

## **ASSET PURCHASE AGREEMENT**

ASSET PURCHASE AGREEMENT, dated as of July 7, 2014 (this "Agreement"), by and between EDUCATIONAL MEDIA FOUNDATION, a California non-profit corporation ("Buyer"), and RED MOUNTAIN BROADCASTING, LLC, an Alabama limited liability company ("Seller").

### **WITNESSETH:**

*WHEREAS*, Seller is the licensee of FM translator station W265CG, Tuscaloosa, Alabama (Channel 265, 100.9 MHz, FIN 148566) (the "Station"), pursuant to authorizations (the "FCC Authorizations") issued by the Federal Communications Commission (the "FCC"); and

*WHEREAS*, on the terms and conditions described herein, Seller desires to sell and Buyer desires to acquire certain of the assets to be owned by Seller and used in connection with the operation of the Station.

*NOW, THEREFORE*, in consideration of the foregoing and of the mutual promises herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

#### **1. Sale of Assets.**

(a) On the Closing Date (as hereinafter defined), Seller shall sell, assign and transfer to Buyer, and Buyer shall purchase and assume from Seller, the following assets used in connection with the operation of the Station (the "Assets") (but excluding the Excluded Assets described in subparagraph (b) below):

(i) Certain of Seller's equipment and other tangible personal property used in the transmission operations of the Station (the "Tangible Personal Property"), as set forth on Schedule 1 hereto;

(ii) Licenses, permits and other authorizations, including the FCC Authorizations (collectively, the "Licenses"), issued by the FCC, to Seller in connection with the operations of the Station, as set forth on Schedule 2 hereto.

(iii)

(b) Seller shall not sell, assign or transfer to Buyer any assets, of whatever kind or nature, wherever located, which are held by Seller and used or useful in connection with the operations or ownership of any station or stations other than the Station, including any privileges, rights, interests and claims associated therewith (the "Excluded Assets") and specifically including, without limitation, the following:

(i) Cash on hand and in banks (or their equivalents), and accounts receivable arising out of the operation of the Station prior to Closing;

(ii) All rights of Seller under all contracts, leases (other than the Lease), and agreements, including contracts of insurance and insurance proceeds of settlement and insurance claims made by Seller relating to property or equipment repaired, replaced, restored by Seller prior to the Closing Date;

(iii) All pension, profit-sharing, retirement, stock purchase or savings plans or trusts and any assets thereof and all other employee benefit plans;

(iv) All deposits and all prepaid expenses and taxes; and

(v) Seller's corporate records.

(vi) All tangible and intangible personal and real property used or useful in connection with all of Seller's broadcast properties excluding the Station.

2. **Consideration.** Upon the terms and subject to the conditions contained in this Agreement, and in consideration of the actions taken by Buyer pursuant to Section 2 of the July 19, 2013, Settlement Agreement between Mark Snow and Buyer, (approved by the FCC through a Joint Request filed with the FCC on July 19, 2013), and Five Hundred Dollars (\$500.00), Mark Snow, a Member of Seller, under Section 1, agreed to join with Buyer to seek FCC approval for and effectuate the assignment of the Station from Seller to the Buyer. The foregoing consideration constitutes the purchase price (the "Purchase Price"). The cash portion of the Purchase Price will be paid by wire transfer of immediately available funds at Closing.

3. **FCC Consent; Assignment Application.** Buyer and Seller shall execute, file and vigorously prosecute an application with the FCC (the "Assignment Application") requesting its consent to the assignment, from Seller to Buyer, of all FCC Authorizations pertaining to the Station (the "FCC Consent") at a date not later than five (5) business days after the date hereof. Buyer and Seller shall take all reasonable steps to cooperate with each other and with the FCC to secure such FCC Consent without delay, and to promptly consummate this Agreement in full.

4. **Closing Date; Closing Place.** The closing (the "Closing") of the transactions contemplated by this Agreement shall occur ten (10) days following the date on which the FCC Consent shall have become a Final Order (as hereinafter defined) (the "Closing Date") and the other conditions to closing set forth in Section 8 have either been waived or satisfied. For purposes of this Agreement, the term "Final Order" means action by the FCC consenting to an application that is not reversed, stayed, enjoined, set aside, annulled or suspended, and with respect to which action no timely request for stay, petition for rehearing or appeal is pending, and as to which the time for filing any such request, petition or appeal or reconsideration by the FCC on its own motion has expired. The Closing shall be held by mail, facsimile, or electronic mail, as the Parties may agree.

5. **Representations and Warranties of Seller.** Seller hereby makes the following representations and warranties to Buyer:

(a) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Alabama. Seller has the power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby.

This Agreement has been duly and validly executed and delivered by Seller and constitutes the legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency or other laws affecting generally the enforcement of creditors' rights or the application of principles of equity.

(b) Schedule 1 hereto contains a list of the Tangible Personal Property owned by Seller that shall be transferred to Buyer. Seller owns and has, and will have on the Closing Date, good and marketable title to the Tangible Personal Property. Other than as specifically set forth in this Section 5(b), each material item of Tangible Personal Property shall be conveyed to Buyer without representation or warranty, "as-is, where-is."

