. At one or more times during the term of this Agreement, Time Broker may request that Licensee change the FCC assigned call sign of the Stations. Licensee will honor such requests and promptly seek FCC assignment to the Stations of the call signs specified by Time Broker provided that (1) Licensee determines in its reasonable good faith judgement that the call signs requested by the time Broker is consistent with Licensee's obligations under the Communications Act of 1934, as amended (the "Communications Act"), the rules of the FCC and all other applicable laws, and (ii) Time Broker agrees to reimburse Licensee for its reasonable expenses incurred in connection with requesting and obtaining the changes.
- 2.9 Compliance with Laws. At all times during the term of this Agreement, Time Broker and Licensee shall comply in all material respects with all applicable federal, state and local laws, rules and regulations, including the use of FCC-licensed operators where such are required.
- 2.10 Certifications. Pursuant to Section 73.3555(a)(2)(ii) of the FCC's rules, Licensee certifies that it maintains ultimate control over the Stations' facilities, including specifically control over station finances, personnel and programming, and Time Broker certifies that this Agreement complies with the provisions of Sections 73.3555(a)(1) and (e)(1) of FCC's rules.

### ARTICLE 3

#### RESPONSIBILITY FOR EMPLOYERS AND EXPENSES

- 3.1 Time Broker's Employees.
- (a). Time Broker shall employ and be responsible for the payment of salaries, taxes, insurance and all other costs related to all personnel used in the production of the Programming. Time Broker will not incur any liability on account of Licensee's employees in connection with the transactions contemplated by this Agreement including, without limitation, any liability on account of unemployment insurance contributions, termination payments, accrued sick leave or accrued vacation. It is expressly understood that Time Broker is not obligated to employ or pay, and has no authority over, any of Licensee's employees.
- (b). Time Broker may extend offers of employment to those employees of Licensee in the Meridian market whom it desires to hire, which offers shall be on terms and conditions that Time Broker shall determine in its sole discretion.
- (c). In no event shall Time Broker or its employees represent, depict, describe or portray Time Broker as the licensee of the Stations.
- 3.2 Licensee's Employees.
- (a). Licensee shall employ and be responsible for the payment of salaries, taxes, insurance and all other costs related to the personnel necessary to fulfill its obligations as Licensee and to transmit the Programming.
- (b). Licensee will not incur any liability on account of Time Broker's employees in connection with the transactions contemplated by this Agreement including, without limitation, any liability on account of unemployment insurance contributions, termination payments, accrued sick leave or accrued vacation.
- 3.3 Time Broker's Expenses. Beginning on the Commencement Date, Time Broker shall pay for all costs associated with the production and delivery of the Programming (including advertising and marketing costs with respect to the Programming) with respect to the time periods following the Commencement Date, including all ASCAP, BMI, SESAC and other fees on account of the Programming.

- 3.4 Licensee's Expenses. Beginning on the Commencement Date, Licensee shall be responsible for the payment when due of all fees and expenses relating to the operation of the Stations other than those specified in Section 3.3, including but not limited to: (a) maintaining the studio and transmitting capability of the Stations, including, without limitation utility expense, maintenance of the tower, transmitter and studio equipment, rental of the transmitter and studio sites, and insurance payments for the studio, tower and transmitter, (b) all other expenses relating to fulfilling its obligations as an FCC licensee and (c) any programming expenses incurred by Licensee in presenting Programming on the Stations pursuant to Section 2.4.

