

## PROGRAMMING AGREEMENT

This Programming Agreement (this "Agreement"), dated as of May 10<sup>th</sup>, 2016, is by and between Cumulus Radio Corporation, a radio broadcaster ("Operator"), and Bronwyn Dannenfelser, (The "Licensee"), Waterfire Ignites Rhode Island (The program) a **Rhode Island 501(c)** ("Programmer").

WHEREAS, Operator owns or holds certain assets used or useful in the operation of radio station WPRV-AM, Providence, RI (FCC Facility ID WPRV AM FCC Facility ID 64843 (the "Station"); and

WHEREAS, Operator and Programmer desire to enter into this Agreement to enable Programmer to provide certain programming on the Station; and

WHEREAS, it is the parties' intention that this Agreement comply with the Communications Act of 1934, as amended (the "Act"), and the Federal Communications Commission ("FCC") rules and published policies (collectively, the "FCC Rules").

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. Programmer's Programming.**

**1.1 The Program.** Programmer's program (individually, the "Program" and collectively, the "Programming") will consist of live show regarding fundraising efforts for arts programs provided by Waterfire. Programmer shall be solely responsible for any expenses incurred in the production, origination and/or delivery of the Program, which shall be provided to Operator on MP3 by overnight delivery or drop box in accordance with Section 14.6 hereof. The Program will be hosted by Bronwyn Dannenfelser. If Host is unable to host the Program on any given day, it shall be Programmer's responsibility to find a suitable substitute host, who shall be subject to the prior approval by Operator in its sole discretion. In the event Host should no longer be able to host the Program, Operator shall have the option to terminate this Agreement.

**1.2 Program Broadcast.** To the extent necessary, Operator shall make studio facilities and board equipment available to Programmer for the transmission of the Program over the Station. Operator shall broadcast, or cause to be broadcast, the Program on the Station on the following day(s) and time(s): (WPRV –AM) Thursday between the hours of 4:00 PM and 5:00, during the term of this Agreement. Operator shall have the right to change the broadcast day and/or time of the Program upon 30 days written notice to Programmer. In the event Programmer objects to Operator's proposed change in the day and/or time of the Program broadcast, Programmer shall provide written notice to Operator within ten (10) days of receipt of Operator's notice. In the event the parties cannot agree upon a mutually-agreeable day and time for the Program broadcast from the date that is 30 days after Operator's initial notice to Programmer, Operator shall have the right to terminate this Agreement.

**Section 2. Term.**

2.1 The term ("Term") of this Agreement shall commence on the date hereof and shall terminate on the earlier of (a) twelve months later or (b) such time as this Agreement is terminated in accordance with Section 12 hereof.

2.2 This Agreement shall not automatically renew. Ninety (90) days prior to the expiration of the Term there shall be a 14-day renegotiation window ("Renegotiation Window") during which the parties shall exercise good faith efforts to reach an agreement with respect to the renewal of this Agreement for an additional one-year period. In the event the parties have not reached an agreement on renewal by the close of the Renegotiation Window, the Program's timeslot(s) shall be immediately available for resale and Operator shall have the right to begin negotiating with third parties for the sale of that programming time after the expiration of the Term.

**Section 3. Consideration.** In consideration for the right to air its Program on the Station, Programmer shall pay Operator a fee ("Fee") of ~~6000.00~~ (net of agency commissions) during the Term of this Agreement for shows aired by December 18<sup>th</sup>, 2016. Payments are due in full not later than the 15th day of each month during the Term of this Agreement.

**Section 4. Advertising.** Programmer may insert into each Program no more than eleven (11) minutes of commercial inventory each hour to sell to sponsors, subject to the limitations contained in this Agreement. Cumulus Radio Corporation retains the right to insert three (3) minutes of commercials per hour. On Wednesday of each week during the Term, Programmer shall provide Operator with a list of all commercial spots it sold for the prior week in connection with the Program. All commercial announcements other than those specifically reserved for Programmer are those of Operator. Each party shall have the right to retain the proceeds from the sale of advertising sold by such party.

**Section 5. Promotional Announcements.** Programmer shall receive twelve (12) thirty second (00:00:30) promotional spots each week Saturday through Wednesday.

