

TIME BROKERAGE AGREEMENT

by and among

CUMULUS BROADCASTING LLC

CUMULUS LICENSING LLC

AND

POTENTIAL BROADCASTING, LLC

for

RADIO STATION

WRSR(FM), OWOSSO, MICHIGAN

SEPTEMBER 16, 2011

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## TIME BROKERAGE AGREEMENT

THIS TIME BROKERAGE AGREEMENT (the “Agreement”), made this 16th day of September, 2011, by and among Cumulus Broadcasting LLC, a Nevada limited liability company (“Operator”), Cumulus Licensing LLC, a Nevada limited liability company (“CLL,” and together with Operator, “Licensee”), and Potential Broadcasting, LLC, a Georgia limited liability company (“Programmer”).

WHEREAS, Licensee is the holder of licenses issued by the Federal Communications Commission (“FCC”) for radio station WRSR(FM), Owosso, Michigan (Facility ID 41681) (the “Station”); and

WHEREAS, Programmer has been appointed as the trustee and the Management Trustee under that certain Final Judgment and that certain Preservation of Assets Stipulation and Order (collectively, the “Orders”) issued in *United States of America v. Cumulus Media Inc. et al.*, Case No.1:11-CV-01619 (September \_\_, 2011), and, in such capacity, desires to provide programming and sales responsibilities for the Stations that will be separate and apart from the programming and sales activities of Cumulus Media Inc. and its subsidiaries (collectively, “Cumulus”) and help ensure that the Stations are operated as viable, ongoing businesses that are competitive with Cumulus’ radio stations in the Flint, Michigan Arbitron Metro (the “Metro”); and

WHEREAS, Licensee desires to engage Programmer shall provide programming for broadcast on the Station in accordance with the Orders and the terms and conditions of this Agreement;

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

### **Section 1. Sale of Station Air Time.**

**1.1. Term.** The term of this Agreement (the “Term”) shall commence at 12:01 a.m. on the date hereof (the “Effective Date”), and shall continue in force for a period of ten (10) years from such date unless otherwise terminated as set forth below.

**1.2. Scope.** On the Effective Date, Licensee shall make the Station’s facilities available to Programmer for the broadcast of programming (including advertising) for broadcast on the Station 168 hours per week: provided, that, notwithstanding the foregoing, Licensee shall be entitled to broadcast programming (a) necessary to serve the needs and interests of the Station’s service area, and, to that end, shall have access to the Station between 6 am and 8 am every Sunday morning for such purpose, and (b) as may be required by applicable law, including but not limited to the Communications Act of 1934, as amended (the “Act”), and FCC rules and policies.

**1.3. Consideration.** Programmer shall be entitled to the monthly fee (the “Fee”) set forth on Attachment I annexed hereto. The Fee shall be paid in accordance with the schedule set forth in Attachment I.

#### **1.4. Licensee Responsibilities.**

In accordance with the Act and FCC rules and policies, Licensee will retain ultimate responsibility for the management and operations of the Station during the Term of this Agreement. Except as otherwise expressly provided in this Agreement, Licensee shall (a) have sole responsibility for the Station's compliance with all applicable provisions of the Act, the rules, regulations and policies of the FCC, and all other applicable laws and regulations, (b) have sole responsibility for the timely payment of all operating costs of the Station (except those for which a good faith dispute has been raised with the vendor or taxing authority), including but not limited to maintenance of the studio and transmitting facility and costs of electricity, (c) employ at its expense (i) a general manager who will direct the day-to-day operations of the Station, (ii) at least one non-management level employee, as required by the FCC, and (iii) such other personnel as may be necessary for the broadcast transmission of Licensee's own programs, and (d) subject to Section 1.5(b) below, be responsible for the payment of all salaries, taxes, insurance and other related costs and expenses for all Station personnel employed by Licensee. Whenever on the Station's premises, all personnel, including Programmer's employees and agents, shall be subject to the overall supervision of Licensee's general manager.