## ARTICLE 4

### ASSIGNMENT OF CERTAIN AGREEMENTS AND RIGHTS

- 4.1. Assignment. On the Commencement Date, Licensee shall assign to Time Broker all those contracts and other agreements related to programming and advertising (collectively, the "Assigned Contracts"). No other agreements, contracts or understandings relating to the operation of the Stations are assigned to Time Broker hereunder.
- 4.2. Proration.
- (a). All expenses and income arising under the Assigned Contracts shall be prorated between Licensee and Time Broker as of the Commencement Date in a manner such that the costs and benefits thereunder through the date before the Commencement Date shall be for the account of Licensee and, thereafter, from the Commencement Date and during the term of this Agreement, for the account of Time Broker.
- (b). Except as provided in sub-paragraph (c), below, Licensee shall remain responsible for the payment of all direct and indirect expenses relating to operating the Stations prior to the Commencement Date, including those related to (i) producing and broadcasting the Programming on the Stations; (ii) licensing fees, (iii) maintaining the transmitting capability of the Stations, including, without limitation, maintenance of the towers, transmitters and studio equipment; (iv) salaries, payroll taxes, insurance and all related costs of Licensee's employees; (v) income taxes, gross receipts, taxes, salaries, personal and real property tax, and/or other taxes related to the ownership of the Stations; and (vi) fulfilling its obligations as an FCC licensee.
- (c). If any disagreement with respect to the proration of such income and expenses cannot be resolved by the parties, Licensee and Time Broker will select a certified public accountant knowledgeable in the broadcast industry to resolve the dispute. If the parties cannot agree on an accountant, each party shall select an accounting firm, both of which shall review the apportionment and agree on an appropriate adjustment, and payment shall be made as agreed upon by the accounting firms. If the two accounting firms selected by the parties are unable to resolve the matter, the two accounting firms shall select a third firm of independent certified public accountants, which shall review the apportionments and make a determination of an appropriate adjustment, and whose decision will be final and binding on the parties, and whose fees and expenses shall be borne by the parties in accordance with the following sentence; provided, however, in no event shall the adjustment resulting from such third accountant's review fall outside the range of adjustments proposed by the accountants chosen by the parties. Payment of the fees and expenses of all accounting firms shall be apportioned between the parties as follows: each party shall pay an amount equal to the sum of all fees and expense of the accounting firm multiplied by a fraction, the numerator of which is equal to (i) the net difference between the amount claimed by such party and the amount owed by or awarded to such party divided by (ii) the sum of (A) the net difference between the amount claimed by the successful party and the amount awarded to such party, plus (B) the net difference between the amount claimed by the unsuccessful party and the amount awarded to the successful party. The resolution of such disputes shall be binding on the parties and subject to judicial enforcement.

4.3 Payment of Station Obligations. Licensee shall promptly pay when due and satisfy all obligations owing to, or reach a settlement with all third parties with respect to the operation of the Stations prior to the Commencement Date, to the extent required to grant Time Broker the full enjoyment of its rights hereunder.

## ARTICLE 5

### OPERATION OF STATIONS

Notwithstanding any provision of this Agreement to the contrary, Licensee shall retain full authority and power with respect to the operation of the Stations during the term of this Agreement. The parties agree and acknowledge that Licensee's continued control of the Stations is an essential element of the continuing validity and legality of this Agreement. Accordingly, Licensee shall employ the General Manager of the Stations and such other personnel (not less than one) as Licensee determines may be necessary to fulfill its obligations as a licensee under the Communications Act. Licensee shall retain full authority and control over the policies, programming and operations of the Stations, including, without limitation, the decision whether to preempt Programming in accordance with the Section 2.4 hereof. Licensee shall have full responsibility to effectuate compliance with the Communications Act and with FCC rules, regulations and policies.

## ARTICLE 6

### GRANT OF LICENSES

- 6.1 License to Use Station Facilities. Effective as of the Commencement Date, Licensee grants Time Broker a license to access and use all of the Stations' studio and office space and other facilities ("Station Facilities") and all equipment and furnishings contained therein ("Station Equipment") in the production and broadcasting of the Programming and sales and administration relating thereto, in accordance with the terms set forth in this Section 6 (the "Time Broker License"). The Time Broker License shall have a term beginning on the commencement Date and ending upon the termination of this Agreement. Time Broker shall not remove from the Station Facilities or modify any Station Equipment in the Station Facilities owned by or leased or licensed to Licensee without Licensee's prior written consent, such consent not to be unreasonably withheld. Licensee shall not license the use of the Station Facilities to any other party during the term of the Time Broker License; and Time Broker's use of the Station Facilities shall be exclusive except for Licensee's right to use such facilities for production of programming for which Licensee is responsible as set forth on Schedule 1.1. Time Broker shall use due care in the use of any property of Licensee. Time Broker shall indemnify Licensee for any damage (normal wear and tear excepted) to Licensee's property caused by time Broker or any employee, contractor, agent or guest of Time broker.
- 6.2 License of Intellectual Property. Effective as of the Commencement Date, Licensee licenses to Time Broker the exclusive right to use (or, to the extent Licensee does not hold exclusive rights, the non-exclusive right to use) all intellectual property owned by or licensed to Licensee and used in the operation of the Stations (including, but not limited to, logos, jingles and promotional materials) (the "IP License"). In the event of termination of this Agreement, the IP License shall terminate; provided, however, that Time Broker shall own all trademarks, service marks, trade names, characters, formats, logos, and positioning statements which it develops for the Programming during the term of this Agreement, and Licensee may not make use of any such materials with the prior written consent of Time Broker.