**Section 6. Station Programming Policies.**

6.1 **Operator Authority.** Notwithstanding any other provision of this Agreement, Operator shall retain ultimate responsibility to broadcast programming to meet the needs and interests of listeners in the Station's service area. Operator therefore retains the right to broadcast specific programming on issues of importance to the service area. Operator 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 Operator, is of greater local, regional or national public importance. Operator shall coordinate with Programmer the Station's hourly Station identification and any other announcements required to be aired by FCC Rules. Upon request by Operator, Programmer shall provide Operator with such information concerning Programmer's Programming and advertising as is necessary to assist Operator in the preparation of documents or materials to be filed with the FCC or placed in the Station's public inspection file.

6.2 **Compliance with the Act and FCC Rules.** Programmer shall comply in all material respects with the Act and FCC Rules in the broadcast of its Programming on the Station.

Programmer shall furnish or cause to be furnished the artistic personnel and material for its Programming as provided by this Agreement. All advertising spots and promotional material or announcements shall comply in all material respects with applicable law and shall be produced in accordance with quality standards established by Programmer. If Operator determines, in the exercise of Operator's sole discretion, that any material supplied by Programmer for broadcast on the Station is for any reason unsatisfactory, unsuitable or contrary to the public interest, Operator 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. Operator 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 Operator 24 hours in advance of material changes in the Program (or Programming) to be broadcast on the Station.

**6.3 Programmer Compliance with Copyright Act.** Programmer represents and warrants to Operator 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 of 1976, as amended (the "Copyright Act"), or the right of any person. All music supplied by Programmer shall be (a) licensed to Programmer from a music licensing agent such as ASCAP, BMI, or SESAC, (b) in the public domain, or (c) cleared at the source by Programmer. The right to use programming supplied by Programmer and to authorize its use in any manner shall be and remain vested in Programmer.

**6.4 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 Operator.

**6.5 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. Upon the execution of this Agreement, Programmer shall provide Operator with a Payola Affidavit executed by Programmer and separate Payola Affidavits executed by each of its employees involved with the Programming provided to the Station, with each Payola Affidavit to be substantially in the form attached hereto as Attachment I.

**Section 7. Internet.** Nothing herein shall be construed so as to prevent Operator from transmitting the Program over the Internet as part of a contemporaneous stream of all of the Station's programming.

**Section 8. Exclusivity.** Operator has unlimited and exclusive use of the Program in its Metro Survey Area ("MSA") as defined by Nielsen during the Term of this Agreement. Programmer shall not provide any similar program or service to any other radio or television station, cable system, satellite, MDS or other distributor within the Station's MSA during the Term.

**Section 9. Special Events.** Operator shall have the right, in its sole discretion, to preempt any broadcasts of the Program in order to air special events. Such events shall include, but not be limited to, news, weather, special sports events and other live programming. In the event Operator preempts Programmer's Program (or portions thereof) pursuant to this Section 9, the parties will exercise good faith efforts to reach an agreement with respect to the broadcast of the preempted Program (or Programs) at a mutually-agreeable time. If the parties are unable to reach an agreement within five (5) business days as to when the preempted Program (or Programs) will be broadcast on an alternative date and time, Programmer shall be entitled to a *pro rata* reduction in the Fee to the extent the Program (or Programs) did not air on the Station.

**Section 10. Indemnification.**

**10.1 Programmer's Indemnification.** Programmer shall indemnify and hold Operator 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) violations of the Copyright Act, the Act or FCC Rules, forfeitures imposed by the FCC, slander, defamation or other third-party claims relating to the Programming provided by Programmer, and Programmer's broadcast and sale of advertising time on the Station. The obligations under this section shall survive any termination of this Agreement.

**10.2 Operator's Indemnification.** Operator shall indemnify and hold harmless Programmer from and against any and all Damages resulting from (a) Operator's breach of any representation, warranty, covenant or agreement contained in this Agreement, (b) Operator's negligence or willful misconduct or the negligence or willful misconduct of its employees or agents, and (c) violations of the Copyright Act, the Act or FCC Rules, forfeitures imposed by the FCC, slander, defamation or other third-party claims relating to programming provided by Operator.

**10.3 Limitation.** Neither Operator 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 10.5.

**10.4 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 extinguish the Claimant's right to indemnification only to the extent that such failure adversely affects the Indemnifying Party's rights.

