

## **TIME BROKERAGE AND OPTION AGREEMENT**

This Time Brokerage and Option Agreement ("Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between **CONNER MEDIA CORPORATION** ("Licensee") and **Surge Media, LLC** ("Programmer").

### **RECITALS**

WHEREAS, Licensee is the licensee of radio broadcast station WEGG(AM), Rose Hill, North Carolina (the "Station"); and

WHEREAS, Programmer desires, in conformity with the rules and policies of the Federal Communications Commission ("FCC") and this Agreement, to produce and present radio programming over the Station; and

WHEREAS, Licensee desires to accept the programming produced by Programmer (the "Programming") and to make broadcasting time on the Station available to Programmer on terms and conditions which conform to FCC rules and policies and to this Agreement; and

WHEREAS, Licensee believes that the programming produced by Programmer will serve the needs and interests of listeners in the Station's service area; and

WHEREAS, Licensee wishes to extend to Programmer an option to purchase the Station's assets;

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

### **Section 1.**

#### **Sale of Station's Air Time**

**1.1. Scope.** Beginning \_\_\_\_\_ 1, 2014 (the "Commencement Date"), Licensee shall make available to Programmer substantially all the Station's air time, subject to the exceptions set forth in this Agreement, for broadcast of the Programming. The Programming shall consist of entertainment programming of Programmer's selection, together with commercial matter, news, public service announcements, and other programming suitable for broadcast on the Station. Notwithstanding the foregoing, it is understood that Licensee may set aside such time as it may require (up to four hours per week, or such greater time as may be required to comply with applicable FCC rules and policies as they may be in effect from time to time) for the broadcast of its own news, public affairs, and other programming (such programs to be broadcast by Licensee referred to herein as the "Licensee Programming").

**1.2. Term.** This Agreement shall commence on the Commencement Date, and unless

extended by mutual agreement of the parties or earlier terminated pursuant to the terms hereof, shall end one year thereafter (the "Term"), provided, however, that upon timely exercise of the option provided in section 8 hereof the Term shall be extended as provided therein.

**1.3. Consideration and Deposit.** The consideration to be paid by Programmer to Licensee with respect to this Agreement shall be a monthly fee of Three Thousand Nine Hundred Thirty-Three Dollars (\$3,933) (the "Monthly Fee"), payable in advance, with the first such payment due on the Commencement Date and each subsequent payment due on the first day of each month thereafter. In addition to the Monthly Fee, prior to or on the Commencement Date Programmer shall pay to Licensee a deposit of Three Thousand Nine Hundred Thirty-Three Dollars (\$3,933) (the "Deposit"), which Licensee may apply to any damage or delinquent payments notwithstanding any other remedies to which it may be entitled. Upon expiration of the Term or termination of this Agreement for any reason other than Programmer's default, the Deposit (or such portion thereof as shall remain after application to delinquent payments or damage) shall be returned to Programmer.

**1.4 Personal Guaranty.** To induce Licensee to accept Programmer's promise to pay the Monthly Fees due hereunder, Kenneth Santarelli, the Managing Member of Programmer "Guarantor") personally guarantees prompt payment of the Monthly Fees and all other amounts owed to Licensee hereunder upon the due dates thereof. Guarantor agrees that nothing shall discharge the obligation to pay such amounts except performance in full. Guarantor will pay on demand all costs and expenses, including attorney's fees, reasonably incurred or paid by Licensee in enforcing this guarantee upon any default of Programmer to make a required payment. This is an absolute, continuing and unconditional guarantee and is irrevocable. It shall survive the death of Guarantor and his heirs, devisees and legatees. Licensee may proceed against Guarantor without also proceeding against Programmer at the same or an earlier time. The liabilities and obligations of Guarantor hereunder shall not be affected by any fraud or illegal or improper acts of Programmer. The rights and remedies of Licensee under this guaranty shall be cumulative and not exclusive of any rights or remedies that it might otherwise have, and these rights may be exercised singularly or concurrently

**1.5. Certifications.** Pursuant to Section 73.3555(a)(3)(ii) of the FCC's rules, Licensee certifies that it maintains ultimate control over the Station's facilities, including specifically control over station finances, personnel and programming. Programmer certifies that this Agreement complies with the provisions of Section 73.3555(a) of the FCC's local radio ownership rules.