## ARTICLE 7

### INDEMNIFICATION

- 7.1 By Time Broker. Time Broker shall indemnify and hold Licensee harmless from and against all claims; suits; actions; causes of action; damages; losses; and costs, including but not limited to attorney's fees, arising out of or relating to (a) the Programming, (b) any advertising placed on the Stations by or on behalf of Time Broker or (c) Time Broker's failure to comply with any material provision of this Agreement. This indemnification shall survive termination of this agreement.
- 7.2 By Licensee. Licensee shall indemnify and hold TimeBroker harmless from and against all claims; suits; actions; causes of action; damages; losses; and costs, including but not limited to attorney's fees, arising out of or relating to (a) any programming presented by Licensee, (b) any political advertising presented by Licensee or (c) Licensee's failure to comply with any material provision of this Agreement. This indemnification shall survive termination of this agreement.
- 7.3 Procedures.
- (a). If any claim or proceeding covered by Sections 7.1 or 7.2 hereof to indemnify and hold a party harmless shall arise, the party seeking indemnification ("Indemnatee") shall give written notice thereof to the indemnifying party ("Indemnitor") promptly but in no event more than ten (10) days after Indemnatee learns of the existence of such claim or proceeding. Any claim for indemnification hereunder shall be accompanied by evidence demonstrating Indemnatee's right or possible right to indemnification, including a copy of all supporting documents relevant thereto. After Indemnitor acknowledges its obligation to defend against or settle any such claim or proceeding, the Indemnitor shall not be liable to Indemnatee under this Section 7 for any legal or other expenses subsequently incurred by Indemnatee in connection with the defense thereof, provided, however, that Indemnatee shall have the right to employ counsel to represent it if, in the Indemnatee's sole judgement, it is advisable for Indemnatee to be represented by separate counsel, in which event the reasonable fees and expenses of such separate counsel shall be paid by the Indemnitee. The parties shall fully cooperate in the defense of each claim or proceeding and shall make available to each other all books or records necessary or appropriate for such defense.
- (b). Indemnitor shall have the right to employ counsel reasonably acceptable to Indemnatee to defend against the claim or proceeding or to compromise, settle or otherwise dispose of the same; provided, however, that no settlement or compromise shall be effected without the express prior written consent of Indemnatee, which consent shall not be unreasonably withheld or delayed; and, provided, further, that if Indemnatee does not consent to a bona fide offer of settlement made by a third party and the settlement involves only the payment of money, then Indemnitor may, in lieu of payment of that amount to such third party, pay the amount to the Indemnitee. After such payment to the Indemnitee, Indemnitor shall have no further liability with respect to that claim or proceeding and the Indemnitee shall assume full responsibility for the defense, payment or settlement of such claim or proceeding.
- (c). If the Indemnitor fails to acknowledge in writing its obligation to defend against or settle any claim or proceeding within twenty (20) days after receiving notice of the claim or proceeding from the Indemnitee (or such shorter period of time specified in the notice as the circumstances of the matter may dictate), the Indemnitee shall be free to dispose of the matter, at the expense of the Indemnitor, in any way that the Indemnitee deems in its best interest, subject to the Indemnitor's right subsequently to contest through appropriate proceedings its obligation to provide indemnification.

## ARTICLE 8

### DEFAULT

8.1 Events of Default. The following, after the expiration of the applicable cure periods specified in Section 8.2, shall constitute Events of Default under the Agreement:

- (a). Non-Payment. Time Broker's failure to timely pay the consideration provided for in Section 1.2;
- (b). Default in Covenants. Time Broker's or Licensee's default in the observance or performance of any material covenant, condition or agreement contained herein; or
- (c). Breach of Representation. Time Broker's or Licensee's material breach of any representation or warranty made by it herein, or in any certificate or document furnished pursuant of the provisions hereof, which shall prove to have been false or misleading in any material respect as of the time made or furnished.

