

**TIME BROKERAGE AGREEMENT**

**For**

**Television Station WDRL**

**Danville, VA**

**By and Between**

**MNE Broadcasting, LLC**

**Licensee**

**And**

**Liberty University, Inc.**

**Programmer**

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## **TIME BROKERAGE AGREEMENT**

THIS Time Brokerage Agreement ("TBA" or "Agreement"), made and entered into this \_\_\_\_ day of March, 2007, by and between MNE Broadcasting, LLC ("Licensee"), a Virginia limited liability company which is licensee of Television Stations WDRL-TV and WDRL-DT ("the Stations"), and Liberty University, Inc., a Virginia nonstock corporation ("Programmer"),

### **WITNESSETH:**

WHEREAS, Licensee holds licenses duly issued by the Federal Communications Commission ("FCC") and has in place all assets necessary to operate the Stations;

WHEREAS, the parties hereto have carefully considered the FCC's time brokerage policies in effect at this time and intend that this TBA in all respects comply with such policies;

WHEREAS, Licensee and Programmer desire to enter into this TBA for the purpose of providing a regular source of diverse programming;

WHEREAS, Programmer desires to provide programming to the Danville, Roanoke, and Lynchburg, Virginia, area using the facilities of the Stations under the continued direction of Licensee and in accordance herewith;

WHEREAS, Licensee agrees to provide time exclusively to Programmer and shall maintain, during the term hereof, ultimate control over the Stations' facilities, including control over the Stations' finances, personnel, and programming; and

WHEREAS, Programmer agrees to utilize the facilities of the Stations solely to broadcast such programming as complies with the policies of Licensee; with all Rules, Regulations, and policies of the FCC; and as set forth herein.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. **Basic Agreement.** All time on the Stations not reserved to Licensee pursuant to Section 2 hereof shall be available for use by Programmer for no further consideration and to no other party, subject to the limitations set forth herein. Programmer shall provide programming of its selection complete with commercial matter, news, public service announcements, children's, and other suitable programming.

2. **Reservation of Time.** Licensee reserves up to two hours of broadcast time per week at the time(s) and on the day(s) mutually agreed to by the parties.

3. Effective Date and Term. The effective date of this TBA shall be the date of execution of an Asset Purchase Agreement between WDRL-TV Inc. and the Licensee as sellers and the Programmer as buyer ("APA") ("Effective Date"). This TBA shall continue in force for a term of 24 months from the effective date unless sooner terminated by mutual agreement of the parties or as set forth at Sections 17.1, 18, 19, or 20 herein, or by the later expiration or termination of the Asset Purchase Agreement ("APA").

4. Consideration. As consideration for the broadcast time provided to Programmer, Programmer shall:

4.1 Pay to Licensee the sum of TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) per year, payable during the term in equal monthly installments on the first day of each month commencing on the Effective Date or such date as the Bankruptcy Court approval referenced in Section 14.1 is received, which shall be deemed to include all salary, payroll tax, insurance, and related costs payable or attributable to the Licensee; and

4.2 As additional consideration, Programmer shall reimburse Licensee for the expenditures set forth in Section 5 below.

4.3 Upon receipt of an invoice for any expense reimbursable by Programmer pursuant to Section 5, Licensee shall review the invoice to determine whether it approves payment thereof or disputes any invoiced amount. In the event payment is approved, Licensee shall pay the invoice and shall submit a copy of the paid invoice to Programmer for reimbursement. Unless it disputes the bona fide nature of the expenditure, Programmer shall reimburse Licensee for such expenditures within twenty days of receipt of the invoice. Invoices not paid within twenty days shall bear interest at the prime interest rate, as periodically announced in the Wall Street Journal, plus 2 percent. If Licensee disputes any invoice submitted by a creditor, it shall promptly contest such obligation in good faith by appropriate proceedings and Programmer's obligation to reimburse Licensee shall be limited to reimbursement of the amount which Licensee has agreed or is otherwise obligated to pay. In the event Programmer disputes the bona fide nature of an expenditure for which reimbursement is sought, the matter shall be referred to a mutually acceptable accountant with no professional relationship to Licensee or Programmer, and the decision of such accountant shall be final and binding on both parties.