#### **1.5. Programmer Responsibilities.**

(a) Subject to the limitations set forth in Section 1.2 and elsewhere in this Agreement, Programmer shall (i) file reports with the United States Department of Justice (the "DOJ") as required by the Orders, have all the rights, power and authority of the trustee or, as the case may be, the Management Trustee set forth in the Orders and otherwise abide by the obligations of the trustee or, as the case may be, the Management Trustee under the Orders; (ii) be solely responsible for providing and otherwise preserving, maintaining, and managing the programming to be broadcast over the Station 168 hours each week, (iii) have sole authority and responsibility for deciding what programming to broadcast on the Station to ensure that the Station is and remains an independent, ongoing, and economically viable competitor with radio stations owned and operated by Cumulus in the Metro, (iv) have sole authority and responsibility for managing the sale of time on such programming at such prices and under such other conditions as Programmer shall impose in the exercise of its sole discretion, and (v) remit to Licensee whatever monies are derived from the sale of time on such programming after payment of the fee set forth in Attachment I and the payment of Licensee's expenses pursuant to subsection (b) of this section. In accordance therewith, Programmer shall (x) have authority to hire or engage whatever employees, attorneys, accountants, and other advisors that Programmer deems appropriate or necessary to exercise its rights and fulfill its responsibilities under this Agreement, and (y) be solely responsible for the salaries, fees, commissions, taxes, insurance and all other related costs and expenses for all personnel, including attorneys, accountants, and other advisors, involved in the exercise of its rights or the fulfillment of its responsibilities under this Agreement, including the production and broadcast of its programs (including but not limited to on-air personalities, engineering personnel, sales personnel, traffic personnel, board operators and other programmers and production staff members). In fulfilling its responsibilities under this section, Programmer shall maintain the confidentiality of its books, records, and competitively-sensitive sales, marketing, promotion and pricing information and not make them available to Cumulus or Licensee.

(b) In addition to the payments required under subsection (a) of this section, Programmer shall (i) reimburse Licensee for all reasonable expenses incurred by Licensee in the operation of the Station and (ii) after deduction of the Fee, pay to the Licensee all monies generated from operation of the Station after deduction of (x) expenses reasonably incurred by Programmer in the operation of the Station and (y) such reserves as Programmer reasonably determines are necessary to cover anticipated expenses. Such reimbursement shall be made in accordance with the schedule included in Attachment II once a month within ten (10) business days after Programmer's receipt of invoices and other documentation reflecting the expenses incurred by Licensee in the prior month: provided, that Licensee and Programmer may at any time establish a schedule of payments to be made by Programmer to Licensee on another date each month to cover routine expenses which are incurred each month by Licensee. To the extent there is any dispute as to whether an expense should be reimbursed by Programmer under this subsection, the parties shall engage in good faith discussions to resolve such dispute. If such dispute cannot be resolved within 30 days after Licensee's presentation of an invoice for reimbursement, the parties shall refer the matter to a mutually agreeable third party (such as a certified public accountant or a qualified appraiser of broadcast properties) whose decision shall be final and binding. A dispute over any particular item or items shall not relieve Programmer of its responsibility under this subsection to make a timely payment to Licensee of those items which are not in dispute. Any payments required to be made by Programmer under this subsection that are not paid when due shall bear interest at the rate of 10 percent per annum from the date due until paid in full.

(c) Notwithstanding anything to the contrary in this Agreement, if Programmer determines that revenues generated from operation of the Station in any particular month will be insufficient to cover the Fee, Programmer's obligation to reimburse Licensee for its expenses under subsection (b) of this section, and the expenses that Programmer reasonably incurs in the operation of the Station for that particular month, then, in that event, Programmer shall provide Licensee with an accounting for that particular month which identifies the scope of the deficiency (the "Shortfall"), and Licensee shall be obligated to make a payment to Programmer to cover the Shortfall within ten (10) business days after Programmer's receipt of the aforementioned accounting.

**1.6. Contracts.** Programmer will not enter into any third-party contract, lease or agreement that will bind Licensee in any way.

