

## RETRANSMISSION AGREEMENT

This Retransmission Agreement (this "Agreement") dated as of August 17, 2016, is made by and between Cumulus Radio Corporation ("Programmer") and Martha Whitman ("Licensee").

**WHEREAS**, Licensee has entered into a Purchase Agreement with Educational Media Foundation ("EMF") to acquire FM translator station K233CG, Sandia, New Mexico (FCC Facility ID No. 88468) (the "Station"), including the licenses and other authorizations ("FCC Licenses") issued by the Federal Communications Commission ("FCC") used or useful in the operation of the Station; and

**WHEREAS**, following Licensee's acquisition of the Station, Programmer desires to have access to the Station to broadcast Programmer's programming, and Licensee has agreed to make available to Programmer the Station for the presentation of such programming pursuant to the terms hereof.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual agreements, representations, warranties and covenants herein contained, and upon the terms and subject to the conditions hereinafter set forth, the parties hereby agree as follows:

**Section 1. Use of the Station.** On and after the Commencement Date (as defined below), Licensee agrees to make all air time transmission services of and/or for the Station available exclusively to Programmer and to broadcast, or cause to be broadcast, on the Station the programming provided by, or proposed to be presented by or on behalf of, Programmer (the "Programming").

**Section 2. Term.** The parties agree that this Agreement shall be effective beginning at 12:01 a.m. on September 1, 2016 (the "Commencement Date"), and shall continue for a period of one (1) year (the "Initial Term"). Programmer shall have the option of extending the Initial Term for additional twelve (12) month periods (each a "Renewal Term") if written notice of Programmer's election to extend the Initial Term is provided to Licensee no less than thirty (30) days prior to the end of the Initial Term or any Renewal Term (the Initial Term and any Renewal Term are collectively referred to herein as the "Term").

**Section 3. Consideration.** In consideration for the right to air its Programming on the Station, Programmer shall pay Licensee a monthly fee of \$1,000 per month in advance during the Term of this Agreement. Payments are due in full no later than the fifth (5th) day of each month during the Term of this Agreement.

### **Section 4. Equipment.**

**4.1** Programmer will utilize Licensee's equipment (the "Equipment") for the operation of the Station. The parties hereto expressly agree that throughout the Term of this Agreement, ownership of the Equipment and all right, title and interest therein shall remain vested solely in Licensee, who shall maintain, repair, and, if necessary, replace any portion or all of the Equipment and provide engineering services and technical support (including monitoring of transmission equipment and facilities).

**4.2** Licensee hereby covenants that the Station shall operate in accordance with the authorizations issued to Licensee by the FCC, provided that the Station may operate at reduced power or remain silent due to circumstances beyond Licensee's reasonable control including but not limited to Equipment malfunction or commercial power failure or reduction.

**4.3** To facilitate the production of Programming for the Station, and in furtherance of Programmer's rights under this Agreement, Licensee shall cooperate with Programmer in making such arrangements as Programmer shall request to deliver Programming, at Programmer's cost, from any remote location to the Station's transmitter site.

**4.4** During the Term, Programmer is authorized to use the Station's call letters in its Programming and in any promotional material in any media in connection with the Programming.

**Section 5. Accounts Receivable.** Programmer shall be entitled to retain any and all revenue generated from the use of and the sale of time on the Station.

**Section 6. Programmer Programming.**

**6.1. Production, Expense and Quality.** Programmer shall be solely responsible for the acquisition or production of the Programming to be broadcast on the Station, and shall transmit, at its sole expense, the Programming to be broadcast on the Station to the Station's transmitting facilities.

**6.2. Access to Programmer's Programming Materials.** Licensee shall be entitled upon reasonable request (a) to review at its discretion from time to time on a confidential basis any of the Programming (including any advertising therein) and (b) copies of all program logs and promotional materials with respect to the Programming.

**6.3. Compliance with Applicable Law.** The Programming (including advertising therein) shall comply in all material respects with applicable law, including but not limited to the Communications Act of 1934, as amended (the "Act"), and all published rules and policies of the FCC (the "FCC Rules"). If Licensee determines, in the exercise of Licensee's sole discretion, that any Programming (or advertising therein) is for any reason unsatisfactory, unsuitable or contrary to the public interest, Licensee may, upon prior written notice to Programmer (to the extent time permits such notice), reject, preempt, suspend or cancel the broadcast of such material without incurring liability to Programmer. Licensee will use reasonable efforts to provide such written notice to Programmer prior to the rejection, preemption, suspension or cancellation of such material.