8.2 Cure Periods. Unless otherwise specifically provided herein, if either party believes the other to be in default hereunder, the former party shall provide the other party with written notice specifying in reasonable detail the nature of such default. If the default has not been cured within thirty (30) days after delivery of the notice (or such additional reasonable time as the circumstances may warrant provided the party in default undertakes diligent, good faith efforts to cure the default within such thirty (30) day period and continues such efforts there after), then the party giving such notice may exercise the remedies available to such party pursuant to this Section, subject to the right of the other party to contest such action through appropriate proceedings.

## ARTICLE 9

### TERMINATION

9.1 Termination Upon Default. In addition to other remedies available at law or equity, this Agreement may be terminated as set forth below by either Licensee or Time Broker 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). An uncured Event of Default.
- (b). A change in FCC rules, policies or precedent that would cause this Agreement to be in violation thereof and such change is final, in effect and has not been stayed, provided however the parties shall cooperate to renegotiate the Agreement and seek Commission approval as contemplated by Section 13.15 hereof.

9.2 Certain Matters Upon Termination or Expiration.

- (a). Upon any termination or expiration of this Agreement, Licensee shall be under no further obligation to make available to Time Broker any further broadcast time or broadcast



transmission facilities and Time Broker shall be responsible for all debts and obligations of Time Broker resulting from the use of air time and transmission facilities.

(b). Upon any termination or expiration of this Agreement, Time Broker shall (1) assign to Licensee and Licensee shall assume the Assigned Contracts assigned to Time Broker on the Commencement Date that remain in effect on the date of such termination or expiration; (ii) be responsible for only those obligations under the Assigned Contracts arising on or after the Commencement Date and prior to the termination of this Agreement; and (iii) assign to Licensee (after obtaining, at Time Broker's expense) any necessary consents to such assignment, and Time Broker shall use its reasonable best efforts to obtain such consents), and Licensee shall assume all contracts for the sale of time on the Stations that are in effect on the date of such termination or expiration except those contracts for the sale of time that are not in the ordinary course or to the extent that such contracts have a term in excess of six months (the "Advertising Contracts").

(c). No expiration or termination of this Agreement shall terminate the obligation of each party to indemnify the other for claims under Section 7 hereof or limit or impair any party's rights to receive payments due and owing hereunder on or before the date of such termination.

## ARTICLE 10

### REMEDIES

The remedies contained herein are not exclusive. Time Broker and Licensee may seek any remedies available at law or equity in court of competent jurisdiction. Licensee and Time Broker agree that time Broker may seek specific performance of Licensee's obligations under this Agreement but only to the extent that this remedy, as applied, is consistent with Licensee's obligation under the Communications Act and the policies and rules of the FCC.

## ARTICLE 11

### CERTAIN REPRESENTATIONS AND WARRANTIES OF THE PARTIES

11.1 Representations and Warranties of Time Broker. Time Broker hereby represents and warrants to Licensee as follows:

11.1.1 Organization. Time Broker is a corporation duly organized and validly existing under the laws of the state of Mississippi.

11.1.2 Authorization: Enforceability. This Agreement has been duly executed and delivered by Time Broker, and is valid, binding and enforceable against Time Broker in accordance with its terms. Time Broker has the power and authority to enter into and perform its obligations under this Agreement and to consummate the transactions contemplated hereby. The execution and delivery or performance of this Agreement and the person executing the Agreement on behalf of Time Broker has express authority to do so and in so doing binds time Broker hereto.

11.1.3. No Consent. No consent of any other party and no consent, license, approval or authorization of, or exemption by, or filing, restriction or declaration with, any governmental authority, bureau, agency or regulatory authority, other than the filing of this Agreement with the FCC, is required in connection with the execution, delivery or performance of this Agreement by Time Broker or will effect the validity or performance of this Agreement.

11.1.4 No Breach. Neither the execution or delivery of this Agreement nor the consummation of the transactions contemplated hereby will constitute or result in the breach of any term, condition or provision of, or constitute a default under, or result in the creation of any lien, charge or encumbrance upon any property or assets of Time Broker pursuant to the articles of incorporation of Time Broker, its bylaws, any agreement or other instrument to which Time Broker is a party or by which any part of its property is bound, or violate any law, regulation, judgement or order binding upon Time Broker.

11.1.5 Actions and Proceedings. No proceeding is pending against Time Broker or, to the knowledge of Time Broker, threatened before any court or governmental agency to restrain or prohibit, or to obtain damages, or other relief in connection with, this Agreement or the consummation of the transactions contemplated hereby or that might adversely affect Time Broker's performance under this Agreement.

