

**ASSET PURCHASE AGREEMENT**

**dated as of JUNE 28, 2021**

*by and among*

**NRJ TV NY OpCo, LLC**

**NRJ TV NY LICENSE Co., LLC**

**AS SELLERS**

*and*

**TV-49, INC.**

**AS BUYER**



## TABLE OF CONTENTS

	Page
ARTICLE I PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES.....	2
1.1 <i>Purchase and Sale of Assets</i> .....	2
1.2 <i>Excluded Assets</i> .....	3
1.3 <i>Assumed Liabilities</i> .....	3
1.4 <i>Excluded Liabilities</i> .....	3
ARTICLE II CONSIDERATION.....	4
2.1 <i>Purchase Price and Payment</i> .....	4
2.2 <i>Escrow Deposit</i> .....	4
2.3 <i>Allocation of Revenues and Expenses</i> .....	4
2.4 <i>Allocation of Purchase Price</i> .....	5
2.5 <i>Prorations</i> .....	5
2.6 <i>Inability to Assign Assigned Contracts.</i> .....	5
2.7 <i>Tax Withholding</i> .....	6
ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLERS .....	7
3.1 <i>Organization and Authority</i> .....	7
3.2 <i>Authorization and Binding Obligation; No Conflicts</i> .....	7
3.3 <i>Contracts</i> .....	8
3.4 <i>Channel Sharing Agreement and Station Matters</i> .....	8
3.5 <i>Assets</i> .....	9
3.6 <i>Intellectual Property and Station Materials</i> .....	9
3.7 <i>FCC and Governmental Matters</i> .....	10
3.8 <i>MVPD Matters.</i> .....	11
3.9 <i>Absence of Litigation</i> .....	12
3.10 <i>Real Estate and Environmental Matters</i> .....	12
3.11 <i>Taxes and Tax Returns</i> .....	12
3.12 <i>Compliance with Laws</i> .....	13
3.13 <i>No Restrictions</i> .....	13
3.14 <i>Approvals and Consents</i> .....	13
3.15 <i>Brokers and Financial Advisors</i> .....	13
ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER .....	13



**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
4.1 <i>Organization and Standing</i> .....	13
4.2 <i>Authorization and Binding Obligation</i> .....	14
4.3 <i>FCC Qualifications</i> .....	14
4.4 <i>Absence of Litigation</i> .....	14
4.5 <i>Approvals and Consents</i> .....	15
4.6 <i>Brokers and Financial Advisors</i> .....	15
4.7 <i>Financing</i> .....	15
4.8 <i>Other Information</i> .....	15
4.9 <i>Solvency</i> .....	15
ARTICLE V COVENANTS .....	16
5.1 <i>Covenants of Sellers</i> .....	16
5.2 <i>Joint Covenants</i> .....	18
5.3 <i>Tax Matters</i> .....	21
5.4 <i>Retention of Records; Post Closing Access to Records</i> .....	21
ARTICLE VI CONDITIONS TO CLOSING .....	22
6.1 <i>Conditions to Obligations of Buyer</i> .....	22
6.2 <i>Conditions to Obligations of Sellers</i> .....	23
6.3 <i>Conditions to Obligations of Buyer and Sellers</i> .....	23
6.4 <i>Frustration of Closing Conditions</i> .....	23
ARTICLE VII CLOSING .....	24
7.1 <i>Time and Procedure</i> .....	24
7.2 <i>Sellers' Deliveries at Closing</i> .....	24
7.3 <i>Buyer's Deliveries at Closing</i> .....	24
ARTICLE VIII SURVIVAL AND INDEMNIFICATION .....	25
8.1 <i>Survival</i> .....	25
8.2 <i>Indemnification by Sellers</i> .....	25
8.3 <i>Indemnification by Buyer</i> .....	25
8.4 <i>Procedures with Respect to Third Party Claims</i> .....	25
8.5 <i>Treatment of Indemnity Benefits</i> .....	26
8.6 <i>Exclusive Remedies</i> .....	26