**6.4. Programmer Ownership.** The right to use programming supplied by Programmer and to authorize its use in any manner shall be and remain vested solely in Programmer.

**6.5. Sales Expenses.** Programmer shall be responsible for payment of all expenses attributable to the sale of time on its Programming, including, but not limited to, commissions due to any sales executives or representative engaged by it for the purpose of selling such time.

**Section 7. Control of Station.** Programmer shall not, directly or indirectly, control, supervise, direct, or attempt to control, supervise, or direct, the operations of the Station. Such operations, including ultimate control and supervision of all of the programs, employees (if any), and policies of the Station, shall be the sole responsibility of Licensee. To ensure that Licensee shall have the unfettered ability to control and supervise all operational matters concerning the Station, Licensee shall be permitted unrestricted access to and the right to use the Station's transmitter and other technical facilities at all times. In performing its responsibilities hereunder, Licensee shall use commercially reasonable efforts to avoid interfering with Programmer's operations.

**Section 8. Station Expenses.** Programmer will pay all costs for its employees and the costs associated with Programmer's maintenance of the transmitter equipment owned by it and used to operate the Station.

**Section 9. Licensee Compliance.**

**9.1. Compliance with Laws.** As of the date of this Agreement, (a) Licensee is in material compliance with all applicable laws, rules, regulations, policies and orders of the federal, state, and local governments with respect to its operation of the Station, and (b) the present operation of the Station by Licensee does not violate any such laws, regulations, policies or orders in any material respect.

**9.2 FCC Compliance.** Licensee is the holder of the FCC Licenses included in Schedule 1 to this Agreement, all of which are in full force and effect. The FCC Licenses constitute all of the licenses required under the Communications Act of 1934, as amended (the "Act"), and FCC Rules for the operation of the Station as currently conducted. The FCC Licenses authorize the operation of the Station for a license term expiring on October 1, 2021. Licensee has filed with the FCC all material applications, reports and other documents required by FCC Rules. Except as otherwise specified in Schedule 1, there is not pending or, to Licensee's knowledge, threatened, any petition, complaint, objection (whether formal or informal), order to show cause, investigation, or other action by or before the FCC to revoke, cancel, rescind, modify, or refuse to renew any of the FCC Licenses. Other than proceedings of general applicability to the broadcasting industry, there is not now pending or, to Licensee's knowledge, threatened, any petition, complaint, objection (whether formal or informal), investigation, order to show cause, notice of violation, notice of apparent liability, or notice of forfeiture or other proceeding by or before the FCC against Licensee with respect to the Station. The Station is operating in material compliance with the FCC Licenses, the Act, and FCC Rules. Licensee will take commercially reasonable efforts to preserve the FCC Licenses throughout the Term of this Agreement, which shall include without limitation, filing a timely renewal application.

**Section 10. Indemnification.**

**10.1. Programmer's Indemnification.** Programmer shall indemnify and hold Licensee harmless from and against any and all claims, losses, costs, liabilities, damages, forfeitures and expenses (including reasonable legal fees and other expenses incidental thereto) of every kind, nature and description (collectively, "Damages") resulting from (a) Programmer's breach of any representation, warranty, covenant or agreement contained in this Agreement, (b) Programmer's negligence or willful misconduct or the negligence or willful misconduct of its

employees or agents, and (c) any third-party claims relating to the Programming (including advertising therein).

**10.2. Licensee's Indemnification.** Licensee shall indemnify and hold Programmer harmless from and against any and all Damages resulting from (a) Licensee's breach of any representation, warranty, covenant or agreement contained in this Agreement, (b) Licensee's negligence or willful misconduct or the negligence or willful misconduct of its employees or agents, and (c) any third-party claims relating to programming broadcast by Licensee on the Station.

