

## ASSET PURCHASE AGREEMENT

**THIS ASSET PURCHASE AGREEMENT** (this “*Agreement*”) is made as of October 19, 2017 (“*Effective Date*”), between **EDUCATIONAL MEDIA FOUNDATION**, a California corporation (“*Buyer*”) and **LIVING WAY MINISTRIES, INC.**, a California non-profit corporation (“*Seller*”).

### Recitals

**WHEREAS**, Seller is the holder of a construction permit issued by the Federal Communications Commission (“*FCC*”) to build a new FM translator station, K224EY to serve San Marino, CA (Facility ID No. 145229 ), under FCC File No. BNPFT-20130827ACN (the “*Permit*”).

**WHEREAS** subject to the terms and conditions set forth herein, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Permit.

**NOW, THEREFORE**, taking the foregoing into account, and in consideration of the mutual covenants and agreements set forth herein, the parties, intending to be legally bound, hereby agree as follows:

### **ARTICLE 1: PURCHASE OF STATION**

1.1. Sale and Purchase. On the terms and subject to the conditions hereof, at Closing (defined below), Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase and acquire from Seller, all right, title and interest of Seller in and to the assets described in Section 1.2 (together the “*Purchased Assets*”). The Purchased Assets shall be transferred to Buyer free and clear of liens, claims and encumbrances (“*Liens*”) other than for taxes not yet due and payable.

1.2. Purchased Assets. The Purchased Assets shall include the following:

(a) the Permit

1.3. Excluded Assets. Notwithstanding the foregoing, the Purchased Assets to be conveyed to buyer hereunder shall exclude all assets owned or leased by Seller other than the Purchased Assets.

1.4. Purchase Price. In consideration for the sale of the Purchased Assets to Buyer, Buyer shall pay Seller the total sum of Ninety Thousand Dollars (\$90,000.00) (“*Purchase Price*”) as follows:

(a) At Closing, the Purchase Price (less the Deposit as provided below) shall be payable to Seller in cash by wire transfer of immediately available funds as provided to the Buyer by the Seller.

(b) Within two (2) business days of the execution of this Agreement, Buyer shall deliver to Seller the sum of Nine Thousand Dollars (\$9,000) to be held by Seller as an earnest money deposit (the "Deposit"). The Deposit will be credited against the Purchase Price at Closing or otherwise be made available to Seller or released to Buyer in accordance with Section 9.2 hereof.

1.5. Closing. The consummation of the sale and purchase of the Purchased Assets (the "Closing") shall take place within ten (10) days after the last to occur of (a) the date the FCC Consent (defined below) becomes Final or (b) satisfaction or waiver of the conditions required to be satisfied or waived pursuant to Articles 5 or 6 below (other than those requiring the taking of action at the Closing). The date on which the Closing is to occur is referred to herein as the "Closing Date."

1.6. FCC Applications.

(a) Within five (5) business days of the Effective Date, Buyer and Seller shall file an application with the FCC requesting FCC consent to the assignment of the Permit from Seller to Buyer (the "Assignment Application"). The FCC's grant of the Assignment Application without any material adverse conditions other than those of general applicability is referred to herein as the "FCC Consent." Seller and Buyer shall make commercially reasonable efforts to obtain the FCC Consent. Each party shall promptly provide the other with a copy of any pleading, order or other document served on it relating to such application and shall furnish all information required by the FCC. In the event the FCC requires an application filing fee for the Assignment Application the parties agree to share equally the cost of such fee, the accounting for which may be done as an adjustment to the Purchase Price at Closing.

(b) For purposes of this Agreement, the term "Final" means that action shall have been taken by the FCC (including action duly taken by the FCC's staff, pursuant to delegated authority) which shall not have been reversed, stayed, enjoined, set aside, annulled or suspended; with respect to which no timely request for stay, petition for rehearing, appeal or certiorari or *sua sponte* action of the FCC with comparable effect shall be pending; and as to which the time for filing any such request, petition, appeal, certiorari or for the taking of any such *sua sponte* action by the FCC shall have expired or otherwise terminated.

(c) Seller will cooperate with Buyer to file a modification application for the Permit if requested by Buyer and Seller shall be responsible for any and all costs associated with the filing of such an application.