11.1.6 No Misleading Statements. This Agreement, nor any statement made by Time Broker to Licensee and no written information provided or to be provided by Time Broker to Licensee pursuant to this Agreement, or in connection with the transactions contemplated herein, contains or will contain any untrue statement of material fact or omits to state any facts necessary to make such statements or information not materially misleading.

11.2 Representations, Warranties and Covenants of Licensee. Licensee hereby represents, warrants and covenants to Time Broker as follows:

11.2.1 Authority. Licensee has full power and authority to enter into and perform this Agreement.

11.2.2 Authorization: Enforceability. This Agreement has been duly executed and delivered by Licensee, and is valid, binding and enforceable against Licensee in accordance with its terms. Licensee has full power and authority to enter into and perform its obligations under this Agreement and to consummate the transactions contemplated hereby.

11.2.3 No Consent. No consent of any other party and no consent, license approval or authorization of or exemption by, or filing, restriction or declaration with any governmental authority, bureau, agency or regulatory authority, other than the filing of this Agreement with the FCC, is required in connection with the execution, delivery or performance of this Agreement or will affect the validity or enforceability of this Agreement.

11.2.4 No Breach. Except to the extent any of the Assigned Contracts require consent to assignment, neither the execution or delivery of this Agreement nor the consummation of the transactions contemplated hereby will constitute or result in the breach of any term, condition or provision of, or constitute a default under, or result in the creation of any lien, charge or encumbrance upon any property or assets of Licensee pursuant to the articles of incorporation of Licensee, its bylaws, any agreement or other instrument to which Licensee is a party or by which any part of its property is bound, or violate any law, regulation, judgement or order binding upon Licensee.

11.2.5 Actions and Proceedings. There is no judgement outstanding and no litigation, claim, investigation or proceeding pending against Licensee or, to the knowledge of Licensee, threatened before any court or governmental agency to restrain or prohibit, or to obtain damages or other relief in connection with this Agreement or the consummation of the transactions contemplated hereby or

that might affect the continued operation of the Station or materially impair the value of the assets used or useful in operation of the Station.

**11.2.6 Contracts, Agreements, and Leases.** The Assigned Contracts are valid and binding obligations of the parties thereto, enforceable against such parties in accordance with their respective terms, except in each case, as limited by laws affecting creditors' rights and equitable principles generally. The Licensee is not, and to the best of Licensee's knowledge, no other party thereto is, in default under any Assigned Contracts and no party has given any notice of default under any Assigned contract. Licensee has not granted or been granted any material waiver or forbearance with respect to any of the Assigned Contracts.

**11.2.7 Ancillary Broadcast Rights.** Licensee represents that it does not transmit, shall not transmit while this Agreement is in effect, and will not permit third parties to transmit, over the Stations' subcarrier frequencies.

**11.2.8 Maintenance of Current Coverage.** During the term hereof, Licensee shall take no action which will have the effect of reducing the effective radiated power and the current coverage of the Stations except in connection with necessary maintenance, which shall be conducted to the extent possible between 12:00 a.m. and 5:00 a.m. and shall not exceed three (3) hours.

**11.2.9 Compliance with Laws.** Licensee shall not knowingly take any action or omit to take any action which would have an adverse impact upon the FCC's Licenses, its assets utilized in the operation of the Stations or upon Licensee's ability to perform this Agreement. All reports, annual regulatory fees and applications required to be filed with the FCC or any other governmental body have been and during the course of the term of this Agreement or any extension thereof, will be filed in a timely and complete manner. The Stations' local public records file will be maintained in accordance with the rules and regulations of the FCC and such applications, records, lists and other documents as are required to be placed in said file shall be filed there in a timely manner. The facilities of the Stations are and will continue to be in compliance in all material respects with the engineering requirements set forth in the FCC licenses of the Stations and the rules of the FCC, and the Station shall be operated in compliance with all applicable laws.

**11.2.10 License Renewal.** Licensee shall timely file all necessary applications and pay all requisite fees in connection with obtaining renewal of the Stations' licenses from the FCC and shall thereafter prosecute such renewal applications with all reasonable diligence and otherwise use its commercially reasonable efforts to obtain the grant of such renewal applications as expeditiously as possible. Furthermore, Licensee shall be responsible for broadcasting those announcements required by the FCC of broadcast radio Stations filing for license renewal. Programmer shall cooperate fully in Licensee's efforts to obtain renewal of the Stations' licenses.