(c) Schedule 2 hereto contains a true and complete list of the FCC Authorizations that are required by the FCC to operate the Station. The FCC Authorizations are in full force and effect, and so far as known to Seller, unimpaired by any act or omission of Seller. Seller lawfully holds each of the FCC Authorizations listed on Schedule 2, and Seller is aware of no restrictions or conditions that would limit in any material respect the operations of the Station, except such conditions as are stated on the face thereof, or as generally applicable pursuant to FCC rules and policies.

(d) No representation or warranty made by Seller in this Agreement, and no statement made in any certificate, document, exhibit or schedule furnished or to be furnished in connection with the transactions herein contemplated, contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make such representation or warranty or any such statement not misleading.

(e) There is no broker or finder or other person who would have any valid claim for a commission or brokerage in connection with this Agreement or the transaction contemplated hereby as a result of any agreement, understanding or action by Seller.

6. **Representations and Warranties of Buyer.** Buyer hereby makes the following representations and warranties to Seller:

(a) This Agreement has been duly and validly executed and delivered by Buyer and constitutes the legal, valid and binding agreements of Buyer enforceable in accordance with their respective terms, except as may be limited by bankruptcy, insolvency or other laws affecting generally the enforcement of creditors' rights or the application of principles of equity.

(b) Buyer is legally, financially and technically qualified to acquire and become the licensee of, acquire, own and operate the Station under the Communications Act of 1934, as amended (the "Communications Act") and the rules, regulations and policies of the FCC. There are no facts that would, under existing law and the existing rules, regulations, policies and procedures of the FCC, disqualify Buyer as an assignee of the FCC Authorizations or as the owner and operator of the Station. No waiver of any FCC rule or policy with respect to Buyer, its business or operations, is necessary for the FCC Consent to be obtained. Buyer has and will have available on the Closing Date sufficient funds to enable it to consummate the transactions contemplated hereby.

(c) There is no broker or finder or other person who would have any valid claim against Seller for a commission or brokerage in connection with this Agreement or the transactions contemplated hereby as a result of any agreement, understanding or action by Buyer.

(d) No representation or warranty made by Buyer in this Agreement, and no statement made in any certificate, document, exhibit or schedule furnished or to be furnished in connection with the transactions herein contemplated, contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make such representation or warranty or any such statement not misleading to Seller to the best of Buyer's knowledge.

(e) **Covenants.** Seller covenants with Buyer that, between the date hereof and the Closing Date, Seller shall take all reasonable actions necessary to keep the FCC Authorizations, including all material permits and applications pending before the FCC, valid and in full force and effect. Seller assisted Buyer in contacting a principal of Bunn Brothers Materials, Inc., owner of the Station's existing tower site, to facilitate discussions between Buyer, as lessee, and Bunn Brothers Materials, Inc., as lessor, for a lease agreement effective on the Closing Date; however, Seller is not obligated to take any other actions. It is Buyer's sole responsibility to negotiate the terms and conditions of a tower lease agreement and Buyer shall use its best efforts to enter into a tower lease prior to Closing Date reflecting the terms set forth in Schedule 3.

**7. Conditions Precedent to Obligation to Close.**

(a) The performance of the obligations of Seller hereunder is subject to the satisfaction of each of the following express conditions precedent, unless waived in writing by Seller:

(i) Buyer shall have performed and complied in all material respects with all of the agreements, obligations and covenants required by this Agreement to be performed or complied with by Buyer prior to or as of the Closing Date;

(ii) The representations and warranties of Buyer set forth in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of the Closing Date;

(iii) The FCC Consent contemplated by this Agreement shall have become a Final Order;

(iv) Buyer shall have delivered to Seller, on the Closing Date, the documents and payments required to be delivered pursuant to Section 9(b);

(b) The performance of the obligations of Buyer hereunder is subject to the satisfaction of each of the following express conditions precedent:

(i) Seller shall have performed and complied in all material respects with all the agreements, obligations and covenants required by this Agreement to be performed or complied with by Seller prior to or as of the Closing Date;

(ii) The representations and warranties of Seller set forth in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of the Closing Date;

(iii) The FCC Consent contemplated by this Agreement shall have been granted;

(iv) The FCC Authorizations shall be in full force and effect and there shall be no proceedings pending before the FCC to revoke, cancel, rescind, or refuse to renew any of such FCC Authorizations;

(v) Bunn Brothers Materials, Inc., as lessor, and Buyer, as lessee, shall have entered into a tower lease by which Buyer shall acquire the right to use and occupy the current tower site with rent and other basic as outlined in Schedule 3; and

(vi) Seller shall have delivered to Buyer, on the Closing Date, the documents required to be delivered pursuant to Section 9(a).

**8. Closing Deliveries.**

(a) At the Closing, Seller will deliver to Buyer the following, each of which shall be in form and substance satisfactory to Buyer and its counsel:

(i) A Bill of Sale;

(ii) An Assignment and Assumption of the Station's FCC Licenses;

(iii) An Assignment and Assumption of Seller's rights, interests, and obligations under the Lease, together with consent of the Lessor for such assignment; and

(iv) Such other documents, instruments and agreements necessary to consummate the transactions contemplated by this Agreement or as Buyer shall reasonably request, each in form and substance satisfactory to Buyer and its counsel.