**10.3. Procedure for Indemnification.** The procedure for indemnification shall be as follows:

(a) The party claiming indemnification (the "Claimant") shall promptly give written notice to the party from which indemnification is claimed (the "Indemnifying Party") of any claim, whether between the parties or brought by a third party, specifying in reasonable detail the factual basis for the claim. If the claim relates to an action, suit, or proceeding filed by a third party against Claimant, such notice shall be given by Claimant no later than ten (10) business days after written notice of such action, suit, or proceeding was given to Claimant; provided, that the failure to give timely notice shall extinguish the Claimant's right to indemnification only to the extent that such failure adversely affects the Indemnifying Party's rights.

(b) With respect to claims solely between the parties, following receipt of notice from the Claimant of a claim, the Indemnifying Party shall have thirty (30) days to make such investigation of the claim as the Indemnifying Party deems necessary or desirable. For purposes of such investigation, the Claimant shall make available to the Indemnifying Party or its authorized representatives the information relied upon by the Claimant to substantiate the claim. If the Claimant and the Indemnifying Party agree in writing at or prior to the expiration of the 30-day period (or any mutually agreed upon extension thereof) to the validity and amount of such claim, the Indemnifying Party shall immediately pay to the Claimant the full amount of the claim or such amount as agreed to by the parties. If the Claimant and the Indemnifying Party fail to agree within the 30-day period (or any mutually agreed upon extension thereof), the Claimant may seek any remedy available to it at law or equity.

(c) With respect to any claim by a third party as to which the Claimant is entitled to indemnification under this Agreement, the Indemnifying Party shall have the right, at its own expense, to assume control of the defense of such claim, and the Claimant shall cooperate fully with the Indemnifying Party, subject to reimbursement for actual out-of-pocket expenses incurred by the Claimant as the result of a request by the Indemnifying Party. If the Indemnifying Party elects to assume control of the defense of any third-party claim, the Claimant shall have the right to participate in the defense of such claim at its own expense. If the Indemnifying Party does not assume control, it shall be bound by the results obtained by the Claimant with respect to such claim; provided, that the Claimant shall not settle any third party claim without first giving the Indemnifying Party ten (10) business days' prior notice of the terms of such settlement.

(d) If a claim, whether between the parties or by a third party, requires immediate action, the parties will make every commercially reasonable effort to reach a decision with respect thereto as expeditiously as possible.

(e) The indemnification rights provided herein shall extend to the partners, members, shareholders, directors, officers, employees, representatives, attorneys, agents, successors and permitted assigns of any Claimant; provided that, for the purpose of the procedures set forth in this section, any indemnification claims by such parties shall be made by and through the Claimant.

**Section 11. Challenge to Agreement.** Subject to the terms of Section 16.8, if this Agreement is challenged by or before the FCC, whether or not in connection with the Station's license renewal application, Licensee and Programmer shall jointly defend this Agreement and the parties' performance hereunder throughout all FCC proceedings. Programmer's obligations hereunder shall be limited to matters specifically limited to this Agreement. If the parties cannot reform this Agreement as necessary to satisfy any adverse FCC decision, the parties shall seek reversal of the FCC's decision. Except as otherwise provided herein, each party hereto shall be solely responsible for all fees and expenses which it incurs in connection with the transactions contemplated by this Agreement, including, without limitation, legal fees incurred in connection herewith.

**Section 12. Survival Period.** The representations and warranties of the parties under this Agreement shall survive for a period of one (1) year after termination of this Agreement in accordance with its terms. Any claim for indemnification under this section must be made in writing on or before expiration of that one-year period.

**Section 13. Termination Rights and Restrictions.**

**13.1. Termination.** This Agreement may be terminated by either Licensee or Programmer by written notice to the other, if the party seeking to terminate is not then in material breach of any representation, warranty, covenant or other obligation hereunder, upon the occurrence of any of the following:

(a) The mutual consent of both parties;

(b) By either party, if the other party is in material breach of any representation, warranty, covenant or other obligation under this Agreement and has failed to cure such breach within twenty (20) days (or longer as reasonably necessary to cure said breach) of written notice from the non-defaulting party;

(c) Subject to the provisions of Section 16.8, this Agreement is declared invalid or illegal in whole or material part by an order or decree of an administrative agency or court of competent jurisdiction and such order or decree has become a Final Order (which, for purposes of this Agreement, means a decision – as modified or supplemented upon reconsideration or review by such agency or court of competent jurisdiction – that is no longer subject to administrative or judicial reconsideration or review); or

(d) A material change in FCC Rules or precedent that would cause this Agreement to be in violation thereof, such change has become a Final Order, and this Agreement cannot be reformed to remove and/or eliminate the violation in a manner reasonably acceptable to Programmer and Licensee.