## Section 2.

### Operation

#### **2.1. Licensee's Responsibilities and Operational Expenses.**

(a) Expenses. Licensee shall be responsible for, and pay in a timely manner, the costs of operating the Station, including but not limited to electrical utilities, tower liability insurance and property taxes, excepting the Station's telephone charges (both local and long distance), all Internet and other program delivery charges, and all expenses related to the programming and advertising sales activities of Programmer (including music license fees), all of which shall be paid directly by Programmer as provided in Paragraph 2.2 hereof.

(b) Regulatory Compliance. Licensee shall be responsible for the Station's compliance with all applicable provisions of the Communications Act of 1934, as amended, the rules and policies of the FCC and all other applicable laws, including, without limitation, laws relating to equal employment opportunity, human exposure to radiofrequency radiation, the safety of air navigation, public service programming, maintaining the political and public inspection files and the Station's logs, and for the preparation of issues/programs lists; provided, however, that Programmer shall use its best efforts to assist Licensee in complying with such requirements. Licensee shall, on a regular basis, assess the needs of its community and address those needs in connection with the preparation of its public affairs programming to the extent to which it believes those needs have not been adequately addressed through the Programming. Further, Programmer shall provide Licensee with all information reasonably available to Programmer with respect to the Programming which is responsive to public needs and interests so as to assist Licensee in the preparation of required programming in the satisfaction of the Station's community service needs. Programmer shall also provide Licensee with such other information necessary to enable Licensee to prepare any other records and reports required by the FCC and local, state or other federal governmental authorities.

(c) Licensee Personnel. An individual to be designated by Licensee (or such other person as Licensee shall designate from time to time) shall serve as the general manager of the Station, who shall be responsible for overseeing the maintenance, operation and programming of the Station, one additional staff level employee and such additional employees as may be needed who shall report directly to the general manager, all to the extent required by the Commission's rules. The salaries (if any), taxes, insurance, and related costs of the general manager and all other personnel employed by Licensee shall be included in the Monthly Fee and shall not be reimbursed by Programmer.

(d) Studios. Licensee shall make available to Programmer such facilities at the Station's studios as Programmer may reasonably require to accommodate its programming

and sales activities. During the Term, Licensee shall comply with the FCC's main studio rule and shall have access to the main studio 24 hours a day every day. Programmer shall cooperate with Licensee, at Programmer's expense, in making such arrangements as Licensee shall reasonably request to deliver Programmer's programming from any remote location to the Station's transmitter site.

(e) FCC Licenses. Licensee shall maintain all authorizations required for the operation of the Station in full force and effect during the Term, unimpaired by any acts or omissions of Licensee.

(f) Licensee Assets. During the Term, Licensee shall not sell, or otherwise dispose of, any of the assets used for the operation of the Station if such action would adversely affect Licensee's performance hereunder or the business and operations of Programmer permitted hereby.

