

FREQUENCY EXCHANGE AGREEMENT

THIS FREQUENCY EXCHANGE AGREEMENT (this "Agreement") is made and entered into as of this 27th day of December 2016 (the "Effective Date"), by and between **SUMMITMEDIA, LLC**, a Delaware limited liability company ("SummitMedia") and **EDUCATIONAL MEDIA FOUNDATION**, a California non-profit, religious corporation ("EMF").

WITNESSETH:

WHEREAS, SummitMedia holds or shall hold on the Closing Date (as defined in Paragraph 11, below) the Federal Communications Commission ("FCC") license for Station W271BN, licensed to Birmingham, Alabama (Facility I.D. 148321) (the "102.1 Station"), and EMF holds the FCC license for Station W297BF, licensed to Birmingham, Alabama (Facility ID 156366) (the "107.3 Station"), each including respective affiliated broadcast license(s), all as may be more particularly described on Exhibit A attached hereto; and

WHEREAS, SummitMedia and EMF desire and have agreed to exchange the license for the 102.1 Station for the license for the 107.3 Station, all subject to FCC approval, such that upon FCC approval and the consummation of the transactions described herein, SummitMedia shall own the FCC licenses for the 107.3 Station and EMF shall own the FCC licenses for the 102.1 Station (the "Exchange").

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, it is agreed by and between SummitMedia and EMF that:

1. **APPLICATION TO FCC.** The parties shall cooperate in the prompt preparation and filing, within ten (10) business days from the later of (i) the date of execution of this Agreement, or (ii) the acquisition of the 102.1 Station licenses by SummitMedia, of an application with the FCC, requesting its consent to the assignment of the licenses and authorizations to effect the Exchange of the licenses for the 102.1 Station and the 107.3 Station. SummitMedia and EMF shall share equally the filing fees for such application. The parties shall cooperate in the diligent submission of any additional information requested by the FCC with respect to such application, and will take all steps that are necessary and proper to the expeditious prosecution of such application to a favorable conclusion. Neither SummitMedia nor EMF shall take any intentional action, or intentionally fail to take such action the failure of which to take that would reasonably be expected to have the effect of preventing or materially delaying the receipt of the consent of the FCC to the Exchange.

2. **ASSETS TO BE EXCHANGED.**

(a) On the Closing Date, as defined in Paragraph 11 hereof, EMF will assign, transfer, sell, convey and deliver to SummitMedia all of the licenses and other authorizations (including call signs) issued by the FCC for the operations of the 107.3 Station (the "107.3 Station Licenses").

(b) On the Closing Date, as defined in Paragraph 11 hereof, SummitMedia will assign, transfer, sell, convey and deliver to EMF all of the licenses and other authorizations (including call signs) issued by the FCC for the operation of the 102.1 Station (the "102.1 Station Licenses").

(c) The licenses, authorizations, and any other property to be transferred and exchanged as described in Paragraph 2(a) and Paragraph 2(b) above (the "Exchanged Assets"), are to be assigned, transferred and conveyed to the appropriate party, by good and sufficient bills of sale, assignments, and/or other documents of transfer, including, but not limited to, an Assignment and Assumption of FCC Authorizations, executed by both parties (the "Closing Documents"), satisfactory in form and substance to the other party hereto and its counsel. The Exchanged Assets will be conveyed to the appropriate party free and clear of any claims, liabilities, mortgages, deeds of trust, assignments, liens, pledges, conditions, charges or encumbrances of any nature whatsoever.

(d) Each party is expressly not assuming any liabilities or obligations of the other party hereto under this Agreement or through the transactions described herein. The Exchanged Assets are exchanged by each party "as-is, where-is."

3. REPRESENTATIONS AND WARRANTIES OF EMF. EMF hereby represents and warrants that:

(a) EMF is and as of the Closing Date will be a non-profit, religious corporation, organized under the laws of and duly qualified to transact business in the State of California. This Agreement constitutes the legal, valid and binding obligation of EMF, enforceable in accordance with its terms. EMF has taken all necessary action to authorize the execution, delivery and performance of this Agreement;

(b) Subject to obtaining the approval of the FCC, the execution, delivery and performance of this Agreement by EMF (i) does not and will not require the consent of any third party; and (ii) does not and will not conflict with, result in a breach of, or constitute a default under any material contract, agreement, instrument, license or permit to which EMF is a party or by which EMF may be bound, or under any law, judgment, order, decree, rule, regulation or ruling of any court or governmental instrumentality, which is applicable to EMF;

(c) EMF is and on the Closing Date will be the holder of the FCC authorizations and licenses for the 107.3 Station as authorized under the Communications Act of 1934, as amended, and such authorizations and licenses are in full force and effect. EMF's ownership and operation of the 107.3 Station are in compliance with the Communications Act of 1934, as amended, the FCC's rules and regulations and all other applicable laws and regulations. EMF does not otherwise know of any reason which would disqualify it under the Communications Act of 1934, as amended, from owning or operating the 107.3 Station, or which would cause the FCC to deny its consent to the assignment of the authorizations and licenses of the 107.3 Station to SummitMedia;

(d) EMF owns and has good title to the 107.3 Station Licenses, free and clear of any lien or encumbrance of any nature whatsoever.