**Section 14. Programmer's Accounts Receivable.** In the event this Agreement is terminated pursuant to Section 14.1, and upon Programmer's request, Licensee shall use commercially reasonable efforts (which shall not require the institution of litigation) to collect Programmer's accounts receivables for a period of one hundred twenty (120) days after the date of termination and shall remit payments to Programmer on the fifteenth (15th) day of each calendar month during that 120-day period of any accounts receivable collected, with the final payment to be made within five (5) business days after expiration of that 120-day period.

**14.1. Force Majeure.** Any failure or impairment of the Station's facilities or any delay or interruption in the broadcast of programs, or failure at any time to furnish facilities, in whole or in part, for broadcast, due to Acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods and any other cause not reasonably within the control of Licensee or Programmer, or for power reductions necessitated for maintenance of the Station or for maintenance of other radio or television broadcast stations located on the tower from which the Station is broadcasting, shall not constitute a breach of any representation, warranty, covenant or other obligation under this Agreement.

**Section 15. Representations and Warranties.**

**15.1. By Licensee.** Licensee represents and warrants to Programmer that (a) it has all requisite power and authority to execute and deliver this Agreement and the documents contemplated hereby and to perform and comply with all of the terms, covenants, and conditions to be performed and complied with by Licensee hereunder, (b) the execution, delivery, and performance by Licensee of this Agreement and the documents contemplated hereby have been duly authorized by all necessary actions on the part of Licensee, (c) this Agreement has been duly executed and delivered by Licensee and constitutes a legal, valid, and binding obligation of Licensee, enforceable against Licensee in accordance with its terms, except as the enforceability of this Agreement may be affected by bankruptcy, insolvency, or similar laws affecting creditors' rights generally and by judicial discretion in the enforcement of equitable remedies, and (d) the execution, delivery, and performance by Licensee of this Agreement and the documents contemplated hereby (with or without the giving of notice, the lapse of time, or both) (i) do not require the consent of any third party, and (ii) will not conflict with, constitute grounds for termination of, result in a breach of, or constitute a default under, any agreement, instrument, license, or permit to which Licensee is a party or by which Licensee is bound.

**15.2. By Programmer.** Programmer represents and warrants to Licensee that (a) it has all requisite corporate power and authority to execute and deliver this Agreement and the documents contemplated hereby and to perform and comply with all of the terms, covenants, and conditions to be performed and complied with by Programmer hereunder, (b) the execution, delivery, and performance by Programmer of this Agreement and the documents contemplated hereby have been duly authorized by all necessary corporate actions on the part of Programmer, (c) this Agreement has been duly executed and delivered by Programmer and constitutes the legal, valid, and binding obligation of Programmer, enforceable against Programmer in accordance with its terms, except as the enforceability of this Agreement may be affected by bankruptcy,

insolvency, or similar laws affecting creditors' rights generally and by judicial discretion in the enforcement of equitable remedies, and (d) the execution, delivery, and performance by Programmer of this Agreement and the documents contemplated hereby (with or without the giving of notice, the lapse of time, or both) (i) do not require the consent of any third party, (ii) will not conflict with any provision of the organizational documents of Programmer; and (iii) will not conflict with, constitute grounds for termination of, result in a breach of, or constitute a default under, any agreement, instrument, license, or permit to which Programmer is a party or by which it is bound.

**15.3 Other Agreements.** During the Term of this Agreement, neither Licensee nor Programmer will enter into any other agreement with any third party that would conflict with or result in a breach of this Agreement by Licensee or Programmer.

## **Section 16. Miscellaneous.**

### **16.1. Assignment.**

(a) Neither party may assign its rights and obligations under this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld or denied; provided, that Programmer may assign its rights and obligations under this Agreement at any time to any subsidiary of Programmer or to any other party under common control with Programmer, or to any purchaser or party acquiring control of the radio station whose programming is retransmitted on the Station pursuant to this Agreement.