**2.2. Programmer's Responsibilities.** Programmer shall employ and be responsible for the salaries, taxes, insurance, and related costs for all personnel used in the production of the Programming, and all other costs incurred by Programmer for the production of such programs, including but not limited to all music license fees with respect thereto. Programmer shall be responsible for any expenses incurred in the origination and/or delivery of the Programming from any remote location to the Station's transmitter site, and for any publicity or promotional expenses incurred by Programmer, together with all telephone and audio line charges relating to the Station. Programmer shall be responsible for the purchase and installation of any studio, production and related equipment it desires to use with respect to the Station and Programmer shall retain title thereto. Programmer shall be responsible for the maintenance of any such additional equipment as it may acquire. Programmer shall use due care in the use of any equipment or other property of Licensee. Programmer shall reimburse Licensee for any damage (normal wear and tear excepted) to Licensee's equipment or other property caused by Programmer or any employee, contractor, agent or guest of Programmer. Such reimbursement shall be made within five (5) days of Licensee's written notice to Programmer of the cost of such damage. In lieu of reimbursement, Programmer, at its entire expense, may repair or replace the damaged property within five (5) days of Licensee's above-referenced written notice. Such repair or replacement shall be subject to the approval of Licensee, which approval shall not be unreasonably withheld.

**2.3. Advertising and Existing Programming.** Programmer shall be entitled to all revenue from the sale of advertising or programming broadcast on the Station on or after the Commencement Date, except for revenues from advertising or program time sold by Licensee for broadcast during the hours reserved for Licensee Programming. Effective as of the Commencement Date, Programmer shall assume all obligations of Licensee under any contract for the broadcast of advertising or programming over the Station entered into by Licensee in the

ordinary course of business at the Station's then-prevailing rates, other than for broadcast during Licensee Programming. The advertising and programming contracts assumed by Programmer pursuant to this Section shall be referred to herein as "the Assumed Liabilities."

**2.4. Licensee's Liabilities.** Programmer shall not assume any of the Licensee's liabilities, including without limitation any liability under any single or multi-employer "employee pension benefit plan" as defined in ERISA or for taxes, except for the Assumed Liabilities.

**2.5. Political Time.** On the later of (a) the Commencement Date or (b) ninety (90) days before the start of any primary or general election campaign, Programmer shall clear with Licensee the rates to be charged political candidates for public office to be sure that the rate is in conformance with applicable law and policy. Each of Programmer and Licensee shall provide the other with access to all its books and records regarding the pricing of advertising sold on the Station in order to confirm that the political rates are correct. Within twenty-four (24) hours of any request to purchase time on the Station on behalf of a candidate for public office or to support or urge defeat of an issue on an election ballot, Programmer shall report the request, and its disposition, to Licensee so that appropriate records can be placed in the public inspection files for the Station. In the event that Programmer fails to provide adequate broadcast time for the broadcast of programming or advertising by political candidates, Licensee shall have the right to preempt Programming to make time available to these political candidates.

**2.6. Licensee's Accounts Receivable.** On the Commencement Date, Licensee may, at its sole option, assign to Programmer for purposes of collection any or all of the Licensee's accounts receivable. Should Licensee so elect, Programmer shall use such efforts as are reasonable and in the ordinary course of business to collect the accounts receivable for a period of ninety (90) days following the Commencement Date (the "Collection Period"). This obligation, however, shall not extend to the institution of litigation, employment of counsel, or any other extraordinary means of collection. So long as an account receivable is in Programmer's possession, neither Licensee nor its agents shall make any solicitation of such account for collection purposes or institute litigation for the collection of any amounts due thereunder. All payments received by Programmer during the Collection Period from any person or entity obligated with respect to any of the accounts receivable shall be applied first to Licensee's account and only after full satisfaction thereof to Programmer's account; provided, however, that if during the Collection Period any account debtor contests in writing the validity of its obligation with respect to any account receivable, then Programmer shall return that account receivable to Licensee after which Licensee shall be solely responsible for the collection thereof. At the end of each thirty days during the Collection Period (or if such day is a weekend or holiday, on the next business day), Programmer shall furnish Licensee with a list of the Accounts Receivable collected during the preceding thirty-day period, and shall remit to Licensee all amounts collected, less any salesperson's, agency and representative commissions