5. Licensee Operation of the Stations. Licensee shall be solely responsible for paying, and shall at all times keep current, all charges and expenses for:

5.1 Rent, power, and all other utility and maintenance bills at the Stations' studio and at the Stations' transmitter and antenna site;

5.2 Insurance costs for all premiums for all casualty and liability coverage reasonably required or requested by Programmer, and all workers' compensation or other insurance for all of Licensee's employees required by law;

5.3 Licensee's own office expenses, including local and long distance telephone and postal services related to the operation of the Stations pursuant to this Agreement;

5.4 Maintenance, including any necessary repairs and replacements as needed of the transmitting facilities, tower and lighting, and all equipment necessary for the continuous and proper operation of the Stations in strict compliance with the Rules, Regulations and policies of the FCC;

5.5 Salaries, payroll taxes, insurance, and related costs of Licensee's operations manager and Licensee's other employees;

5.6 All local, state, and federal income, sales, excise, and personal property taxes; provided, however, that all local, state, and federal income taxes owed by Licensee shall not be subject to reimbursement by Programmer;

5.7 Subject to the provisions of Section 7, the payment of all music licensing fees arising from the broadcast of copyrighted music on the Stations;

5.8 All program and network costs, including all Nielsen Ratings costs, as well as any normal and customary advertising costs; and

5.9 All federal regulatory use fees.

6. Programmer Responsibility. Programmer shall be responsible for any expenses incurred in the origination and/or delivery of programming and for any publicity or promotional expenses incurred by Programmer, including, but not limited to:

6.1 Rent and lease payments for use of its own studio/office facilities;

6.2 Power and other utility bills for its own studio/office facilities;

6.3 Insurance costs relating to Programmer's own assets and operations;

6.4 Programmer's own telephone, *delivery*, and postal service;

6.5 Maintenance of its studio and the Stations' studio, and all equipment used by Programmer at its studio;

6.6 Salaries, payroll taxes, insurance, and related costs of

Programmer's management and other personnel employed by Programmer; and

6.7 All local, state, and federal income, real property, sales, and personal property taxes related to the ownership of Programmer's assets or Programmer's programming of the Stations.

7. Overriding Responsibility. It is recognized that all obligations of Licensee hereunder are subject to its overriding obligation as a public trustee to serve the needs and interests of the listening public as an FCC licensee of the Stations, and to broadcast programming that Licensee views as consistent with those needs and interests, and with the Rules, Regulations and policies of the FCC. Programmer shall not exercise any ultimate or final control over the Stations, and Licensee shall be solely responsible for the operation of the Stations and maintenance of its FCC permits and licenses, all in conformity herewith and with FCC Rules, Regulations and policies.

8. Licensee's Programming Discretion. Programmer recognizes that Licensee has the authority and obligation to remain in complete control of the operation of the Stations. Nothing herein shall be construed as in any way limiting Licensee's right and obligation as an FCC licensee to make the ultimate and non-delegable decisions concerning the programs to be broadcast on the Stations, including, but not limited to, the right to reject or refuse to air such portions of Programmer's programming as Licensee may, in its sole discretion, believe is unsatisfactory, unsuitable, or contrary to the public interest.

9. Licensee Authority. Nothing in this Agreement shall abrogate or limit the unrestricted authority of Licensee to discharge its obligations to the public and to comply with the Rules, Regulations and policies of the FCC. Programmer recognizes that Licensee has certain obligations and responsibilities as an FCC licensee to air programming that is responsive to the needs of its community. Licensee shall retain the ultimate discretion to preempt or cut into Programmer's programming for the broadcast of such responsive programming in an event of an emergency or to air programming or an announcement which, in the sole judgment of Licensee, is of overriding public importance; provided, however, that any revenues realized by Licensee as a result of such an interruption or preemption shall promptly be remitted to Programmer.

10. Issues/Programs Lists. Programmer shall maintain logs and records of programming aired over the Stations and such logs and records shall be available to Licensee.

11. Political Advertising. Programmer shall cooperate with Licensee in complying with the equal time and reasonable access requirements for political advertising. Programmer shall supply promptly to Licensee such information as may be necessary to comply with the lowest unit. charge requirements of federal law. To the extent that Licensee believes necessary, in its sole discretion, Programmer shall release advertising availability to Licensee to permit it to comply with its reasonable access and

equal time obligations under Section 315 of the Communications Act of 1934, as amended, and the Rules and Regulations of the FCC; provided, however, that revenues realized by Licensee as a result of such a release of advertising time shall promptly be remitted to Programmer.

