

## **PROGRAM SERVICE AND TIME BROKERAGE AGREEMENT**

This program service and time brokerage agreement is made this 1st day of April, 2006, by and between KXOJ, Inc. ("KXOJ") and KMMY, Inc. ("KMMY").

**WHEREAS**, KMMY holds a license from the Federal Communications Commission ("FCC") which authorizes it to operate FM broadcast station KMMY on a frequency of 97.1 MHz at Muskogee, Oklahoma (the "Station"); and

**WHEREAS**, KXOJ is experienced in radio station ownership and operation; and

**WHEREAS**, KMMY wishes to retain KXOJ to provide programming for the Station in a manner that conforms to the FCC's policies for time brokerage arrangements and as set forth herein; and

**WHEREAS**, KXOJ agrees to use the Station exclusively to broadcast such programming of its selection that is in conformity with all rules, regulations and policies of the FCC and subject to KMMY's full authority to control the operation of the Station; and

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

### **SECTION 1**

**1.1 Representations.** Both KMMY and KXOJ represent that they are authorized to enter into this Agreement and that this Agreement constitutes the legal, valid and binding obligation of each, enforceable against them in accordance with its terms.

**1.2 Effective Date, Term.** This Agreement shall commence at 12:00 a.m. on April 1, 2006 and continue in force for one-year terms from the commencement date of this Agreement.

**1.3 Scope.** During the term hereof, KMMY shall make available to KXOJ time on the Station as set forth in this Agreement. KXOJ shall deliver programming, at its expense, to the Station's transmitter facilities. Subject to KMMY's reasonable approval, as set forth in this Agreement, KXOJ shall provide entertainment programming of its selection complete with

commercial matter, news, public service announcements and other suitable programming to KMMY in sufficient amount to comply with the minimum daily operating requirements established by the FCC and up to one hundred sixty-eight (168) hours per week on the Station. KXOJ shall have access to, and full use of the Station's facilities, including the studios, transmission facilities, broadcast equipment and sales records used in the operation of the Station, free of charge and free from any hindrance from any persons, for the delivery of programming to the station and the sale of commercial advertising.

**1.4 Consideration.** As consideration for the air time made available hereunder, KXOJ shall assume and pay all ordinary expenses of the operation of the Station (occurring on and after the commencement of this agreement), and also pay an LMA fee to KMMY in the amount of \$10.00 per month.

**1.5 Expenses.** KMMY shall be responsible for the operating and maintenance costs of the Station as follows: (i) rents, power and utilities at the Station's studio, tower and transmitter site facilities; (ii) insurance costs related to KMMY's assets and operations; (iii) maintenance costs and capital expenditures with respect to the Station's main studio and all equipment necessary for the operation of the Station in compliance with applicable law; (iv) fees paid to ASCAP, BMI and SESAC; and (v) income, gross receipts, sales, real property, personal property, excise and/or any other taxes of any nature whatsoever related to KMMY's ownership of assets relating to the Station, or the production, acquisition or airing of its programming on the Station and payments made by Programmer to Licensee. KXOJ shall reimburse KMMY for the normal and customary expenses incurred in connection with the operation of the Station, including, but not limited to, the expenses itemized in this Section 1.5, Schedule 1, attached hereto, and Section 1.6, below, by sending payment in such amounts to KMMY at the address set forth in Section 6.4, in advance, on or before the first day of each month, beginning on April 1, 2006, together with the LMA fee recited in Section 1.4. To the extent that the expense amount exceeds the actual expenses incurred by KMMY, KXOJ will be reimbursed, and to the extent that this amount falls short of the actual expenses incurred by KMMY, KXOJ shall pay the balance. In either case, an itemized list of the expenses for which

payment is due or has been paid in the prior month will be provided to KXOJ by the tenth (10<sup>th</sup>) day of each month. If reimbursement to KXOJ is required, such reimbursement shall accompany said list. If additional payment is required to KMMY, KXOJ shall remit same on or before the first day of the following month, when the payment for that following month is due.

**1.6 KMMY's Operation of the Station.** KMMY will have full authority, power and control over the operation of the Station during the term of this Agreement. KMMY will bear all responsibility for the Station's compliance with all applicable provisions of the Communications Act of 1934, as amended (the "Communications Act"), the rules, regulations and policies of the FCC and all other applicable laws. KMMY shall employ staff personnel at the Station to comply with FCC regulations and requirements. Such employees will report to and be accountable to KMMY. KMMY shall be responsible for the salaries, taxes, insurance and related costs for all personnel it employs at the Station and shall pay for insurance covering the Station's transmission facilities.