**ARTICLE 2: SELLER REPRESENTATIONS AND WARRANTIES**

Seller hereby represents and warrants to Buyer as follows:

2.1. Organization. Seller is duly organized, validly existing and in good standing. Seller has the requisite power and authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby.

2.2. Authorization. The execution, delivery and performance of this Agreement have been duly authorized by Seller and approved by all necessary action of Seller and do not require any further authorization or consent of Seller. This Agreement is, and will be a legal, valid and binding agreement of Seller enforceable in accordance with its terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

2.3. No Conflicts. The execution and delivery by Seller of this Agreement and the consummation by Seller of the transactions contemplated hereby do not conflict with any organizational documents of Seller; any other agreement or understanding to which Seller is a party; any law, judgment, order, or decree to which Seller is subject; or require the approval, consent, authorization or act of, or the making by Seller of any declaration, filing or registration with, any third party or any governmental authority, except the FCC Consent.

2.4. Permit. Seller is the holder of the Permit described in Exhibit A. The Permit is in full force and effect and has not been revoked, suspended, canceled, rescinded or terminated and have not expired. There is not pending any action by or before the FCC to revoke, suspend, cancel, rescind or materially adversely modify the Permit other than proceedings to amend FCC rules of general applicability, and Seller has no knowledge of any such action at the FCC and no reason to believe that such an action may be sought from the FCC by any third party. There is no order to show cause, notice of violation, notice of apparent liability or notice of forfeiture or complaint pending or, to Seller's knowledge, threatened against Seller with respect to the Permit by or before the FCC.

2.5. Ownership of Purchased Assets. Seller has good and marketable title to the Purchased Assets and will deliver the Purchased Assets to Buyer at Closing, free and clear of all Liens other than for taxes not yet due and payable.

2.6. No Finder. Except for Patrick Communications, Inc., no broker, finder or other person is entitled to a commission, brokerage fee or other similar payment in connection with this Agreement or the transactions contemplated hereby as a result of any agreement or action of Seller or any party acting on Seller's behalf. Seller shall be solely responsible to pay any broker fees owed to Patrick Communications, Inc. as a result of this transaction.

### **ARTICLE 3: BUYER REPRESENTATIONS AND WARRANTIES**

Buyer hereby represents and warrants to Seller as follows:

3.1. Organization. Buyer is duly organized, validly existing and in good standing. Buyer has the requisite power and authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby.

3.2. Authorization. The execution, delivery and performance of this Agreement by Buyer have been duly authorized and approved by all necessary action of Buyer and do not require any further authorization or consent of Buyer. This Agreement is a valid and binding agreement of Buyer enforceable in accordance with its terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

3.3. No Conflicts. The execution and delivery by Buyer of this Agreement and the consummation by Buyer of the transactions contemplated hereby does not conflict with any organizational documents of Buyer; any other agreement or understanding to which Buyer is a party; any law, judgment, order or decree to which Buyer is subject; or require the approval, consent, authorization or act of, or the making by Buyer of any declaration, filing or registration with, any third party or any governmental authority, except the FCC Consent.

3.4. Qualification. Buyer is legally, financially and otherwise qualified to acquire, own and operate the subject translator under the Communications Act and the rules, regulations and policies of the FCC.

3.5. Broker. No broker, finder or other person is entitled to a commission, brokerage fee or other similar payment in connection with this Agreement or the transactions contemplated hereby as a result of any agreement or action of Buyer or any party acting on Buyer's behalf.

#### **ARTICLE 4: COVENANTS**

Buyer and Seller hereby further covenant and agree as follows:

4.1. Confidentiality. Subject to the requirements of applicable law, all non-public information regarding the parties and their business and properties that is disclosed in connection with the negotiation, preparation or performance of this Agreement shall be confidential and shall not be disclosed to any other person or entity, except the parties' representatives and lenders for the purpose of consummating the transactions contemplated by this Agreement, and provided that no provision of this Agreement shall restrict the Buyer's ability to produce this Agreement in response to a lawful request.