**11.2.11 No Misleading Statements.** This Agreement, nor any statement made by Licensee to Time Broker and no written information provided or to be provided in Licensee to Time Broker pursuant to this Agreement, or in connection with the transactions contemplated herein, contains or will contain any untrue statement of material fact or omits to state any facts necessary to make such statements or information not materially misleading.

## ARTICLE 12

### DELIVERIES PRIOR TO COMMENCEMENT DATE

**12.1 Deliveries by Time Broker.** On or prior to the Commencement Date, Time Broker shall deliver to Licensee such documents relating to Time Broker's authority to enter into this Agreement as shall be reasonably requested by Licensee or its counsel.

12.2 Deliveries by Licensee. On or prior to the Commencement Date, Licensee shall deliver to Time Broker any necessary consents, in a form reasonably acceptable to Time Broker, to the assignment top Time Broker of those Assigned Contracts.

## ARTICLE 13

### MISCELLANEOUS

13.1 Modification and Waiver. No modification or waiver of any provision of this Agreement shall in any event be effective unless the same shall be in writing signed by the party against whom the waiver is sought to be enforced, and then such waiver and consent shall be effective only in the specific instance and for the purpose for which given.

13.2 No Waiver; Remedies Cumulative. No failure or delay on the part of Licensee or Time Broker in exercising any right or power hereunder shall operate as a waiver thereof, nor any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, shall preclude any order or further exercise thereof or the exercise of any other right or power. The rights and remedies of Licensee and Time Broker herein provided are cumulative and are not exclusive of any rights or remedies which they may otherwise have.

13.3 Construction. This Agreement shall be construed in accordance with the laws of the State of Mississippi without reference to conflict of laws principles, and the obligations of the parties hereto are subject to all federal, state or municipal laws or regulations now or hereafter in force and to the regulations of the FCC and all other governmental bodies or authorities presently or hereafter duly constituted.

13.4 Headings. The headings contained in this Agreement are included for convenience only and no such headings shall in any way alter the meaning of any provision.

13.5 Assignments. No party may assign its rights or obligations hereunder without the express prior written consent of the other party. Subject to the foregoing, this Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective heirs, legal representatives, successors and permitted assigns ("Successors").

13.6 Force Majeure. Both parties acknowledge and agree that a party will not be liable for any failure to timely perform any of its obligations under this Agreement if such failure is due, in whole or in part, directly or indirectly, to accidents, fires, floods, governmental actions, war, civil disturbance, labor disputes, other causes beyond such party's control or any other occurrence which would generally be considered an event of force majeure.

13.7 Broker. The parties agree to indemnify and hold each other harmless against any claims from a broker or finder based upon any agreement, arrangement, or understanding alleged to have been made by the indemnifying party.

13.8 Counterpart Signatures. This Agreement may be signed in one or more counterparts.

13.9 Notices. All notices, requests, demands, and other communications pertaining to this Agreement shall be in writing and shall be deemed duly given when delivered personally (which shall include delivery by Federal Express or other nationally recognized, reputable overnight courier service that issues a receipt or other confirmation of delivery) to the party for whom such communication is intended, or three (3) business days after the date mailed by certified or registered U. S. mail, return receipt requested, postage prepaid, addressed as follows:

If the notice is to Licensee:

Clay E. Holladay  
East Mississippi Broadcasters, Inc..  
P.O. Box 5797  
Meridian, MS 39302

If the notice is to Time Broker:

F. E. Holladay  
New South Communications, Inc.  
P.O. Box 5797  
Meridian, MS 39302

Either party may change its address for notices by notice to such effect to the other party.

13.10 Entire Agreement. This Agreement (including all schedules) embodies the entire agreement between the parties and there are no other agreements, representations, warranties or understandings, oral or written, between them with respect to the subject matter hereof.

13.11 Severability. Except as expressly set forth in Section 13.15, if any provision contained in the Agreement is held to be invalid, illegal or unenforceable in any respect by any court or other authority, then such provision shall be deemed limited to the extent that such court or other authority deems it reasonable and enforceable, and as so limited shall remain in full force and effect. In the event that such court or other authority shall deem any such provision wholly unenforceable, this shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision or provisions had not been contained herein unless the invalidity or unenforceability of such provision or provisions causes the terms of this Agreement to conflict with the underlying business agreement of the parties reflected in this Agreement as written.