12. Closed Captioning Programmer shall at all times be responsible for compliance with Sections 79.1 and 79.3, if applicable, of the Rules and Regulations of the FCC.

13. Children's Programming. Programmer shall at all times be responsible for compliance with Sections 73.670, 73.674 and 63.673 of the Rules and Regulations of the FCC regarding programming for children and restrictions on advertising to children.

14. Licensee's Representations, Covenants, and Warranties. Licensee hereby represents, covenants, and warrants to Programmer that:

14.1 Licensee is legally qualified, empowered, and able to enter into and carry out this Agreement and is and at all times will remain in good standing under the laws of the Commonwealth of Virginia. This Agreement has been approved by all necessary action of Licensee and constitutes the valid and binding obligation of Licensee. This Agreement requires the parties' use of the Station's assets: therefore, this Agreement is expressly conditioned upon the approval of the United States Bankruptcy Court for the Western District of Virginia presiding over the Station's bankruptcy case, In re: WDRL-TV, Inc., Case No. 06-61051.

14.2 Licensee shall employ a chief operator, as that term is defined by the Rules and Regulations of the FCC, who shall be responsible for insuring compliance by the Stations with the technical operating and reporting requirements established by the FCC. Licensee shall be ultimately responsible for insuring that qualified control operators monitor and control the Stations' transmissions at all times, in conformity with FCC requirements;

14.3 Licensee shall maintain a main studio, as that term is defined by the Rules, Regulations, and policies of the FCC. Licensee shall maintain an appropriate public inspection file at the Stations' main studio or at such other location as may be permitted under the FCC Rules. Licensee shall, from time to time, place such documents in its public inspection file as may be required by present or future FCC Rules, Regulations, and policies;

14.4 Licensee shall maintain appropriate Emergency Alert System receivers, tone generators and such other equipment as may be required to conform to FCC Rules and Regulations;

14.5 During the Term, Licensee shall fully perform all contracts, leases, and obligations to which Licensee is a party and shall not be in default under any such contracts, leases, or obligations unless such breach is occasioned by Programmer's



non-payment of consideration as set forth above; and

14.6 Licensee maintains and shall maintain during the Term hereof ultimate control over the Stations' facilities, including control over the Stations' finances, personnel, and programming.

15. Programmer's Representations, Covenants, and Warranties.

Programmer hereby represents, covenants, and warrants to Licensee that:

15.1 Programmer is legally qualified, empowered, and able to enter into and carry out this Agreement and is and at all times will remain in good standing under the laws of the state of its incorporation. This Agreement has been approved by all necessary action of Programmer, and constitutes the valid and binding obligation of Programmer;

15.2 Programmer shall cooperate with Licensee to ensure that all required station identification announcements are broadcast with respect to the Stations as required by FCC Rules, Regulations, and policies. Programmer shall cooperate with Licensee to ensure that all required Emergency Alert System announcements are broadcast as required by FCC Rules and Regulations;

15.3 As of the Effective Date, and throughout the Term, Programmer will have full authority to broadcast its programming on the Stations pursuant to the terms and conditions of this Agreement. Programmer shall use its best efforts not to broadcast any material in violation of the Copyright Act, that is slanderous or libelous, or that is in any other way violative of the Rules, Regulations, or policies of the FCC. All music supplied by Programmer shall be: (i) within the repertoire of ASCAP, SESAC or BMI; (ii) in the public domain; or (iii) cleared at the source by Programmer; and

15.4 This Agreement complies with the provisions of Section 73.3555 of the FCC's Rules.

16. Indemnification. To the extent permitted by law, Programmer shall indemnify and hold harmless Licensee from and against any and all claims, losses, costs, liabilities, damages, and expenses (including reasonable legal fees and other expenses incidental thereto) of every kind, nature, and description, arising out of Programmer's broadcasts pursuant to this Agreement, including but not limited to slander and defamation. To the extent permitted by law, Licensee shall indemnify and hold harmless Programmer from and against any and all claims, losses, costs, liabilities, damages, and expenses (including reasonable legal fees and other expenses incidental thereto) of every kind, nature, and description, arising out of programming originated by Licensee or by any other action or omission by Licensee. Neither Licensee nor Programmer shall be entitled to indemnification pursuant to this Section unless such claim for indemnification is asserted in writing delivered to the other party, and, where such claim, loss, cost, liability, damage, or defense involves a legal action, the party against whom indemnification is sought has been given written notice sufficiently in advance to permit

such party to defend, contest, or compromise such action at its own cost and expense.