## **Section 2. Station Programming Policies.**

### **2.1. Licensee Authority.**

(a) Licensee shall retain ultimate responsibility to broadcast programming to meet the needs and interests of viewers in the Station's service area. Licensee therefore retains the right to broadcast specific programming on issues of importance to the service area. Licensee shall also retain the right to interrupt Programmer's programming in case of an emergency or for programming which, in the good faith judgment of Licensee, is of greater local, regional or national public importance. In no event, however, shall Licensee (i) reject, preempt or change any of Programmer's programming, including advertising included within such programming, for competitive reasons or purposes or (ii) have the right to manage the sale

of advertising on Programmer's programming, including the right to set or negotiate prices for such advertising. Licensee shall coordinate with Programmer the Station's hourly Station identification and any other announcements required to be aired by FCC rules. Licensee shall continue to maintain a main studio, as that term is defined by FCC rules and policies, within the Station's principal community contour, shall maintain a local public inspection file for the Station in accordance with FCC rules, regulations and policies, and shall prepare and place in such inspection file in a timely manner all material required by of the FCC's rules, including without limitation the Station's quarterly issues and programs lists. Programmer shall, upon request by Licensee, provide Licensee with such information concerning Programmer's programs and advertising as is necessary to assist Licensee in the preparation of such material. Licensee shall also maintain the Station's logs, receive and respond to telephone inquiries, and control and oversee any remote control point which may be established for the Station.

(b) Notwithstanding any other provision in this Agreement, except for the broadcast of programming to serve the needs and interests of the Station's service area as set forth in Section 1.2 hereof, Licensee shall provide the United States Department of Justice (the "DOJ") with at least fourteen (14) days prior notice of any action which Licensee deems necessary to fulfill its obligations under the Act and FCC rules and policies, including any action relating to Programmer's responsibilities as set forth in Section 1.5; provided, that Licensee may take such action with on shorter notice to the DOJ if Licensee reasonably determines that such expedited action is necessary to fulfill its obligations under the Act and FCC rules and policies.

**2.2. Compliance with FCC Rules and Policies.** Programmer shall comply in all material respects with the Act and all published rules and policies of the FCC. Programmer shall furnish or cause to be furnished the artistic personnel and material for the programs as provided by this Agreement and all programs shall be prepared and presented in conformity with the rules and policies of the FCC. All advertising spots and promotional material or announcements shall comply with applicable federal, state and local regulations and policies and shall be produced in accordance with quality standards established by Programmer. If Licensee determines, in the exercise of Licensee's sole discretion, that any broadcast material supplied by Programmer 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), 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 suspension or cancellation of such material. Programmer shall use reasonable efforts to notify Licensee 24 hours in advance of material changes in the programming provided by Programmer for broadcast on the Station.

**2.3. Public Service Programming.** Programmer shall cooperate as reasonably directed by Licensee to help Licensee ensure the broadcast of programming responsive to the needs and interests of the Station's service area in compliance with FCC rules and policies. Upon reasonable request from Licensee, Programmer shall also provide Licensee other information to enable Licensee to prepare records and reports required by the FCC or other local, state or federal government entities.

**2.4. Programmer Compliance with Copyright Act.** Programmer represents and warrants to Licensee that Programmer has unrestricted authority to broadcast its programming on the Station and that Programmer shall not broadcast any material in violation of the Copyright Act. The right to use programming supplied by Programmer and to authorize its use in any manner shall be and remain vested in Programmer.

**2.5. Sales Expenses.** Programmer shall be responsible for payment of all expenses attributable to Programmer's sale of advertising time on the Station, including, but not limited to, commissions due to any national sales representative engaged by it for the purpose of selling national advertising which is carried during the programming it provides to Licensee.