(b) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**16.2. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original instrument, but both of which together shall constitute one and the same instrument. Delivery of an executed counterpart signature page to this Agreement by facsimile or email shall be deemed an original for all intents and purposes.

**16.3. Entire Agreement.** This Agreement (including any Attachments hereto) embodies the entire agreement and understanding of the parties relating to the subject matter of this Agreement and supersedes any and all prior and contemporaneous agreements and understandings of the parties, oral or written, with respect hereto. No amendment to this Agreement will be effective unless evidenced by an instrument in writing signed by the parties.

**16.4. Taxes.** Licensee and Programmer shall each pay its own ad valorem taxes, if any, which may be assessed on such party's respective personal property for the periods that such items are owned by such party.

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

**16.6. Governing Law.** The construction and performance of the Agreement will be governed by the laws of the State of New Mexico without regard to conflicts of law principles.

**16.7. Notices.** All notices, demands and requests required or permitted to be given under the provisions of this Agreement shall be (a) in writing, (b) delivered by personal delivery (charges prepaid), by commercial overnight delivery service, or by facsimile (with written confirmation of receipt), (c) deemed to have been given on the date of personal delivery, the date set forth in the records of the delivery service, or on the written confirmation, and (d) addressed as follows:

***If to Programmer:***

Cumulus Radio Corporation  
3280 Peachtree Road, NW  
Suite 2300  
Atlanta, GA 30305  
Attn: General Counsel  
Tel: (404) 949-0700  
Fax: (404) 949-0740

***If to Licensee:***

Martha Whitman  
809 Wellesley NE  
Albuquerque, NM 87106  
Tele: (505) 265-8356

or to any other or additional persons and addresses as the parties may from time to time designate in a writing delivered in accordance with this section.

**16.8. Severability.** If any provision of this Agreement or the application thereof to any person or circumstances shall be held invalid or unenforceable to any extent by any governmental authority or court of competent jurisdiction, 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. In the event that the FCC raises a substantial and material question as to the validity of any provision of this Agreement, the parties hereto shall negotiate in good faith to revise any such provision of this Agreement with a view toward assuring compliance with the Act and applicable FCC Rules, while attempting to preserve, as closely as practical, the intent of the parties as embodied in the provision of this Agreement which is to be so modified.

**16.9. No Joint Venture.** This Agreement is not intended to be and shall not be construed as a partnership or joint venture between the parties. Except as otherwise specifically provided in this Agreement, neither party to this Agreement shall be authorized to act as an agent of or otherwise represent the other party.

**16.10. Remedies.** In the event that either party breaches or threatens to breach any provision of this Agreement, the other party shall be entitled to seek any remedy available at law or equity, including, if appropriate, specific performance. If either party institutes litigation to

enforce its rights under this Agreement, (a) each party waives any requirement that the other party post a bond or other security in connection with pursuing equitable or injunctive relief under this Agreement, and (b) the prevailing party shall be reimbursed by the other party for all reasonable expenses incurred thereby, including reasonable attorneys' fees.

**16.11 Waiver.** No waiver of any provision of this Agreement shall be effective unless contained in a writing signed by the party charged with the waiver. A waiver in any one instance shall not constitute a waiver of any other action or omission in any other instance, regardless of how similar to the action or omission covered by the waiver. No delay in either party's enforcement of any right hereunder shall, in and of itself, be deemed to be a waiver.

**16.12 No Third Party Beneficiaries.** This Agreement is intended to benefit only the parties to this Agreement, and their respective successors and permitted assigns. No other person or entity is an intended or incidental beneficiary of this Agreement.

[Signatures on the Following Page]

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

**MARTHA WHITMAN**



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**CUMULUS RADIO CORPORATION**

By: Richard S. Denney  
Name: Richard S. Denney  
Title: SVP

**SCHEDULE 1**

**FCC Licenses**

K233CG, Sandia, NM (FCC Fac. ID No. 88468)

File No. BLFT-20130213ACB (Expires 10/01/2021)

Primary Station: KQNM(AM), Albuquerque, NM