(b) Prior to or at the Closing, Buyer will deliver to Seller the following, each of which shall be in form and substance satisfactory to Seller and its counsel:

(i) The payments to be made pursuant to Section 2(a) hereof;

(ii) An Assignment and Assumption of the Station's FCC Licenses;

(iii) An Assignment and Assumption of Seller's rights, interests and obligations under the Lease, together with consent of the Lessor for such assignment; and

(iv) Such other documents, instruments and agreements necessary to consummate the transactions contemplated by this Agreement or as Buyer shall reasonably request, each in form and substance satisfactory to Seller and their counsel.

9. **Indemnification.** Each party agrees to indemnify the other for any breach of representations, warranties and covenants contained herein. The several representations and warranties of Seller and Buyer contained in or made pursuant to this Agreement shall expire three months after the Closing Date. Notwithstanding the foregoing, the maximum that Buyer may recover by indemnification or otherwise from Seller as post closing claims shall be limited to an aggregate of Five Thousand Dollars (\$5,000), inclusive of any costs and expenses.

10. **Termination.**

(a) 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 and such denial shall have become a Final Order; or (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 Seller, if the Closing has not occurred within 12 months of the date hereof.

(b) Upon a termination of this Agreement by any party due to a breach by the other party of any of its material obligations under this Agreement, the non-breaching party may seek all rights and remedies that it may have in equity or at law, however, any damages shall be limited to an amount no greater than Five Thousand Dollars (\$5,000), inclusive of any costs and expenses.

11. **Notices.** All notices, elections and other communications permitted or required under this Agreement shall be in writing and shall be deemed effectively given or delivered upon personal delivery (or refusal thereof), or twenty-four (24) hours after delivery to a courier service which guarantees overnight delivery, or five (5) days after deposit with the U.S. Post Office, by registered or certified mail, postage prepaid, and, in the case of courier or mail delivery, addressed as follows (or at such other address for a party as shall be specified by like notice):

If to Seller, to:

Educational Media Foundation  
5700 West Oaks Boulevard  
Rocklin, CA 95765  
Attn: Mike Novak, President/CEO

with a copy (which shall not  
constitute notice) to:

David Oxenford, Esq.  
Wilkinson, Barker, Knauer, LLP  
2300 N Street, NW; Suite 700  
Washington, D.C. 20037

If to Buyer, to:

Red Mountain Broadcasting, LLC  
PO box 70937  
Tuscaloosa, AL 35407

with a copy (which shall not  
constitute notice) to:

M. Scott Johnson, Esq.  
1300 North 17<sup>th</sup> Street  
11<sup>th</sup> Floor  
Arlington, VA 22209

12. **Governing Law; Venue.** This Agreement shall be construed and enforced in accordance with the laws of the State of Alabama, without giving effect to the choice of law principles thereof.

13. **Partial Invalidity.** Wherever possible, each provision hereof shall be interpreted in such manner as to be effective and valid under applicable law, but in case any provision contained herein shall, for any reason, be held to be invalid or unenforceable, such provision shall be ineffective to the extent of such invalidity or unenforceability without invalidating the remainder of such provision or any other provisions hereof, unless such a construction would be unreasonable.

14. **Counterparts.** This Agreement may be executed in several counterparts, each of which will be deemed to be an original but all of which together will constitute one and the same instrument. This Agreement may be executed and exchanged by facsimile transmission or electronic mail, with the same legal effect as if the signatures had appeared in original handwriting on the same physical document.

15. **Expenses.** Except as otherwise set forth herein, each party hereto 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.

16. **Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. No party may voluntarily or involuntarily assign its interest or delegate its duties under this Agreement without the prior written consent of the other party.

17. **Entire Agreement.** This Agreement, and the exhibits attached hereto, together with the Settlement Agreement, supersede all prior agreements and understandings between the parties with respect to the subject matter hereof and may not be changed or terminated orally,

and no attempted change, amendment, or waiver of any of the provisions hereof shall be binding unless in writing and signed by both parties.

*( Signatures of the parties are on the following page.)*

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

**Buyer:**

**EDUCATIONAL MEDIA FOUNDATION**

By: \_\_\_\_\_

Alan Mason, Chief Operating Officer

\_\_\_\_\_  
D. Kevin Blair, Secretary

**Seller:**

**RED MOUNTAIN BROADCASTING, LLC**

By: \_\_\_\_\_

Mark Snow, Member

**SCHEDULE 1**  
**Tangible Personal Property**

The antenna and coax cable used in connection with W265CG for the sum of \$500. The transmitter currently used by W265CG will not be included in the assets sold to Buyer.

SCHEDULE 2

FCC Authorizations

Type of Authorization	Call Sign	FCC File Number	Grant Date	Expiration Date
FM Broadcast Translator License	W265CG Fac Id. 148566	BLFT- 2012120AEH	02/06/2013	04/01/2020