**2.6. Payola.** Neither Programmer nor its employees shall accept any consideration, compensation, gift or gratuity of any kind whatsoever, regardless of its value or form, including, but not limited to, a commission, discount, bonus, material, supplies or other merchandise, services or labor (collectively, "Consideration"), whether or not pursuant to written contracts or agreements between Programmer and merchants or advertisers, unless the payer is identified as required by the Act and FCC rules in the program for which Consideration was provided as having paid for or furnished such Consideration. On each anniversary date of this Agreement, or more frequently at the request of the Licensee, Programmer shall provide Licensee with a Payola Affidavit executed by Programmer and separate Payola Affidavits executed by each of its employees involved with the Station, with each Payola Affidavit to be substantially in the form attached hereto as Attachment III.

**2.7. Control of the Station.** Programmer shall not, directly or indirectly, assume or interfere with Licensee's ultimate responsibility for the Station. To ensure that Licensee shall have the unfettered ability to exercise that ultimate responsibility, Licensee shall be permitted unrestricted access to and the right to use at all times the Station's transmitter and studio facilities. In performing its responsibilities hereunder, Licensee shall use all commercially reasonable efforts to avoid interfering with Programmer's rights and responsibilities under this Agreement, and in no event shall Licensee interfere with Programmer's rights and responsibilities under this Agreement for any competitive reason or purpose.

### **Section 3. Indemnification.**

**3.1. 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) Damages relating to violations of the Copyright Act, the Act or any rule, regulation or policy of the FCC, forfeitures imposed by the FCC, slander, defamation or other third-party claims relating to programming provided by Programmer, and Programmer's broadcast and sale of advertising time on the Station.

**3.2. 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) Damages relating to violations of the Copyright Act, the Act or any rule, regulation or policy of the FCC, forfeitures imposed by the FCC, slander, defamation or other third-party claims relating to programming provided by Licensee, and Licensee's broadcast and sale of advertising time on the Station.

**3.3. Limitation.** Neither Licensee nor Programmer shall be entitled to indemnification pursuant to this section unless such claim for indemnification is asserted in writing delivered to the other party within the time frame set forth in Section 3.6.

**3.4. 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 timely give notice shall not extinguish the Claimant's right to indemnification only to the extent that such failure materially 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 the purposes of such investigation, the Claimant agrees to 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 thirty-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 do not 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 and successors and permitted assigns of any Claimant although for the purpose of the procedures set forth in this Section 3.4, any indemnification claims by such parties shall be made by and through the Claimant.

**3.5. Challenge to Agreement.** Subject to the terms of Section 7.10, 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. Licensee and Programmer shall bear any and all expenses incurred by each of them for such defense, including counsel fees. 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.

**3.6. Survival Period.** The representations and warranties of the parties under this Agreement shall survive for a period of eighteen (18) months after termination of this Agreement in accordance with its terms. Any claim for indemnification under this section must be made on or before expiration of that two-year period.

#### **Section 4. Access to Programmer Materials and Correspondence.**

**4.1. Confidential Review.** Licensee shall be entitled to review at its discretion from time to time on a confidential basis any of Programmer's programming material it may reasonably request. Programmer shall promptly provide Licensee with copies of all correspondence and complaints received from the public (including any telephone logs of complaints called in) and copies of all program logs and promotional materials. Nothing in this section shall entitle Licensee to review the internal corporate or financial records of the Programmer.

**4.2. Political Advertising.** Programmer shall assist Licensee in complying with all provisions of the Act and with all rules and policies of the FCC regarding political broadcasting. Licensee shall promptly supply to Programmer, and Programmer shall promptly supply to Licensee, such information, including all inquiries concerning the broadcast of political advertising, as may be necessary to comply with FCC rules and policies, including the lowest unit rate, equal opportunities, reasonable access, political file and related requirements of applicable law. Licensee, in consultation with Programmer, shall develop a statement which discloses its political broadcasting rates and policies to political candidates, and Programmer shall follow those rates and policies in the sale of political programming and advertising. In the event that Programmer fails to satisfy the political broadcasting requirements under the Act and the rules and policies of the FCC, then, to the extent reasonably necessary to assure compliance with such requirements and rules, Programmer shall either provide rebates to political advertisers or release broadcast time and/or advertising availabilities to Licensee at no cost to Licensee for use by the affected political candidates.