applicable thereto that are deducted and paid by Programmer from the proceeds of such collections. Any of the accounts receivable that are not collected during the Collection Period shall be reassigned to Licensee after which Programmer shall have no further obligation to Licensee with respect to the accounts receivable; provided, however, that all funds subsequently received by Programmer (without time limitation) that can be specifically identified, whether by accompanying invoice or otherwise, as payment on any account receivable belonging to Licensee shall be promptly paid to Licensee. Programmer shall not have the right to compromise, settle or adjust the amounts of any of the accounts receivable without Licensee's prior written consent, or to withhold any proceeds of the accounts receivable or to retain any uncollected accounts receivable after the expiration of the Collection Period for any reason whatsoever. Licensee shall be responsible for the payment of all commissions due with respect to the accounts receivable.

**2.7 Programming and Advertising Contracts.** All programming, advertising and other contracts entered into by Programmer with respect to the Station or its broadcasts shall be in the name of the Programmer and shall not obligate Licensee in any way to any party to such contracts. Licensee shall bear no obligation or liability on account of any such contracts except with respect to Programmer and then only to the extent expressly provided paragraph 6.2 of this Agreement.

### **Section 3.**

#### **Prorations.**

**3.1. Apportionment of Income and Expense.** Licensee shall be entitled to all income attributable to, and shall be responsible for all expenses arising out of, the operation of the Station until 12:01 a.m. on the Commencement Date. Programmer shall be entitled to all income attributable to, and, to the extent provided in paragraph 2.2 hereof, shall be responsible for expenses arising out of, the operation of the Station after 12:01 a.m. on the Commencement Date other than for Licensee Programming. All overlapping items of income or expense shall be prorated or reimbursed, as the case may be, as of 12:01 a.m. on the Commencement Date.

**3.2. Employee Compensation.** Licensee shall pay all compensation and benefits owed to its employees up to and including the Commencement Date. As soon as practicable after the execution hereof, but in any event prior to the Commencement Date, Licensee shall designate those of Licensee's Station employees that Licensee intends to continue to employ and Programmer may elect to employ any of Licensee's other Station employees on terms and conditions determined by Programmer in Programmer's sole discretion. Licensee shall remain solely responsible for all severance pay, vacation time and sick leave of Licensee's employees accrued up to the Commencement Date.

## Section 4.

### **Compliance with Regulations**

**4.1. Licensee Authority.** Nothing in this Agreement shall abrogate the unrestricted authority of the Licensee to discharge its obligations to the public and to comply with the law, and the rules and policies of the FCC. Without limiting the generality of the foregoing, Programmer recognizes that Licensee will have certain obligations to broadcast programming which covers issues of public importance in the service area of Station. The parties understand that Licensee may use a substantial portion of the air time reserved to it under Section 1.1 above to satisfy its programming obligations.

**4.2. Station Identification Announcements and EAS Tests.** During all hours when Programmer is delivering the Programming for broadcast over the Station, Programmer shall include in its Programming, at the appropriate times, the hourly station identification announcements required to be broadcast over the Station. During all hours when Programming is being broadcast over the Station, Licensee shall maintain at the location from which the programming is being originated a receiver capable of receiving test messages and alerts over the Emergency Alert System, which EAS receiver Programmer shall cause to be operated in automatic mode or be continuously monitored or otherwise operated so as to assure compliance with FCC EAS rules. If an EAS test or alert is received during the hours when Programmer is delivering its Programming for broadcast over the Station, Programmer shall cause the appropriate EAS test or alert message to be transmitted over the Station and shall, in the event of an actual activation of the Emergency Alert System, cause all steps that the Station is required to take in such an event to be taken, and shall be responsible for assuring that the receipt and broadcast of all EAS tests and alerts are properly recorded in the station log.

**4.3. Additional Licensee Rights and Obligations.** Licensee retains the right to cut into the Programming in case of an emergency, although both parties shall cooperate in the broadcast of emergency information over the Station. Licensee and Programmer shall coordinate the broadcast of such sponsorship identification announcements as are necessary and appropriate concerning the programming supplied by Programmer hereunder. Licensee shall maintain a main studio and public inspection file for the Station at such location as is consistent with applicable rules and policies of the FCC.