4.2. Control. Buyer shall not, directly or indirectly, control the Purchased Assets prior to Closing. Consistent with the Communications Act and the FCC rules and regulations, control, supervision and direction of the Purchased Assets prior to Closing shall remain the responsibility of Seller as the station's licensee.

4.3. Seller Covenants. Between the date hereof and the Closing Date, Seller shall: (i) maintain in effect the Permit, (ii) promptly deliver to Buyer copies of any material reports, applications or written responses to the FCC related to the Permit or related station which are filed during such period, and (iii) not modify the Permit except if requested by Buyer pursuant to Section 1.6(c).

## **ARTICLE 5: SELLER CLOSING CONDITIONS**

The obligation of Seller to consummate the Closing hereunder is subject to satisfaction, at or prior to Closing, of each of the following conditions (unless waived in writing by Seller):

5.1. Closing Deliveries. Buyer shall have made, or be ready, willing and able to concurrently make, the Closing deliveries described in Section 7.2.

5.2. FCC Consent. The FCC Consent shall have been obtained, the FCC shall have issued public notice of the FCC Consent, and no court or governmental order prohibiting Closing shall be in effect.

5.3. Buyer's Representations. Buyer's representations and warranties in this Agreement shall be true and correct and Buyer shall have complied with its obligations under this Agreement.

## **ARTICLE 6: BUYER CLOSING CONDITIONS**

The obligation of Buyer to consummate the Closing hereunder is subject to satisfaction, at or prior to Closing, of each of the following conditions (unless waived in writing by Buyer):

6.1. Closing Deliveries. Seller shall have made, or be ready, willing and able to concurrently make, the Closing deliveries described in Section 7.1.

6.2. FCC Consent. The FCC Consent shall have been granted and become Final and no court or governmental order prohibiting Closing shall be in effect.

6.3. Seller's Representations. Seller's representations and warranties in this Agreement shall be true and correct and Seller shall have complied with its obligations under this Agreement.

## **ARTICLE 7: CLOSING DELIVERIES**

7.1. Seller Documents. At Closing, Seller shall deliver to Buyer an Assignment of the Permit, and other instruments of conveyance, assignment and transfer as may be necessary to convey, transfer and assign the Purchased Assets to Buyer, free and clear of all debts and Liens other than for taxes not yet due and payable.

7.2. Buyer Documents. At Closing, Buyer shall pay the Purchase Price in accordance with Section 1.4 hereof, including delivering an originally executed copy of the Promissory Note and any other documents Seller's counsel may reasonably request

## **ARTICLE 8: SURVIVAL**

The representations and warranties in this Agreement shall survive Closing for a period of one (1) year from the Closing Date.

## **ARTICLE 9. TERMINATION**

9.1 General. This Agreement may be terminated by either Buyer or Seller, if the party seeking to terminate is not in default or breach of any of its material obligations under this Agreement upon written notice to the other upon the occurrence of any of the following: (i) if, on or prior to the Closing Date, the other party breaches any of its material obligations contained herein, and such breach is not cured by the earlier of the Closing Date or thirty (30) days after receipt of the notice of breach from the non-breaching party; or (ii) if the Assignment Application is denied by the FCC; (iii) if there shall be in effect any judgment, final decree or order that would prevent or make unlawful the Closing of this Agreement, or (iv) by either Seller or Buyer if the Closing has not occurred within one (1) year of the date of this Agreement.

9.2 Remedies Upon Termination. If Closing does not occur, Seller's exclusive remedy upon a termination of this Agreement by the Seller due to a breach by the Buyer of any of its material obligations under this Agreement shall be retention of the Deposit which shall be considered liquidated damages and not a penalty. Seller and Buyer each agree that this amount is reasonable in light of the anticipated harm which will be caused by a breach of this Agreement, the difficulty of proof of loss, the inconvenience and non-feasibility of otherwise obtaining an adequate remedy. If the Agreement terminates any reason other than the material breach by Buyer, Seller shall retain the Deposit.