## **Section 5. Termination And Remedies Upon Default**

### **5.1. Termination.**

(a) 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 hereof, upon the occurrence of any of the following:

(i) subject to the provisions of Section 7.10, this Agreement is declared invalid or illegal in whole or material part by an order or decision of a governmental authority or court of competent jurisdiction and such order or decision has not been stayed or has become final (meaning that it is no longer subject to further administrative or judicial reconsideration or review and the time periods for requesting or initiating such review under applicable law have expired without such request having been made);

(ii) By Licensee, if Programmer is in material breach of its obligations under this Agreement and has failed to cure such breach within thirty (30) days of notice from Licensee;

(iii) By Programmer, if Licensee is in material breach of its obligations under this Agreement and has failed to cure such breach within thirty (30) days of notice from Programmer;

(iv) the mutual consent of both parties;

(v) a material change in FCC rules, policies or precedent that would cause this Agreement to be in violation thereof, and (x) such change has become final and is no longer subject to further administrative or judicial reconsideration or review and (y) this Agreement cannot be reformed, in a manner reasonably acceptable to Programmer and Licensee, to remove and/or eliminate the violation: provided, that, in the event the Agreement is terminated pursuant to this paragraph, Licensee shall use commercially reasonable efforts (which shall not include 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 at least once a month of any accounts receivable collected; or

(vi) upon the assignment of the Station's FCC licenses to Programmer or a third party.

(b) During any period prior to the effective date of any termination of this Agreement, Programmer and Licensee shall cooperate in good faith to ensure that the Station's operations will continue, to the extent feasible, in accordance with the terms of this Agreement and in a manner that will minimize, to the extent feasible, the resulting disruption of the Station's ongoing operations.

**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 Licensee, 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 this Agreement, and Licensee will not be liable to Programmer for reimbursement or reduction of the consideration owed to Licensee.

**5.3. 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 breach of this Agreement by Licensee or Programmer.

## **Section 6. Representations and Warranties.**

**6.1. By Licensee.** Each of Operator and CLL represent and warrant to Programmer that (i) they each have all requisite limited liability company 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 each of them hereunder, (ii) the execution, delivery, and performance by Operator and CLL of this Agreement and the documents contemplated hereby have been duly authorized by all necessary limited liability company actions on the part of each of Operator and CLL, (iii) this Agreement has been duly executed and delivered by Operator and CLL and constitutes the legal, valid, and binding obligation of each of Operator and CLL, enforceable against Operator and CLL 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 (iv) the execution, delivery, and performance by Operator and CLL of this Agreement and the documents contemplated hereby (with or without the giving of notice, the lapse of time, or both): (x) do not require the consent of any third party, (y) will not conflict with any provision of the organizational documents of either Operator or CLL; and (z) will not conflict with, constitute grounds for termination of, result in a breach of, or constitute a default under, any material agreement, instrument, license, or permit to which either Operator or CLL is a party or by which either Operator or CLL is bound.

**6.2. By Programmer.** Programmer represents and warrants to Licensee that (i) it has all requisite limited liability company 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, (ii) the execution, delivery, and performance by Programmer of this Agreement and the documents contemplated hereby have been duly authorized by all necessary actions on the part of Programmer, (iii) 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 (iv) 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): (x) do not require the consent of any third party, (y) will not conflict with any provision of the organizational documents of Programmer; and (z) will not conflict with, constitute grounds for termination of, result in a

breach of, or constitute a default under, any material agreement, instrument, license, or permit to which Programmer is a party or by which it is bound.

## **Section 7. Miscellaneous.**

### **7.1. Assignment.**

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

b. No party may assign its rights and obligations under this Agreement without the prior written consent of the other parties: 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 (although Programmer would continue to remain liable in that event).

**7.2. Call Letters.** Upon the request of Programmer, Licensee shall apply to the FCC for authority to change the call letters of the Station (with the consent of the FCC) to such call letters that Programmer shall reasonably designate. Licensee shall coordinate with Programmer any proposed changes to the call letters of the Station before taking any action to change such letters.