(b) With respect to claims solely between the parties, following receipt of notice from the Claimant of a claim, the Indemnifying Party shall have thirty (30) days to make such investigation of the claim as the Indemnifying Party deems necessary or desirable. For the purposes of such investigation, the Claimant shall make available to the Indemnifying Party or its authorized representatives the information relied upon by the Claimant to substantiate the claim. If the Claimant and the Indemnifying Party agree in writing at or prior to the expiration of the 30-day period (or any mutually agreed upon extension thereof) to the validity and amount of such claim, the Indemnifying Party shall immediately pay to the Claimant the full amount of the claim or such amount as agreed to by the parties. If the Claimant and the Indemnifying Party do not reach an agreement within the 30-day period (or any mutually agreed upon extension thereof), the Claimant may seek any remedy available 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 and such settlement imposes no obligations on the Indemnifying Party vis-à-vis the third party.

(d) If a claim, whether between the parties or by a third party, requires immediate action, the parties will make every 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; provided, that any indemnification claims by such parties shall be made by and through the Claimant.

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

**Section 11. Insurance.** Throughout the Term of this Agreement, Programmer shall maintain commercial general liability insurance with minimum limits of \$1,000,000 per occurrence. Within five (5) business days of the date hereof, Programmer shall provide Operator with a certificate of insurance evidencing proof of the required insurance coverage and shall name Operator as an additional insured/loss party under such policy. The insurance will contain a provision stating that it cannot be reduced or cancelled unless and until the insurer notifies Operator thirty (30) days prior as a certificate holder. The insurance policy must be issued by an insurance carrier that is (a) reasonably acceptable to Operator with a rating of A or better, and (b) authorized to do business in the state in which the Station is located.

**Section 12. Termination.** This Agreement may be terminated by either Operator or Programmer by written notice to the other, if the party seeking to terminate is not then in material breach hereof, and only upon the occurrence of any of the following:

(a) subject to Section 14.7 hereof, if 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 or governmental regulation have expired without such request having been made);

(b) by Operator, if Programmer is in material breach of its obligations under this Agreement and has failed to cure such breach within ten (10) days of written notice from Operator;

(c) by Programmer, if Operator is in material breach of its obligations under this Agreement and has failed to cure such breach within ten (10) days of written notice from Programmer;

(d) by Operator, pursuant to Section 1.1 or Section 1.2 hereof;

(e) the mutual consent of both parties; or

(f) a material change in the Act or FCC Rules that would cause this Agreement to be in violation thereof, and (i) such change has become Final and (ii) this Agreement cannot be reformed in a manner reasonably acceptable to Programmer and Operator to remove and/or eliminate the violation.

**Section 13. Representations and Warranties.**

**13.1 By Operator.** Operator represents and warrants to Programmer that (a) 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 Operator hereunder, (b) the execution, delivery, and performance by Operator of this Agreement and the documents contemplated hereby have been duly authorized by all necessary company actions on the part of Operator, (c) this Agreement has been duly executed and delivered by Operator and constitutes the legal, valid, and binding obligation of Operator, enforceable against Operator in accordance with its terms, except as the enforceability of this Agreement may be affected by bankruptcy, insolvency, or similar laws affecting creditors’ rights generally and by judicial discretion in the enforcement of equitable remedies, and (d) the execution, delivery, and performance by Operator of this Agreement and the documents contemplated hereby (with or without the giving of notice, the lapse of time, or both): (i) do not require the consent of any third party, (ii) will not conflict with any provision of the organizational documents of Operator; and (iii) 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 Operator is a party or by which Operator is bound.

**13.2 By Programmer.** Programmer represents and warrants to Operator that (a) it has all requisite power and authority to execute and deliver this Agreement and the documents contemplated hereby and to perform and comply with all of the terms, covenants, and conditions to be performed and complied with by Programmer hereunder, (b) the execution, delivery, and performance by Programmer of this Agreement and the documents contemplated hereby have been duly authorized by all necessary actions on the part of Programmer, (c) this Agreement has been duly executed and delivered by Programmer and constitutes the legal, valid, and binding obligation of Programmer, enforceable against Programmer in accordance with its terms, except as the enforceability of this Agreement may be affected by bankruptcy, insolvency, or similar laws affecting creditors' rights generally and by judicial discretion in the enforcement of equitable remedies, (d) the execution, delivery, and performance by Programmer of this Agreement and the documents contemplated hereby (with or without the giving of notice, the lapse of time, or both): (i) do not require the consent of any third party, (ii) will not conflict with any provision of the organizational documents of Programmer; and (iii) will not conflict with, constitute grounds for termination of, result in a breach of, or constitute a default under, any material agreement, instrument, license, or permit to which Programmer is a party or by which it is bound, and (e) all ideas, creations, materials and intellectual properties used by Programmer with respect to the Programming provided to Operator hereunder will be of its own original creation except for materials in the public domain or materials which it is fully licensed to use, and all materials furnished by Programmer and the use thereof by Programmer or its designees will not infringe upon or violate any rights of any kind whatsoever of any person or entity.