(e) Except for any rulemaking proceedings generally affecting the radio broadcasting industry, there are no claims, legal actions, suits, or governmental investigations in progress or pending, or to EMF's knowledge, threatened with respect to EMF's ownership or operation of the 107.3 Station or otherwise relating to the 107.3 Station Licenses; and

(f) EMF has not engaged a broker in connection with this transaction.

4. REPRESENTATIONS AND WARRANTIES OF SUMMITMEDIA.
SummitMedia hereby represents and warrants that:

(a) SummitMedia is and as of the Closing Date will be a limited liability company organized under the laws of the state of Delaware and duly qualified to transact business in the State of Alabama. This Agreement constitutes the legal, valid and binding obligation of SummitMedia, enforceable in accordance with its terms. SummitMedia has taken all necessary action to authorize the execution, delivery and performance of this Agreement;

(b) Subject to obtaining the approval of the FCC, the execution, delivery and performance of this Agreement by SummitMedia (i) does not and will not require the consent of any third party; and (ii) does not and will not conflict with, result in a breach of, or constitute a default under any material contract, agreement, instrument, license or permit to which SummitMedia is a party or by which SummitMedia may be bound, or under any law, judgment, order, decree, rule, regulation or ruling of any court or governmental instrumentality, which is applicable to SummitMedia;

(c) SummitMedia on the Closing Date will be the holder of the FCC authorizations and licenses for the 102.1 Station as authorized under the Communications Act of 1934, as amended, and such authorizations and licenses shall be in full force and effect. SummitMedia's ownership and operation of the 102.1 Station are in compliance with the Communications Act of 1934, as amended, the FCC's rules and regulations and all other applicable laws and regulations. SummitMedia does not otherwise know of any reason which would disqualify it under the Communications Act of 1934, as amended, from owning or operating the 102.1 Station, or which would cause the FCC to deny its consent to the assignment of the authorizations and licenses of the 102.1 Station to EMF;

(d) On the Closing Date, SummitMedia shall own and have good title to the 102.1 Station Licenses, free and clear of any lien or encumbrance of any nature whatsoever;

(e) Except for any rulemaking proceedings generally affecting the radio broadcasting industry, there are no claims, legal actions, suits, or governmental investigations in progress or pending, or to SummitMedia's knowledge, threatened with respect to SummitMedia's ownership or operation of the 102.1 Station or otherwise relating to the 102.1 Station Licenses; and

(f) SummitMedia has not engaged a broker in connection with this transaction.

5. COVENANTS.

(a) Each party covenants and agrees that between the date hereof and the time of the Closing, EMF, with respect to the 107.3 Station, and SummitMedia, with respect to the 102.1 Station, shall conduct the business of the same in the ordinary course in all material respects. Subject to and without limiting the foregoing, between the date hereof and Closing, except as permitted by this Agreement or with the prior written consent of the other party hereto, which shall not be unreasonably withheld, delayed or conditioned, EMF with respect to the 107.3 Station and SummitMedia with respect to the 102.1 Station shall:

(i) not adversely modify, and in all material respects maintain in full force and effect, the FCC licenses and authorizations for such station;

(ii) promptly enter into with the FCC, and comply, in all material respects, with the terms of, tolling, escrow, assignment and assumption or similar agreements as requested by the FCC to obtain grant of the application described in Paragraph 1 with respect to such station; and

(iii) not agree, commit or resolve to take any actions prohibited by this Paragraph 5(a); and

(iv) not make any engineering or technical change which reduces the power or coverage of the Station or which requires the consent of or filing with the FCC, except as permitted by FCC rules for periods of maintenance or as reasonably necessary due to matters outside of such party's reasonable control;

(b) Following the Closing, EMF shall ensure that any programming on the 102.1 Station is of a format which is not similar to, and does not otherwise conflict with, the programming format of any station then owned, licensed, or under local marketing agreement by SummitMedia as of such time.