**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
8.7 <i>Net Losses; Subrogation; Mitigation</i> .....	27
8.8 <i>Computation of Indemnifiable Losses</i> .....	27
ARTICLE IX TERMINATION AND REMEDIES .....	27
9.1 <i>Termination Generally</i> .....	27
9.2 <i>Effect of Termination</i> .....	28
9.3 <i>Specific Performance</i> .....	29
ARTICLE X MISCELLANEOUS .....	29
10.1 <i>Notices</i> .....	29
10.2 <i>Risk of Loss</i> .....	30
10.3 <i>Bulk Sales</i> .....	30
10.4 <i>Binding Effect; No Third Party Beneficiaries</i> .....	30
10.5 <i>Amendments and Modifications</i> .....	31
10.6 <i>Assignment</i> .....	31
10.7 <i>Governing Law; Jurisdiction</i> .....	31
10.8 <i>Captions and Interpretation</i> .....	32
10.9 <i>Waiver</i> .....	32
10.10 <i>Expenses</i> .....	32
10.11 <i>Severability</i> .....	32
10.12 <i>Disclaimer</i> .....	33
10.13 <i>Counterparts and Execution</i> .....	33
10.14 <i>Entire Agreement</i> .....	33
10.15 <i>No Recourse</i> .....	33



## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this “**Agreement**”) is made as of June 28, 2021, by and among **NRJ TV NY OPCO, LLC**, a Delaware limited liability company (“**Seller OpCo**”), **NRJ TV NY LICENSE CO., LLC**, a Delaware limited liability company (“**Seller LicenseCo**,” and together with Seller OpCo, “**Sellers**”) and **TV-49, INC.**, a Wisconsin corporation (“**Buyer**”). Sellers and Buyer are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**.” Capitalized terms used herein but not otherwise defined shall have the meanings given to them in *Exhibit A* to this Agreement.

### RECITALS:

**WHEREAS**, pursuant to certain authorizations issued by the Federal Communications Commission (the “**FCC**”), Sellers own and operate the following television broadcast station (the “**Station**”):

#### **WZME-TV (Facility ID 70493), Bridgeport, Connecticut**

**WHEREAS**, the Station serves the New York, New York, Designated Market Area (as such term is defined by Nielsen Media Research, Inc. in its periodic publications) (the “**Market**”);

**WHEREAS**, Sellers are parties to that certain Channel Sharing and Facilities Agreement, dated as of January 11, 2016, among Connecticut Public Broadcasting, Inc. (“**Sharer**”), as licensee of the Sharer Station, Sellers, and those certain other parties joined thereto (the “**Channel Sharing Agreement**”), pursuant to which, among other things, Sellers, as the owner, operator, and licensee of the Station, have certain rights as a “**Sharee**” with respect to the spectrum of the Sharer Station as provided therein.

**WHEREAS**, the FCC has granted to Sharer, and Sharer holds, a valid Governmental Authorization to construct and operate a Distributed Transmission System (DTS) facility which includes a transmission site at Trumbull, Connecticut and an additional transmission site at the Empire State Building in New York, New York, which shall each be part of the Transmission Facilities shared under the Channel Sharing Agreement, in accordance with the FCC Rules with respect to the construction and operation of DTS facilities (the “**DTS Authorization**”);

**WHEREAS**, Buyer desires to purchase from Sellers the Purchased Assets and assume from Sellers the Assumed Liabilities, and Sellers desires to sell to Buyer the Purchased Assets and transfer to Buyer the Assumed Liabilities, in each case including rights and obligations with respect to the Channel Sharing Agreement on the terms and subject to the conditions hereinafter set forth; and

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual agreements and covenants contained herein, the Parties, intending to be legally bound, agree as follows:



## ARTICLE I PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES

**1.1 *Purchase and Sale of Assets.*** Pursuant to the terms and subject to the conditions set forth in this Agreement, at the Closing, Sellers will assign, sell, transfer, convey and deliver to Buyer, and Buyer will purchase, acquire and accept from Sellers, free and clear of all Encumbrances (other than Permitted Encumbrances), all of Sellers' right, title and interest in and to the following assets (except for the Excluded Assets) (collectively the "***Purchased Assets***"):

(a) All (i) Government Authorizations issued by the FCC to either Seller for use and operation of the Station, including the PSIP of the Station and its rights pursuant to the DTS Authorization (the "***FCC Authorizations***"), and (ii) other assignable Governmental Authorizations held by either Seller in connection with the ownership and use of the Station (this clause, including foregoing subparts (i) and (ii), collectively, the "***Assigned Authorizations***");

(b) (i) The Channel Sharing Agreement, including all of Sellers' rights thereunder in respect of the Shared Channel and the Shared Equipment and (ii) the other Station Contracts that are set forth and more fully described on *Disclosure Schedule 1.1(b)*, including deposits made by programmers under any Station Contract, hereto (collectively, the "***Assigned Contracts***"), and any Station Contract entered into during the Interim Period and approved by Buyer in writing as an Assigned Contract;