**7.3. Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original but both of which together will constitute one and the same instrument.

**7.4. Entire Agreement.** This Agreement (including the Attachments hereto) embodies the entire agreement and understanding of the parties relating to the operation of the Station and supersede any and all prior and contemporaneous agreements and understandings of the parties. No amendment to this Agreement will be effective unless evidenced by an instrument in writing signed by the parties.

**7.5. Taxes.** Licensee and Programmer shall each pay their 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.

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

**7.7. 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 Act and the rules and policies of the FCC. The construction and performance of the Agreement will be governed by the laws of the State of Michigan without regard to conflict of law principles.

**7.9. 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, by commercial overnight delivery service, or by email or facsimile (in each case with

written confirmation of receipt), (c) deemed to have been given on the date of personal delivery or the date set forth in the records of the delivery service or on the written confirmation, and (d) addressed as follows:

To Programmer: Potential Broadcasting, LLC  
205 Marina Drive  
St. Simons Island, GA 31522  
Attn: Edward N. Esserman, Member  
Tele: (912) 634-6575  
Fax: (912) 634-5770

With copy to: Lerman Senter PLLC  
2000 K Street, NW  
Suite 600  
Washington, DC 20006-1809  
Attn: Sally Buckman  
Tele: (202) 416-6762  
Fax: (202) 293-7783

To Licensee: Cumulus Broadcasting LLC  
Cumulus Licensing LLC  
3280 Peachtree Road, NW  
Suite 2300  
Atlanta, GA 30305  
Attn: Richard S. Denning, Esq.  
Tele: (404) 260-6677  
Fax: (404) 260-6877

With copy to: Dickstein Shapiro LLC  
1825 Eye Street, NW  
Washington, DC 20006-5403  
Attn: Lewis J. Paper, Esq.  
Tele: (202) 420-2265  
Fax: (202) 420-2201

**7.10. 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 court or governmental authority 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 and policies, 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.

**7.11. No Joint Venture.** Nothing in this Agreement shall be deemed to create a joint venture between Licensee and Programmer.

**7.12. Remedies.** In the event that any party breaches or threatens to breach any provision of this Agreement, the other party or parties shall be entitled to seek any remedy available at law or equity, including, if appropriate, specific performance. Notwithstanding anything to the contrary in this Agreement, the remedy of specific performance will be available to Programmer and Licensee for any breach or threatened breach by the other party or parties of its or their obligations under Section 2.2 and the proviso in Section 1.3 of this Agreement. If any party does seek specific performance for an actual or threatened breach of such obligations, the other party or parties shall waive the defense that the moving party does have an adequate remedy at law. If any party institutes litigation to enforce its rights under this Agreement, the prevailing party shall be reimbursed by the other party for all reasonable expenses incurred thereby, including reasonable attorney's fees.

**7.13 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 any party's enforcement of any right hereunder shall, in and of itself, be deemed to be a waiver.

**7.14. Compliance with Orders.** Programmer shall promptly advise the DOJ in writing (with a copy to Beneficiaries) if and when the Trustee determines that the Cumulus is not complying with the Orders.

**7.15. Certifications.**

(a) Licensee hereby certifies that it maintains ultimate control over the Station's facilities, including specifically control over Station finances, personnel and programming.

(b) Programmer hereby certifies that this Agreement complies with the provisions of paragraphs (a), (c) and (d) of Section 73.3555 of FCC rules.

*[Remainder of the Page Intentionally Left Blank]*

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

CUMULUS BROADCASTING LLC

By: Richard S. Denning  
Richard S. Denning  
Senior Vice President & General Counsel

CUMULUS LICENSING LLC

By: Richard S. Denning  
Richard S. Denning  
Senior Vice President & General Counsel