(c) After the Closing and prior to EMF's entering into discussions or negotiations with any other person or entity for the assignment or transfer of control of the 102.1 Station Licenses (a "Transaction") to any party that is not a parent, subsidiary, or an affiliate that is controlled by, controls or is under common control with EMF, EMF shall first notify SummitMedia in writing and provide SummitMedia with an opportunity, exercisable in SummitMedia's sole discretion, to exclusively negotiate a Transaction with EMF in good faith for sixty (60) days. If SummitMedia and EMF do not enter into a definitive agreement for a Transaction on mutually acceptable terms and conditions within the sixty (60) day exclusive negotiating window, then EMF shall have the right to negotiate a Transaction with any third party of its choice. In addition, notwithstanding any failure to enter into a Transaction, during the term of this Agreement, EMF shall give prompt written notice to SummitMedia if it should receive any offer to purchase the

102.1 Station Licenses which it intends to accept (an "Offer"). An Offer shall include any proposed transaction (including but not limited to a sale of assets, an assignment, transfer or issuance of equity interests or rights, a recapitalization, or a merger with another entity) that would be deemed a substantial change in ownership or control as contemplated by 47 U.S.C. § 309 and the FCC's rules and published policies. For a period of thirty (30) days after the date the notice is given to SummitMedia by EMF, SummitMedia shall have the exclusive right to offer to purchase the 102.1 Station Licenses for the same price and under substantially equivalent terms and conditions as the Offer. If SummitMedia makes such an offer, EMF shall accept such offer, and the parties shall enter into an appropriate agreement for sale of the applicable assets and licenses to SummitMedia, which shall include representations, warranties, covenants, closing conditions, remedies and other provisions normal and customary in agreements for the sale of the same, but modified to the extent reasonably necessary to reflect the existence of this right of first refusal. If SummitMedia fails to respond of its intention to purchase the 102.1 Station Licenses within the thirty (30) day period, then this right of first refusal shall terminate. This right of first refusal shall be exercisable only to the extent permitted by FCC rules and published policies in effect at the time an Offer is received. For the sake of clarity and to avoid doubt, EMF shall not be obligated to tender an offer to SummitMedia if EMF has no intention of accepting that offer.

(d) For such period of time as EMF owns the 102.1 Station License, SummitMedia shall provide to EMF an HD3 channel designated by SummitMedia. Such HD3 channel to be provided without charge; provided, however, EMF shall be responsible for all costs/fees associated with such HD channel, including, without limitation, all music licenses and ibiquity fees.

(e) At any time prior to or after the Closing, EMF shall have the option to relocate its FM translator, W241AI (Gorgas, AL; Facility ID: 156276) to Summit's master translator antenna (where W297BF and W271BN are located on the Effective Date), such relocation to be at EMF's sole cost and expense (including any costs and expenses associated with any equipment necessary to implement such relocation) for a monthly fee of (i) Five Hundred and 00/100 Dollars (\$500.00), payable by EMF to SummitMedia, and (ii) EMF's pro rata share of all ongoing utilities at such site.

6. INDEMNIFICATION. EMF shall indemnify and hold harmless SummitMedia, its officers, employees and agents from and against any and all losses, claims, debts, demands, obligations, costs, expenses and fees, including attorney's fees, arising out of or resulting from (i) the breach of any of the representations, warranties, covenants, agreements or provisions of this Agreement by EMF, (ii) the exercise or enforcement by SummitMedia of any right, privilege or option granted to it in this Agreement and (iii) the ownership or operations of the 107.3 Station and the 107.3 Station Licenses prior to Closing. Likewise, SummitMedia shall indemnify and hold harmless EMF, its respective officers, employees and agents from and against any and all losses, claims, debts, demands, obligations, costs, expenses and fees, including attorney's fees, arising out of or resulting from (i) the breach of any of the representations, warranties, covenants, agreements or provisions of this Agreement by SummitMedia, (ii) the exercise or enforcement by EMF of any right, privilege or option granted

to it in this Agreement and (iii) the ownership or operations of the 102.1 Station and the 102.1 Station Licenses prior to Closing and the ownership and operations of the 107.3 Station after Closing.

7. **EXPENSES.** Subject to Paragraph 1 hereof, SummitMedia and EMF shall each pay their respective costs and expenses for attorneys, accountants, brokers and advisors retained by or representing them in connection with this Agreement and the transactions described herein. SummitMedia and EMF shall each pay of its own sales, use and transfer taxes levied against such party arising out of this Agreement. SummitMedia and EMF shall equally bear any FCC filing expenses.

8. **CONDITIONS PRECEDENT OF EMF.** All obligations of EMF under this Agreement are subject to the fulfillment, prior to or at the Closing Date, of each of the following conditions:

(a) The FCC shall have granted its approval of the assignment of the 107.3 Station Licenses from EMF to SummitMedia and of the 102.1 Station Licenses from SummitMedia to EMF through a final, non-appealable order.

(b) All representations and warranties of SummitMedia made herein shall be true and correct as of the Closing Date, and SummitMedia shall have delivered to EMF a certificate executed by SummitMedia to such effect.