**4.4. Access to Programmer Materials.** Licensee shall be entitled to review any of Programmer's programming material. Programmer shall provide Licensee with copies of all communications relating to the Station's broadcasts or operation received from the public.

**4.5. Regulatory Changes.** In the event of any order or decree of an administrative agency or court of competent jurisdiction, including without limitation any material change or

clarification in FCC rules, policies, or precedent, that would cause this Agreement to be invalid or violate any applicable law, and such order or decree has become effective and has not yet been stayed, the parties will use their respective best efforts and negotiate in good faith to modify this Agreement to the minimum extent necessary so as to comply with such order or decree without material economic detriment to either party, and this Agreement, as so modified, shall then continue in full force and effect.

## **Section 5.**

### **Station Broadcasts**

**5.1. Station Broadcast Guidelines.** Licensee has adopted and will enforce certain programming guidelines, of which Programmer has been apprised. Programmer agrees and covenants to comply in all material respects with such guidelines and to all rules and policies of the FCC with respect to the programming supplied to the Station by Programmer.

**5.2. Licensee Control of Programming.** Programmer recognizes that the Licensee has full authority to control the operation of the Stations. The parties agree that Licensee's authority includes, but is not limited to, the right to reject or refuse such portions of the Programming which Licensee reasonably believes to be contrary to the public interest; provided, however, that Licensee shall use its best efforts to give Programmer prior notice of Licensee's objection to proposed Programming, including the basis for such objection, and a reasonable opportunity to substitute acceptable programming.

**5.3. Preemption of Programming.** In the event Licensee preempts Programming pursuant to the terms of this Agreement, then Programmer shall be entitled to deduct from the Monthly Fee a prorated amount for each period (not including time set aside for Licensee Programming pursuant to Section 1.1) that is preempted by Licensee.

**5.4. Failures to Broadcast.** If the broadcasts of the Station are interrupted or discontinued after the Commencement Date, other than as a result of circumstances or events attributable to Programmer, Programmer shall be entitled to deduct from the Monthly Fee a prorated amount for each period in which broadcasting is interrupted on the Station. Notwithstanding the foregoing, Licensee shall have the right to take the Station off the air for up to four hours per week for regular maintenance, during the hours of 1:00 a.m. to 5:00 a.m. Monday through Sunday, without any such deduction.

**5.5. Interruption of Normal Operations.** Programmer shall notify Licensee if either of the following (a "Specified Event") shall occur: (i) the broadcast transmissions of the Station are interrupted or discontinued (except for regular maintenance pursuant to Section 5.4); or (ii) the Station is operated at less than fifty percent (50%) of its authorized effective radiated power.



If Specified Events persist for more than one hundred twenty (120) hours, whether or not consecutive, during any period of thirty (30) consecutive days, and such Specified Events are not proximately caused by Programmer's actions or inactions, then Programmer may, at its option, terminate this Agreement by written notice given to Licensee not more than ten (10) days after the expiration of such thirty (30) day period, provided, however, that Programmer may not terminate this Agreement so long as Licensee is making good faith efforts to correct promptly such Specified Event.

## **Section 6.**

### **Termination**

**6.1. Circumstances Permitting Termination.** In addition to other remedies available at law or equity, this Agreement may be terminated prior to the end of the Term as set forth below 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, if such order or decree has gone into effect and has not been stayed, and if the parties are unable, pursuant to Section 4.5 hereof, to modify this Agreement to comply with applicable law.

(b) The other party is in material breach of its obligations hereunder and has failed to cure such breach within ten (10) days after receipt of written notice of such breach from the party seeking to terminate; provided, however, that with respect to the interruption of normal operations, Section 5.5. shall apply and not this Section 6.1(b) and provided further that no such notice and cure period shall pertain for any failure by Programmer to make a payment due hereunder by the date therefor.