POTENTIAL BROADCASTING, LLC

By: \_\_\_\_\_  
Edward N. Esserman  
Sole Member



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

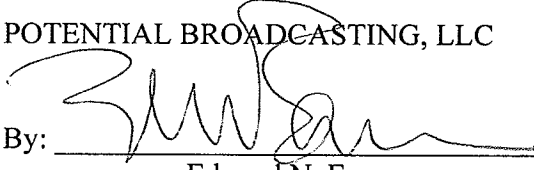
CUMULUS BROADCASTING LLC

By: \_\_\_\_\_  
Richard S. Denning  
Senior Vice President & General Counsel

CUMULUS LICENSING LLC

By: \_\_\_\_\_  
Richard S. Denning  
Senior Vice President & General Counsel

POTENTIAL BROADCASTING, LLC

By:  \_\_\_\_\_  
Edward N. Esserman  
Sole Member

## **ATTACHMENT II**

### **STATION EXPENSES & OPERATIONS**

Programmer shall reimburse Licensee for the following reasonable and necessary Station expenses incurred in the ordinary course of business: \*

- (1) Tower Lease Rent and Utility Payments
- (2) Property Insurance and Taxes
- (3) Fees Payable to Governmental Authorities
- (4) Administrative Expenses
- (5) Equipment Maintenance and Repair
- (6) Studio Lease Rent
- (7) Salaries and Benefits for Employees
- (8) Professional Fees and Expenses for lawyers, engineers, and accountants (but not including fees and expenses related to the negotiation and preparation of this Agreement)

All payments pursuant to this Agreement shall be made by delivery of a check by overnight courier to Licensee at the address set forth in Section 7.9. Any amount that is payable on a Saturday, Sunday or public holiday shall be made on the next succeeding business day.

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\* Not to include expenses related to company overhead.

## **ATTACHMENT III**

### **Payola Statement**

# FORM OF PAYOLA AFFIDAVIT

County of \_\_\_\_\_ )  
State of \_\_\_\_\_ ) SS:

# ANTI-PAYOLA/PLUGOLA AFFIDAVIT

\_\_\_\_\_, being first duly sworn, hereby states as follows:  
Print Name

1. I am \_\_\_\_\_ for \_\_\_\_\_.  
Position Employer
2. I have acted in the above capacity since \_\_\_\_\_, \_\_\_\_\_.  
month year
3. To my knowledge, no matter has been broadcast by [CALL SIGN] in [COMMUNITY OF LICENSE, STATE] (the “Station”) for which money, service or other valuable consideration has been directly or indirectly paid, promised to, charged, or accepted by or from any third party, including, without limitation, any individual, general or limited partnership, corporation, firm, limited liability company or partnership, association or any other legal entity (collectively, “Person”), which matter at the time of broadcast was not announced or otherwise indicated as paid for or furnished by such Person.
4. To my knowledge, no matter has been broadcast by the Station for which money, service or other valuable consideration has been directly or indirectly paid, promised to, charged, or accepted by the Station or by any independent contractor engaged by the Station in furnishing programs, from any Person, which matter at the time of broadcast was not announced or otherwise indicated as paid for or furnished by such Person.
5. I will not pay, promise to pay, request, or receive any money, service or any other valuable consideration, direct or indirect, from any Person in exchange for purposes of influencing, or attempting to influence, the production or preparation of any matter broadcast on the Station.
6. Except as set forth in the Appendix to this affidavit, neither I nor my immediate family (which includes any spouse and children) have any present direct or indirect ownership interest in (other than less than 5% of the voting stock in a corporation whose stock is

publicly traded), serve as an officer or director of (whether with or without compensation), or serve as an employee of, any Person engaged in any of the following:

- a. the publishing of music;
- b. the production, distribution (including wholesale and retail sales outlets), manufacture or exploitation of music, films, tapes, recordings or electronic transcriptions of any program material intended for radio or television broadcast use;
- c. the exploitation, promotion, or management of individuals rendering artistic, production and/or other services in the entertainment industry;
- d. the ownership or operation of radio or television stations;
- e. the wholesale or retail sale of records or CDs made available for purchase by the public; or
- f. advertising on the Station.

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Signature

Subscribed and sworn to before me

This \_\_\_\_ day of \_\_\_\_\_, 20 \_\_.

---

Notary Public

My Commission expires: \_\_\_\_\_.