(c) As of the Closing Date, SummitMedia shall have complied with all covenants and conditions of this Agreement, and SummitMedia shall have delivered to EMF a certificate executed by SummitMedia to such effect.

(d) As of the Closing Date, no claim, action, suit or proceeding concerning the Exchange or seeking to enjoin, restrain, or prohibit the consummation of this transaction shall be pending before any state, local or federal court, the FCC, or any other governmental agency or authority.

(e) SummitMedia shall have executed and delivered to EMF the Closing Documents.

9. **CONDITIONS PRECEDENT OF SUMMITMEDIA.** All obligations of SummitMedia under this Agreement are subject to the fulfillment, prior to or at the Closing Date, of each of the following conditions:

(a) SummitMedia shall have acquired the 102.1 Station Licenses.

(b) The FCC shall have granted its approval of the assignment of the 102.1 Station Licenses from SummitMedia to EMF and of the 107.3 Station Licenses from EMF to SummitMedia through a final, non-appealable order.

(c) All representations and warranties of EMF made herein shall be true and correct as of the Closing Date, and EMF shall have delivered to SummitMedia a certificate executed by EMF to such effect.

(d) As of the Closing Date, EMF shall have complied with all covenants and conditions of this Agreement, and EMF shall have delivered to SummitMedia a certificate executed by EMF to such effect.

(e) As of the Closing Date, no claim, action, suit or proceeding concerning the Exchange or seeking to enjoin, restrain, or prohibit the consummation of this transaction shall be pending before any state, local or federal court, the FCC, or any other governmental agency or authority.

(f) EMF shall have executed and delivered to SummitMedia the Closing Documents.

10. TERMINATION.

(a) If the conditions to Closing set forth in Paragraphs 8 and 9 of this Agreement shall not have been satisfied within a period of twelve (12) months from the date of this Agreement, either EMF or SummitMedia may thereafter terminate this Agreement by giving written notice to the other; provided, however, that the party desiring to terminate shall not then be in breach of this Agreement and have been notified in writing of such breach by the other party hereto.

(b) If either SummitMedia or EMF shall be in breach of this Agreement, and such breach shall not have been cured after ten (10) days' written notice, the other party, if not then in breach and having received written notice thereof, may terminate this Agreement.

11. CLOSING. The Closing Date, as used throughout this Agreement, means the date on which the consummation of the transaction contemplated hereby occurs. The Closing Date shall be within ten (10) days following the consent of the FCC approving the Exchange through a final, non-appealable order, subject to the satisfaction of any other conditions precedent set forth above. The parties hereby acknowledge that the Closing as contemplated in this Agreement shall be conditioned upon all necessary conditions and prerequisites for the sale and purchase for each, including FCC consent, having been satisfied.

12. CONSTRUCTION. This Agreement shall be construed and enforced in accordance with the laws of the State of Alabama, without regard to the conflict of laws provisions thereof.

13. SUCCESSORS AND ASSIGNS. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party hereto; provided, however, either party may freely assign this Agreement to any other affiliated party, including, without limitation, an entity wholly-owned by such party upon the provision of written notice to

the other party hereto. This Agreement shall inure to the benefit of and be binding upon the permitted successors and assigns of the respective parties hereto.

14. **COOPERATION.** EMF and SummitMedia shall each cooperate, take such actions and execute and deliver such documents as may be reasonably requested by either party in order to carry out the provisions and purposes of this Agreement.

15. **NOTICES.** Any notice, demand or request required or permitted to be given under the provisions of this Agreement shall be in writing and shall be deemed to have been duly delivered on the date of personal delivery or the date of receipt if sent by registered or certified mail, postage prepaid and return receipt requested, and shall be deemed to have been received on the date of personal delivery or on the date set forth on the return receipt, to the following addresses or to such other address as any party may request, in the case of EMF, by notifying SummitMedia, and in the case of SummitMedia, by notifying EMF:

To SummitMedia: SummitMedia LLC
Attn: Darryl Grondines
2700 Corporate Drive, Suite 115
Birmingham, Alabama 35242

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

Butler Snow LLP
1819 5th Avenue North, Suite 1000
Birmingham, Alabama 35203
Attn: Russell L. Irby, III

To EMF: Educational Media Foundation
Attn: General Counsel
5700 West Oaks Blvd.
Rocklin, CA 95765

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

David Oxenford, Esq.
Wilkinson, Barker, Knauer LLP
1800 M Street, NW
Suite 800N
Washington, DC 20036

16. **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.

17. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements or understandings.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

SUMMITMEDIA, LLC

By: 

Name: Perry Sanders

Its: VP Finance

Date: 12/28/16

EDUCATIONAL MEDIA FOUNDATION

By: 

Name: Mike Novak

Its: CEO

Date: 12/27/16

[Signature Page to Frequency Exchange Agreement]