9.3 Specific Performance. Seller acknowledges that the Purchased Assets are unique assets not readily obtainable on the open market and that, in the event that Seller fails to perform its obligations to consummate the transaction contemplated hereby, money damages alone will not be adequate to compensate Buyer for its injury. Therefore, Seller agrees and acknowledges that in the event of Seller's failure to perform its obligation to consummate the transaction contemplated hereby, Buyer shall be entitled to specific performances of the terms of this Agreement and of Seller's obligation to consummate the transaction contemplated hereby. If any action is brought by Buyer to enforce this Agreement, Seller shall waive the defense that there is an adequate remedy at law, and Buyer shall be entitled to receive from Seller all court costs, attorney's fees and other out-of-pocket expenses incurred by Buyer in enforcing its rights under this provision.

## **ARTICLE 10: MISCELLANEOUS PROVISIONS**

10.1. Further Assurances. After Closing, each party shall from time to time, at the request of and without further cost or expense to the other, execute and deliver such other instruments of conveyance and assumption and take such other actions as may reasonably be requested in order to more effectively consummate the transactions contemplated hereby.

10.2. Assignment. Neither party may assign this Agreement without the prior written consent of the other party hereto. The terms of this Agreement shall bind and inure to the benefit of the parties' respective successors and assigns, and no assignment or consent shall relieve any party of any obligations, liabilities, or rights under this Agreement.

10.3. Amendments. No amendment or waiver of compliance with any provision hereof or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in

writing signed by the party against whom enforcement of such amendment, waiver, or consent is sought.

10.4. Governing Law. The construction and performance of this Agreement shall be governed by the laws of the State of California without giving effect to the choice of law provisions thereof.

10.5. Notices. Any notice pursuant to this Agreement shall be in writing and shall be deemed delivered on the date of personal delivery or confirmed delivery by a nationally recognized overnight courier service, and shall be addressed as set forth in Schedule 10.5 (or to such other address as any party may request by written notice).

10.6. Entire Agreement. This Agreement, including the exhibits and schedules hereto, constitutes the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings with respect to the subject matter hereof. No party makes any representation or warranty with respect to the transactions contemplated by this Agreement except as expressly set forth in this Agreement.

10.7. Expenses. Except as otherwise set forth herein, each party shall be solely responsible for all costs and expenses incurred by it in connection with the negotiation, preparation and performance of and compliance with the terms of this Agreement.

10.8. Counterparts. This Agreement may be executed in separate counterparts, each of which will be deemed an original and all of which together will constitute one and the same agreement.

*[The remainder of this page is left blank intentionally]*

SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

**BUYER: EDUCATIONAL MEDIA FOUNDATION**

By:   
Name: Mike Novak  
Title: CEO  
Date: 10/17/17

**SELLER: LIVING WAY MINISTRIES, INC.**

By: \_\_\_\_\_  
Name:  
Title:

SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

**BUYER: EDUCATIONAL MEDIA FOUNDATION**

By: \_\_\_\_\_  
Name: Mike Novak  
Title: CEO  
Date: \_\_\_\_\_

**SELLER: LIVING WAY MINISTRIES, INC.**

By:  \_\_\_\_\_  
Name: Michael V. Lynch  
Title: CFO

**EXHIBIT A**  
**Permit**

Station K224EY, San Marino, California  
Facility ID Number 145229  
*Living Way Ministries, Inc.*

<b>Type of Authorization</b>	<b>Call Sign</b>	<b>FCC File Number</b>	<b>Grant Date</b>	<b>Expiration Date</b>
Original Construction Permit	K224EY	BNPFT-20130827ACN	10/30/2015	10/30/2018

**SCHEDULE 10.5**

**Notices to Seller:**

Living Way Ministries, Inc.  
14820 Sherman Way  
Van Nuys, CA 91405  
Attention: Michael Lynch

With a copy to:

Southmayd & Miller  
4 Ocean Ridge Boulevard South  
Palm Coast, Florida 32137  
Attention: Jeffrey D. Southmayd  
[jdsouthmayd@msn.com](mailto:jdsouthmayd@msn.com)

**Notices to Buyer:**

Educational Media Foundation  
5700 West Oaks Boulevard  
Rocklin, CA 95765  
Attention: Joseph C. Miller, Vice President Signal  
Development

With a copy to:

Paige Fronabarger, Esq.  
Wilkinson Barker Knauer LLP  
1800 M Street, N.W., Suite 800N  
Washington, D.C. 20036