17. Events of Default. The following shall, after expiration of the applicable cure period, constitute an event of default ("Event of Default"):

17.1. The failure of Programmer to pay to Licensee any sum due hereunder within 20 days of written notice of such obligation;

17.2. A party is in material breach or violation of its obligations, covenants, representations, or warranties hereunder, and has failed to cure such breach within 30 days of written notice to such other party from the non-breaching party; and

17.3. Either party hereto files or consents by answer or otherwise to the filing of a Petition for Relief or Reorganization or any other petition under the bankruptcy or insolvency law of any jurisdiction.

18. Remedies. In addition to all other remedies which may be available at law or in equity, upon the occurrence of an Event of Default, the non-breaching party may (provided that it is not also in default) terminate this TBA after any relevant cure period expires. If Licensee terminates this TBA because Programmer has defaulted in the performance of its obligations, Licensee shall be under no further obligation to make available to Programmer any further broadcast time or broadcast transmission facilities, and all amounts accrued or payable to Licensee up to the date of termination which have not been paid, less any payments made on behalf of Licensee by Programmer, shall immediately become due and payable. If Programmer terminates this TBA because Licensee has defaulted in the performance of its obligations and any of Programmer's programming is not run as a result of such termination, to the extent that such programming contains as of the date of termination presold unaired commercial advertisements, whether for barter or for cash consideration, Licensee will have the obligation to either, at its sole discretion (i) run such announcements on the same day and time as presold by Programmer, or (ii) to compensate Programmer in cash for the price of such unaired commercial advertisements. Such termination by either party shall not relieve any party of liability it would otherwise have for breach of this Agreement; and

19. Termination by Programmer in Event of Excessive Programming by Licensee. Programmer shall have the right, at its option, to terminate this Agreement at any time during the Term in the event that Licensee preempts or substitutes other programming for that supplied by Programmer during 15 percent or more of the total hours of operation of the Stations during any three or more days in any given week. In the event Programmer elects to terminate pursuant to this provision, it shall give Licensee notice of such election at least 15 days prior to the termination date. Upon termination, all sums then owing to Licensee shall be paid and neither party shall have any further liability to the other party.

20. Termination upon Order of Judicial or Governmental Authority.

20.1. Challenge of this Agreement. In the event that any court of competent jurisdiction or any federal, state, or local governmental authority advises any party hereto of its intention to investigate or to issue a challenge to or a complaint concerning the activities contemplated by this Agreement, or orders the termination of this Agreement and/or curtailment in any manner material to the relationship between the parties hereto of the provision of programming by Programmer hereunder, the parties shall seek administrative or judicial appeal of or relief from such order(s) (in which event Licensee and Programmer shall cooperate with each other and shall share all costs and expenses associated therewith, including, but not limited to, attorneys' fees). After the exhaustion of appeals, or upon the mutual agreement of the parties, either party may terminate this agreement at its option and in its sole discretion. In the event of termination upon such governmental order(s), Programmer shall pay to Licensee any fees due but unpaid as of the date of termination as may be permitted by such order(s), and Licensee shall reasonably cooperate with Programmer to the extent permitted to enable Programmer to fulfill advertising or other programming contracts then outstanding, in which event Licensee shall receive as compensation for the carriage of such programming that which otherwise would have been paid to Programmer thereunder. Thereafter, neither party shall have any liability to the other party.