(c) All supplies, equipment, inventories, machinery, towers, transmission structures, transmitters, transmission facilities or equipment, antennas, vehicles, furniture, fixtures, computers, inventory, cables, spare parts and other fixed assets and tangible personal property used or held for use exclusively in connection with, and necessary for, the transmission of the Station's broadcast signal in accordance with the FCC Authorizations, including all Exclusive Equipment and the items listed on *Disclosure Schedule 1.1(c)* hereto, and all tangible personal property, if any, acquired by either Seller after the date hereof (collectively, the "***Purchased Tangible Property***");

(d) All of Sellers' rights in any intellectual property owned by or licensed to either Seller and used, held for use or useful solely in the operation of the Station, including, without limitation, all websites, URLs and internet domain names, the Station's call letters, trademarks, trade names, service marks, copyrights, and logos together with all goodwill associated therewith ("***Purchased Intellectual Property***");

(e) All of Sellers' rights in and to filings with the FCC relating to the Station and all other files, documents, books, and records relating to the Station's broadcast operations, including the Station's public inspection file, engineering data, FCC required logs, and related technical information, and copies of all of the foregoing, but only to the extent they relate to the Station and, in each case, excluding records to the extent they relate to Excluded Assets or to other stations owned by either Seller or any of their respective Affiliates ("***Station Documents***");

(f) All of Sellers' rights to mandatory carriage (or "must-carry" rights) in and with respect to carriage of the Station by an MVPD serving viewers in the Market pursuant to



applicable FCC Rules (“**Must-Carry Rights**”), and all letters, documents or other written instruments, if any, evidencing such election or enforcement of corresponding Must-Carry Rights;

(g) All rights, if any, in respect to Legal Proceedings, warranties, indemnities, recoveries, refunds, counterclaims, rights of set-off and other claims and rights against Third Parties to the extent related to any of the Purchased Assets; and

(h) All goodwill of Sellers in respect of the Station.

**1.2 Excluded Assets.** Nothing contained herein shall be deemed to sell, transfer, assign or convey the Excluded Assets to Buyer, and Sellers shall retain all right, title and interest to, in and under the Excluded Assets. “**Excluded Assets**” shall mean all assets, properties, interests, and rights of Sellers other than the Purchased Assets, including without limitation, (a) all cash and cash equivalents; (b) accounts receivable; (c) all bank and other depository accounts of Sellers; (d) insurance policies relating to the Station, and all claims, credits, causes of action or rights, including rights to insurance proceeds, thereunder; (e) all interest in and to refunds of Taxes relating to Pre-Closing Tax Periods or the other Excluded Assets; (f) any cause of action or claim relating to any event or occurrence prior to the Closing; (g) intercompany accounts receivable; (h) all (i) books, records, files and papers, whether in hard copy or computer format, relating to the preparation of this Agreement or the transactions contemplated hereby, (ii) all minute books and company records of Seller and its Affiliates and (iii) duplicate copies of the Station Documents; (i) all rights of Seller arising under this Agreement, the Transaction Documents or the transactions contemplated hereby and thereby; (j) any Purchased Asset sold or otherwise disposed of prior to Closing as permitted hereunder; (k) Contracts that are not Assumed Contracts and Contracts identified on *Disclosure Schedule 1.2(k)* (collectively, the “**Excluded Contracts**”); (l) all Tax records, other than real and personal property and sales and use Tax records; (m) all of Seller’s rights, title and interest in and to (i) Seller’s name, service names and trade names (including, without limitation, the names “**NRJ TV NY OpCo, LLC**”, and “**NRJ TV NY License Co, LLC**”), (ii) all URLs and internet domain names consisting of or containing any of the foregoing; and (iii) any variations or derivations of, or marks confusingly similar to, any of the foregoing; and (n) prepaid expenses and deposits of Sellers.

**1.3 Assumed Liabilities.** On the terms and subject to the conditions set forth in this Agreement, Buyer agrees, effective as of the Closing, to assume, pay, defend, discharge, perform or otherwise satisfy the Liabilities (a) with respect to the operation of the Purchased Assets by Buyer to the extent arising from and after the Closing, pursuant to the terms and subject to the conditions of this Agreement, but in the case of the foregoing, excluding any liability or obligation arising from, or relating to, the performance or non-performance prior to the Closing of any Station Contract, and (b) any liability or obligation to the extent of the amount of credit received by Buyer under *Section 2.4*, (c) any Tax Liability or obligation (except for any income taxes of Seller or as expressly provided in *Section 5.3*) related to Post-Closing Tax Periods (collectively, the “**Assumed Liabilities**”).