**1.7 KMMY's Representations and Warranties.** KMMY represents and warrants that it holds the permits and authorizations necessary for the operation of the Station, that no action is pending or, to its knowledge, threatened, to revoke, cancel, terminate or suspend said permits and authorizations, and is not in material violation of any statute, ordinance, rule, regulation, policy, order or decree of any federal, state or local entity, court or authority, having jurisdiction over it or the Station, which would have an adverse effect upon KMMY, the assets or KMMY's ability to perform under this Agreement. All reports 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.

**1.8 KXOJ Responsibility.** KXOJ shall be solely responsible for any expenses incurred in the origination and/or delivery of programming from any remote location and for any publicity or promotional expenses incurred by it.

**1.9 Contracts.** KXOJ will enter into no third-party contracts, leases or agreements (other than those for sales advertising agreements, including "trade agreements") which will bind KMMY in any way except those with KMMY's prior written approval. KMMY will enter into no third-party contracts, leases or agreements which will bind KXOJ in any way except with KXOJ's prior written approval.

## **SECTION 2**

**2.1 KMMY Authority.** Notwithstanding any other provision of this Agreement, KMMY retains sole responsibility to fulfill its obligations under applicable law, including, but not limited to, the Communications Act of 1934, as amended, and the rules of policies of the FCC. On a regular basis, KXOJ shall air specific programming on issues of importance to the local community. However, nothing in this Agreement shall abrogate the unrestricted authority of KMMY to discharge its obligations to the public and to comply with applicable statutes and the rules and policies of the FCC insofar as they require each broadcast licensee to meet the ascertained needs and interests of the public.

**2.2 Additional KMMY Obligations.** Although both parties shall cooperate in the broadcast of emergency information over the Station, KMMY shall also retain the right to interrupt KXOJ's programming in case of any emergency or for programming which, in the judgment of KMMY, is of overriding public importance. Such interruption shall not entitle KXOJ to any credits on fees. KMMY shall maintain a main studio, as that term is defined by the FCC, within the Station's principal community contour, shall maintain its local public inspection file as required by the Commission's rules, and shall prepare and place in the inspection file its quarterly issues and programs lists on a timely basis. KXOJ shall, upon request by KMMY, provide KMMY with information with respect to those of KXOJ's programs which should be included in KMMY's quarterly issues and programs lists.

**2.3 Responsibility for Employees and Expenses.** KXOJ shall employ and be solely responsible for the salaries, taxes, insurance and related costs for all personnel employed by

KXOJ (including, without limitation, salespeople, traffic personnel, board operators and programming staff). KMMY will provide and be responsible for the Station's personnel employed by KMMY and necessary to fulfill KMMY's obligations hereunder, and will be responsible for the salaries, taxes, insurance and related costs for all the personnel it employs. All Station personnel shall be subject to the overall supervision of KMMY, consistent with KXOJ's right to the use of the Station's facilities.

### **SECTION 3**

**3.1 Control of Programming.** KMMY has full authority and responsibility to control the operation of the Station. The parties agree that KMMY's authority includes but is not limited to the right to reject or refuse such portions of KXOJ's programming which KMMY believes to be unsatisfactory, unsuitable or contrary to the public interest. KXOJ shall have the right to change the programming elements and/or format of the programming supplied to KMMY by giving KMMY at least twenty-four (24) hours notice of such changes and obtaining KMMY's approval of such changes.

**3.2 Political Time.** KXOJ shall act to help KMMY insure that the rates to be charged political candidates for public office are in conformance with applicable law. KXOJ shall promptly supply such information to KMMY as may be necessary to comply with the lowest unit rate, equal opportunities and reasonable access requirements of federal law.

**3.3 KXOJ Compliance with Copyright Act.** KXOJ represents and warrants to KMMY that KXOJ has full authority to broadcast its programming on the Station, and that KXOJ shall not broadcast any material in violation of any law, rule, regulation or the Copyright Act. All music supplied by KXOJ shall be: (i) licensed by ASCAP or BMI; (ii) in the public domain; or (iii) cleared at the source by KXOJ. KMMY will maintain ASCAP and BMI licenses as necessary. The right to use the programming and to authorize its use in any manner shall be and remain vested exclusively in KXOJ.