(c) As provided in Sections 5.5 or 8.

(d) If an Asset Purchase Agreement between Licensee (as Seller) and Programmer (as Buyer) for FM translator station W263BE, Rose Hill, NC of even date herewith has been terminated by Licensee due to Programmer's uncured material breach thereof.

(e) By the mutual written consent of both parties.

**6.2. Liabilities Upon Termination; Termination Fee.** Upon any termination of this Agreement for any reason or upon expiration at the end of the Term, Licensee shall cooperate reasonably with Programmer to the extent permitted to enable Programmer to fulfill advertising or other programming contracts then outstanding upon termination of this Agreement; provided,

however, that Licensee shall receive as compensation for the carriage of such advertising and programming the net amounts which otherwise would have been received by Programmer hereunder (payments to Programmer minus commissions, agency fees, station rep fees and the like). Upon termination for any reason, there shall be no refund or adjustment in the Monthly Fees paid to that point, it being agreed that such fees were fully earned as of the time paid for the purposes of compensating Licensee for actual expenses incurred in the operation of the Station for Programmer's benefit and for the lost profits due to Licensee's foregoing the opportunity to sell advertising on the Station. Upon termination by reason of Programmer's default Licensee shall retain the Deposit as liquidated damages, it being agreed that actual damages will be difficult to calculate and that the Deposit is a reasonable estimate of the expenses to be incurred by Licensee to restore the Station's operation and business following the loss of the Programming. Following termination, neither party shall have any liability to the other except as provided by this Agreement.

## **Section 7.**

### **Indemnification**

**7.1. Programmer's Indemnification.** Programmer shall indemnify, defend, and hold harmless Licensee from and against any and all claims, losses, costs, liabilities, damages, FCC forfeitures, and expenses (including reasonable legal fees and other expenses incidental thereto) or every kind, nature, and description, arising out of (i) Programmer's broadcasts under this Agreement; (ii) Programmer's use of Licensee's equipment or other property; (iii) any misrepresentation or breach of any warranty of Programmer contained in this Agreement; (iv) any breach of any covenant, agreement, or obligation of Programmer contained in this Agreement; or (v) any contract between Programmer and any other party with respect to the Station or its broadcasts.

**7.2. Licensee's Indemnification.** Licensee shall indemnify, defend, and hold harmless Programmer from and against any and all claims, losses, costs, liabilities, damages, FCC forfeitures, and expenses (including reasonable legal fees and other expenses incidental thereto) of every kind, nature and description, arising out of (i) Licensee's broadcasts under this Agreement; (ii) any misrepresentation or breach of any warranty of Licensee contained in this Agreement; and (iii) any breach of any covenant, agreement or obligation of Licensee contained in this Agreement.

**7.3. Procedure for Indemnification.** The party seeking indemnification under this Section ("Indemnatee") shall give the party from whom it seeks indemnification ("Indemnitor") prompt notice, pursuant to Section 8.6, of the assertion of any such claim, provided, however, that the failure to give notice of a claim within a reasonable time shall only relieve the Indemnitor of liability to the extent it is materially prejudiced thereby. Promptly after receipt of

written notice, as provided herein, of a claim by a person or entity not a party to this Agreement, the Indemnitor shall assume the defense of such claim; provided, however, that if the Indemnitor fails, within a reasonable time after receipt of written notice of such claim, to assume the defense, compromise, and settlement of such claim on behalf of and for the account and risk of the Indemnitor, the Indemnitee shall have the right to undertake the defense, compromise and settlement of such claim on behalf of and for the account and risk of Indemnitor.