**Section 14. Miscellaneous.**

**14.1 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) Neither party may assign its rights and obligations under this Agreement without the prior written consent of the other party; provided, that Operator may assign its rights and obligations under this Agreement at any time to (i) any subsidiary of Operator or to any other party under common control with Operator, and (ii) any party who enters into an agreement with Operator to purchase all or substantially all of the assets of, or ownership interests in, the Station.

**14.2 Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original but both of which together will constitute one and the same instrument. Signatures delivered by facsimile or electronically shall be deemed sufficient to render this Agreement effective and binding.

**14.3 Entire Agreement.** This Agreement (including any Attachments hereto) embodies the entire agreement and understanding of the parties relating to the subject matter hereof and supersedes any and all prior and contemporaneous agreements and understandings of the parties. No amendment to this Agreement will be effective unless evidenced by a document signed by both parties.

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

**14.5 Governing Law.** The construction and performance of this Agreement will be governed by the laws of the State of Rhode Island without regard to conflict of law principles.

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

To Programmer: Bronwyn Dannenfels  
o/b/o Water Fire Providence 501 C3  
101 Regent Avenue  
Providence, RI 02908  
Facsimile: \_\_\_\_\_

To Operator: Cumulus Radio Corporation  
1502 Wampanoag Trail  
East Providence, RI 02915  
Facsimile: \_\_\_\_\_

With a copy to (which shall not constitute notice): Cumulus Media Inc.  
3280 Peachtree Road, NW  
Suite 2300  
Atlanta, GA 30305  
Facsimile: (404) 949-0740  
Attn: General Counsel

**14.7 Severability.** If any provision of this Agreement or the application thereof to either party 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 provisions shall not be affected thereby and shall be enforced to the greatest extent permitted by law unless the affected provision is material to the benefits or obligations of the parties hereunder, in which case the affected party may terminate this Agreement within thirty (30) days after the order of such court or governmental authority becomes effective. In the event 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 FCC Rules, while attempting to preserve, as closely as practical, the intent of the parties as embodied in the provision of this Agreement which is to be so modified.



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

**14.9 Remedies.** In the event that either party breaches or threatens to breach any provision of this Agreement, the other party shall be entitled to seek any remedy available at law or equity, including, if appropriate, specific performance. Notwithstanding anything to the contrary in this Agreement, the remedy of specific performance will be available to Programmer and Operator for any breach or threatened breach by the other party of its obligations under Sections 6.1 and 6.2 of this Agreement. If either party seeks specific performance for an actual or threatened breach of such obligations, the other party shall waive the defense that the moving party has an adequate remedy at law. If either 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 attorneys' fees.

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

**14.11 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 Operator, 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 Operator will not be liable to Programmer for reimbursement or reduction of the consideration owed to Operator.

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

[PROGRAMMER]

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

OPERATOR

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

**ATTACHMENT I**

**Payola Affidavit**

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

**ANTI-PAYOLA/PLUGOLA AFFIDAVIT**

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

1. I am \_\_\_\_\_ for \_\_\_\_\_.  
Position
2. I have acted in the above capacity since \_\_\_\_\_.
3. To my knowledge, no matter has been broadcast by WPRV AM in East Providence, RI (the "Station") for which service, money or other valuable consideration has been directly or indirectly paid, promised to, charged, or accepted, by or from any person, which matter at the time so broadcast has not been 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 service, money, or other valuable consideration has been directly or indirectly paid, promised to, charged, or accepted by the Station or by an independent contractor engaged by the Station in furnishing programs, from any person, which matter at the time so broadcast has not been announced or otherwise indicated as paid for or furnished by such person.
5. I will not pay, promise to pay, request, or receive any service, money, or any other valuable consideration, direct or indirect, from a third party, in exchange for the influencing of, or the attempt to influence, the preparation of presentation of broadcast matter 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 or company engaged in:
  - a. the publishing of music;

- b. the production, distribution (including wholesale and retail sales outlets); manufacture or exploitation of music, films, tapes, recordings or electrical transcriptions of any program material intended for radio broadcast use;
- c. the exploitation, promotion, or management of persons rendering artistic, production and/or other services in the entertainment field;
- d. the ownership or operation of one or more 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.

\_\_\_\_\_  
[Name]

Subscribed and sworn to before me

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

\_\_\_\_\_  
Notary Public

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