13.12 No Joint Venture. The parties agree that nothing herein shall constitute a joint venture between them. The parties acknowledge that call letters, trademarks and other intellectual property shall at all times remain the property of the respective parties and that neither party shall obtain any ownership interest in the other party's intellectual property by virtue of this Agreement (subject to the IP License set forth in Section 6.2).

13.13 Damage to Stations. In the event of damage or destruction to the Stations (other than damage or destruction caused by Time Broker), Licensee shall proceed to repair, replace or restore the Station to its former condition.

13.14 Noninterference. During the term of this Agreement, neither Licensee nor any of its employees shall take any actions that might impair the operations of Time Broker conducted hereunder, except to the extent expressly contemplated by this Agreement or otherwise required by law.

13.15 Regulatory Changes. If the FCC determines that this Agreement is inconsistent with Licensee obligations or is otherwise contrary to FCC policies, rules and regulations, or if regulatory or legislative action subsequent to the date hereof alters the permissibility of this Agreement under the FCC's rules or the Communications Act, the parties shall renegotiate this Agreement in good faith and recast this Agreement in terms that are likely to cure such defects and return a balance of benefits to both parties comparable to the balance of benefits provided by the Agreement in its current terms. If, after such negotiations, either party determines in good faith and on reasonable grounds that recasting this Agreement to resolve such defects is impossible, either party may terminate the renegotiation contemplated herein by giving 30 days' prior written notice. If termination of negotiations shall occur pursuant to this paragraph, such termination shall extinguish and cancel this Agreement.

13.16 Third Parties. Nothing in this Agreement, whether expressed or implied, is intended to: (1) confer any rights or remedies on any person other than Time Broker and Licensee and

their respective Successors; (ii) relieve or discharge the obligation or liability of any third party, or (iii) give any third party any right of subrogation or action against the Parties.

13.17 Time of Essence. Time Broker and Licensee agree that "time is of the essence" in the performance of this Agreement.

13.18 Attorneys Fees. If either Time Broker or Licensee initiates suit to enforce rights under this Agreement, the prevailing party shall be entitled to its cost of suit, including its attorneys fees.

13.19 Counsel. Each Party has been represented by its own counsel in connection with the negotiation and preparation of this Agreement and, consequently, each Party hereby waives the application and preparation of any rule of law which would otherwise be applicable in connection with the interpretation of this Agreement and each provision shall be interpreted or construed against the Party whose counsel drafted that provision.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date indicated below.

NEW SOUTH COMMUNICATIONS, INC.

BY

F. E. Holladay  
F. E. Holladay, President

EAST MISSISSIPPI BROADCASTERS, INC.

BY

C. E. Holladay  
C. E. Holladay, President

## **SCHEDULE 1.1**

### **Programming**

- A. The Programming shall consist of one hundred sixty-eight (168) hours per week on each Station in an entertainment format to be chosen by Time Broker, subject to Section 2 of this Agreement. The Programming shall include (a) weather information; (b) public service announcements (including, at Licensee's directive from time to time, a reasonable number of public service announcements of local interest supplied by Licensee or produced by Time Broker under Licensee's supervision); (c) an announcement in form sufficient to meet the station identification requirements of the FCC at the beginning of each hour; (d) an announcement at the beginning of each segment of Programming to indicate that program time has been purchased by time Broker; and (e) any other announcement that may be required by applicable law or regulation (including but not limited to EBS tests). Time Broker shall maintain and deliver to Licensee copies of all operating and programming information including without limitation concerning portions of the Programming that are responsive to issues of public importance identified to Time Broker by Licensee, EBS announcements, and station operating logs, necessary for Licensee to maintain its FCC Public File, and all other records required to be kept by FCC rule or policy. Time Broker shall have the sole and exclusive right to sell advertising to be included in the Programming and shall be entitled to retain all the revenues derived from the sale thereof.
- B. Time Broker shall produce under Licensee's supervision and present public affairs programming that responds to the needs and interests of listeners in the Stations' communities of license. Time Broker may present public affairs programming between 6:00 a.m. and 9:00 a.m. on Sundays or at such other times as the public interest calls for.

**AGREEMENT**

The Time Brokerage Agreement between East Mississippi Broadcasters, Inc. and New South Communications, Inc. for stations WMLV/WJXM/WMMZ will continue indefinitely until canceled by either party on 30 days notice.

  
New South Communications, Inc.

  
East Mississippi Broadcasters, Inc.