**7.4. Dispute Over Indemnification.** If upon presentation of a claim for indemnity hereunder, the Indemnitor does not agree that all, or part, of such claim is subject to the indemnification obligations imposed upon it pursuant to this Agreement, it shall promptly so notify the Indemnitee. Thereupon, the parties shall attempt to resolve their dispute, including where appropriate, reaching an agreement as to that portion of the claim, if any, which both concede is subject to indemnification. To the extent that the parties are unable to reach some compromise, the parties agree to submit the matter for binding arbitration pursuant to the rules and procedures of the American Arbitration Association and to share equally in the costs of such arbitration.

## **Section 8.**

### **Option to Purchase Station**

At any time during the Term, Programmer may notify Licensee that it wishes to purchase the Station for a price of One Hundred Twenty Thousand Dollars (\$120,000) cash. Upon Programmer's notification that it is exercising this option, Programmer and Licensee shall negotiate in good faith a definitive asset purchase agreement ("APA") and file an application for FCC consent, all within thirty (30) days of Programmer's notification. The APA shall require a down payment of Five Thousand Dollars (\$5,000) upon execution thereof, which shall be retained by Licensee should the APA not be consummated for any reason other than Licensee's material default thereunder. The APA shall include among the assets being sold all of the equipment currently used in the operation of the Station. The APA shall further provide for assumption of a lease between Licensee and the owner of the Station's transmitter site. The APA shall be consummated as soon as practicable following receipt of FCC consent. This Agreement shall be extended until such time as the APA is consummated or terminated according to its terms, or should the parties not agree on an APA.

## **Section 9.**

### **Miscellaneous**

**9.1. Assignment.** Neither party may assign its rights or obligations hereunder without the prior written consent of the other party.

**9.2. 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.

**9.3. Entire Agreement.** This Agreement embodies the entire agreement and understanding of the parties and supersedes any and all prior agreements, arrangements, and understandings relating to the matters provided for herein. No amendment, waiver of compliance with any provision or conditions hereof, or consent pursuant to this Agreement, will be effective unless evidenced by an instrument in writing signed by the party to be charged therewith.

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

**9.5. 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 Communications Act of 1934, as amended, and the rules and regulations of the FCC. The construction and performance of the Agreement will be governed by the laws of the State of North Carolina except for the choice of law rules used in that jurisdiction.

**9.6. 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 or mailed by certified mail, return receipt requested, postage prepaid, or by an overnight carrier that provides a written confirmation of delivery, addressed as follows:

(a) If to Licensee:

Conner Media Corporation  
702 Hartness Road  
Statesville, NC 28677  
Attn: Ronald Benfield, Manager

(b) If to Programmer or Guarantor:

Surge Media, LLC  
804-H Bryce Court  
Wilmington, NC 28405  
Attn: Kenneth Santarelli, Managing Member

Either party may change its address for notices by written notice to the other given pursuant to this Section.

**9.7. Attorneys' Fees.** If either party initiates any litigation against the other involving this Agreement, the prevailing party in such action shall be entitled to receive reimbursement from the other party for all reasonable attorneys' fees and other costs and expenses incurred by the prevailing party in respect of that litigation, including any appeal, and such reimbursement may be included in the judgment or final order issued in that proceeding.

**9.8. No Partnership or Joint Venture Created.** Nothing in this Agreement shall be construed or interpreted to make Programmer or Licensee partners or joint venturers, or to make one an agent or representative of the other, or to afford any rights to any third party other than as expressly provided herein. Neither Programmer nor Licensee is authorized to bind the other to any contract, agreement or understanding. Programmer and Licensee 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.

**THE NEXT PAGE IS THE SIGNATURE PAGE**

IN WITNESS WHEREOF, the parties hereto have executed this Time Brokerage and Option Agreement on the day and year first written above.

**LICENSEE:**

**CONNER MEDIA CORPORATION**

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

  
Ronald Benfield, President

**PROGRAMMER:**


**SURGE MEDIA, LLC**

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

  
Kenneth Santarelli, Managing Member

**GUARANTOR:**

**KENNETH SANTARELLI**

  
\_\_\_\_\_