20.2. Challenge to Licensee's License. In the event that any court of competent jurisdiction or any federal, state, or local governmental authority designates a hearing with respect to the continuation or renewal of any license or authorization held by Licensee for the operation of the Stations, Programmer shall have the option to seek administrative or judicial appeal of or relief from such order(s) (in which event Licensee shall cooperate with Programmer provided that Programmer shall be responsible for legal fees incurred in such proceedings) or Programmer shall notify Licensee that it will terminate this Agreement in accordance with such order. In the event of termination upon such governmental order(s), Programmer shall pay to Licensee any fees due but unpaid as of the date of termination as may be permitted by such order(s), and Licensee shall reasonably cooperate with Programmer to the extent permitted to enable Programmer to fulfill advertising or other programming contracts then outstanding, in which event Licensee shall receive as compensation for the carriage of such programming that which otherwise would have been paid to Programmer thereunder. Thereafter, neither party shall have any liability to the other party.

21. Force Majeure. Any failure or impairment (i.e., failure to broadcast at Stations' full authorized height and power) of facilities or any delay or interruption in broadcast programs, or failure at any time to furnish facilities, in whole or in part, for broadcasting, due to acts of God, strikes or threats thereof or other such events beyond the control of Licensee, shall not constitute a breach of this Agreement and Licensee will not be liable to Programmer therefor.

22. Assignments. Neither party may assign its rights or obligations under this Agreement to a third party without the express written consent of the other party. This Agreement shall be binding on the parties' successors and assigns. This Agreement does not create a joint venture or partnership, and Licensee and Programmer shall not be

deemed to be partners or joint venturers of each other.

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

24. Entire Agreement. This Agreement embodies the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any and all prior agreements, arrangements, and understandings relating to such subject matter. No amendment, waiver of compliance with any provision or consideration hereof, or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by the parties.

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

26. Governing Law. The construction and performance of this Agreement shall be governed by the laws of the Commonwealth of Virginia and the Rules, Regulations and policies of the FCC.

27. Notices. Any notice, consent, waiver, or other communication hereunder shall be sent by certified or registered mail, return receipt requested, postage prepaid, or USPS Express mail service, overnight air courier service, or same-day delivery service, to the address specified below (or at such other address which a party shall specify to the other party in accordance herewith):

If to Licensee, to:

Melvin N. Eleazer  
Managing Member  
MNE Broadcasting, LLC  
5002 Airport Road NW  
Roanoke, VA 24012  
(540) 366-2424

With a copy, which shall not constitute notice, to:

Howard J. Beck, Jr., Esquire  
Warner & Renick, PLC  
4648 Brambleton Avenue  
SW Roanoke, VA 24018  
(540) 777-2665

If to Programmer, to:

Jerry L. Falwell, Jr., Vice Chancellor  
Liberty University  
1971 University Blvd.  
Lynchburg, VA 24502  
(434) 582-2956

With a copy, which shall not constitute notice, to:

W. Scott Street, III, Esquire  
A. Peter Brodell, Esquire  
Williams Mullen  
1021 East Cary Street  
P.O. Box 1320  
Richmond, Virginia 23218-1320  
(804) 643-1991

Notice shall be deemed to have been given three business days after mailing if sent by registered or certified mail, or on the next business day if sent by USPS express mail, overnight courier, or same-day delivery service.

28. Severability. If any provision of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the fullest extent permitted by law.

29. Confidentiality and Public Disclosure. Licensee and Programmer agree that, subject only to legal process or as otherwise required by law, including, but not limited to, the Rules, Regulations, and policies of the FCC, including FCC filing and public file disclosure requirements, no disclosure of the terms of this Agreement or any of the information and documents exchanged by the parties hereto shall be made public or disclosed to third parties without the consent of both parties hereto; provided, however, that either party may disclose this Agreement to its attorneys, accountants, and bankers in the ordinary course of business. Licensee and Programmer shall cooperate to coordinate the timing and content of all public statements or press releases, if any, regarding the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**LICENSEE:**

MNE BROADCASTING, LLC

By: 

Melvin N. Eleazer  
Managing Member

**PROGRAMMER:**

LIBERTY UNIVERSITY, INC.

By: \_\_\_\_\_

Jerry L. Falwell, Jr.  
Vice Chancellor

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**LICENSEE:**

MNE BROADCASTING, LLC

By: \_\_\_\_\_  
Melvin N. Eleazer  
Managing Member

**PROGRAMMER:**

LIBERTY UNIVERSITY, INC.

By: \_\_\_\_\_  
Jerry L. Falwell, Jr.  
Vice Chancellor

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