**3.4 Sales.** KXOJ shall retain all revenues from the sale of advertising time within the programming it provides to KMMY. KXOJ may sell advertising, consistent with applicable rules, regulations and the Policy Statement, on the Station in combination with any other broadcast station(s) of its choosing. KXOJ shall be responsible for payment of the commissions due to any national sales representative engaged by it for the purpose of selling advertising that is carried during the programming it provides to KMMY.

**3.5 Payola / Plugola. NONE IS ALLOWED.**

## **SECTION 4**

### **4.1 Indemnification.**

(a) KXOJ shall indemnify and hold harmless KMMY 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: (i) the content of programming furnished by KXOJ under this agreement; (ii) any misrepresentation of breach of any warranty of KXOJ contained in this Agreement; (iii) the actions of KXOJ's employees and agents on the premises maintained by KMMY; and (iv) any breach of any covenant, agreement, or obligation of EMF contained in this agreement.

(b) KMMY shall indemnify, defend and hold harmless KXOJ from and against all loss and expense arising out of the breach of any representation, warranty or covenant of KMMY contained in this Agreement.

## **SECTION 5**

### **5.1 Termination.**

(a) **By either party.** In addition to other remedies available at law or equity, this Agreement may be terminated as set forth below by KXOJ or KMMY by written notice to

the other, if the notifying party not then in material default or breach hereof, upon occurrence of any of the following:

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

(2) there has been a material change in FCC rules, policies or precedent that would cause this Agreement to be in violation thereof and such change is in effect and not the subject of an appeal or further administrative review; or

(3) upon 30 days' notice.

**(b) Automatic Termination.** This Agreement shall be terminated automatically upon the closing of the sale of the Station license and other assets.

**5.2 Force Majeure.** Any failure or impairment of the Station's facilities or any delay or interruption in the broadcast of programs, or failure at any time to furnish facilities, in whole or in part, for broadcast, due to Acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods and any other cause not reasonably within the control of KMMY, shall not constitute a breach of this Agreement and KMMY will not be liable to KXOJ, except to the extent of allowing in each such case an appropriate payment credit for time not provided based upon a pro rata adjustment to amounts due pursuant to the written agreement between KMMY and KXOJ, calculated upon the length of time during which the failure or impairment exists or continues.

## **SECTION 6**

**6.1 Assignment of Agreement.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns. Neither party may assign its rights under this Agreement without the prior written consent of the other party, provided, however, that both parties have the right to assign their rights under this Agreement to any

entity in which they hold a majority equity interest. In the event of such an assignment, said party will require the assignee to accept and perform the legal obligations of KMMY under this Agreement and, provided further, that any such assignment will not relieve KXOJ or KMMY, as the case may be, of its obligations hereunder that are not satisfied by such assignee.

**6.2 Entire Agreement.** This Agreement and any attachments hereto and any contemporaneous written agreement between KMMY and KXOJ embody the entire agreement and understanding of the parties and supersede any and all prior agreements, arrangements and understandings relating to matters provided for herein. No amendment, waiver of compliance with any provision or condition hereof, or consent pursuant to this Agreement will be effective unless evidenced by an instrument in writing signed by the parties.

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

**6.4 Notices.** Any notice, demand or request required or permitted to be given under the provisions of the Agreement shall be in writing and shall be deemed to have been duly delivered on the date of personal delivery to the corporate offices of each party, located at the following addresses, or to such other address as any party may request, in the case of KMMY, by notifying KXOJ, and in the case of KXOJ, by notifying KMMY.

**To KXOJ:**

Michael Stephens, President  
KXOJ, Inc.  
2448 E. 81st Street, S. 5500  
Tulsa, OK 74137z

**To KMMY:**

Michael Stephens, President  
KMMY, Inc.  
2448 E. 81st Street, S. 5500  
Tulsa, OK 74137z

**6.5 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 greatest extent permitted by law.

**6.6 Certifications.** KXOJ hereby certifies that its execution and performance of this Agreement is consistent with the Commission's current multiple ownership rules, including those pertaining to time brokerage agreements. KMMY hereby certifies that upon implementation of this Agreement, it will remain in ultimate control of the Station, including with respect to such matters as the Station's programming, personnel, and finances.

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

KMMY, Inc.

KXOJ, Inc.

By: \_\_\_\_\_  
Michael P. Stephens  
President

By: \_\_\_\_\_  
Michael P. Stephens  
President