**1.4 Excluded Liabilities.** Except for the Assumed Liabilities, Buyer will not assume, and Sellers will pay, defend, discharge and perform, as and when due, and otherwise retain and remain solely responsible for all Liabilities that are not expressly included in the Assumed Liabilities (collectively the “**Excluded Liabilities**”). Without limiting the generality of the



foregoing, the Excluded Liabilities shall include: (a) any Liability of Seller (including any trade payable or Indebtedness of either Seller), (b) any Liability of any successor or Affiliate of either Seller, (c) any Liability of any Person, directly or indirectly related to, accruing or arising out of, caused by or resulting from the operation or conduct of the business of or the ownership of the Purchased Assets prior to the Closing or any Excluded Asset, whether or not recorded on the books and records of any Person (including any trade or other accounts payable of either Seller payable to Third Parties that remain outstanding as of the Closing), (d) any Liability related to any employee of either Seller, including any Liability arising under or in any way related to any pension obligations or pension withdrawal Liabilities, (e) any Liability that would become a Liability of Buyer as a matter of Law in connection with this Agreement, any Transaction Document or the transactions contemplated hereby or thereby and (f) without limiting the generality of any of the foregoing, any Liability in respect of Taxes of either Seller, or any successor or Affiliate of either Seller, or any Liability in respect of any Taxes arising from or relating to the operation of the Station, the business of either Seller, or the Purchased Assets or ownership or operation thereof for or accruing or arising at any time in respect of any Pre-Closing Tax Period.

## **ARTICLE II CONSIDERATION**

**2.1 Purchase Price and Payment.** The aggregate purchase price for the Purchased Assets will be (a) an amount of cash equal the sum of Thirty Five Million Dollars (\$35,000,000) as adjusted pursuant to *Section 2.4*, which includes a transfer of all rights to the Escrow Deposit (the “**Purchase Price**”) and (b) the assumption of the Assumed Liabilities. Buyer will pay the Purchase Price at the Closing, to and for the benefit of Sellers, by wire transfer of immediately available funds to such account for which instructions are delivered by Sellers to Buyer not less than three (3) Business Days prior to the Closing.

**2.2 Escrow Deposit.** Contemporaneously with the execution of this Agreement, Buyer shall deliver to Truist Bank, a national banking association (the “**Escrow Agent**”), the amount equal to ten percent (10%) of the Purchase Price to be held as an earnest money deposit (“**Escrow Deposit**”) pursuant to an Escrow Agreement to be entered into by Buyer, Seller and Escrow Agent at the time of the Escrow Deposit (the “**Escrow Agreement**”). The Escrow Deposit (less any interest earned thereon prior to Closing or termination of this Agreement, which shall be paid to Buyer) shall be credited to Sellers as partial payment of the cash Purchase Price due to Sellers at the Closing, or shall otherwise be released to Buyer or Sellers in accordance with Section 9.2(b) and Section 9.2(d) hereof.

**2.3 Allocation of Revenues and Expenses.** All revenues and all expenses arising from the Purchased Assets shall be allocated between Buyer and Sellers in accordance with GAAP, consistently applied, and, except as set forth in *Section 5.4*, to effect the principle that Sellers shall receive all revenues and shall be responsible for all expenses, costs and liabilities related to the use and operations of the Purchased Assets and the Station for the period prior to the Closing and Buyer shall receive all revenue and shall be responsible for all expenses, costs and liabilities related to the use and operations of the Purchased Assets and the Station for the period on and subsequent to the Closing.



**2.4 Allocation of Purchase Price.** Buyer shall prepare an allocation of the Purchase Price (and all other capitalized costs) among the Purchased Assets in accordance with Internal Revenue Code Section 1060 and Treasury regulations thereunder (and any similar provision of state, local, or non-U.S. law, as appropriate). Buyer shall deliver such allocation to Sellers in writing within sixty (60) days after the Closing, for Sellers' review and comment. The Parties shall use commercially reasonable efforts to resolve any issues raised by Sellers' comments (if any), and if Buyer and Sellers are unable to reach agreement on an allocation within sixty (60) days after the Closing, Sellers and Buyer (and, as necessary, their Affiliates) shall each be free to allocate the Purchase Price (and all other capitalized costs) in their own discretion.

**2.5 Prorations.**

(a) The Parties agree to prorate all expenses arising out of the operation of the Purchased Assets which are incurred, accrued or payable, as of 11:59 p.m. New York, New York, time on the Closing Date (the "*Effective Time*"). The items to be prorated shall include FCC regulatory fees for the most recent assessable year (based on the most recent information available from the FCC about the cost of such regulatory fees for the Station), personal property Taxes upon the basis of the most recent Tax bills and information available, and any prepaid and deferred items that are Purchased Assets or Assumed Liabilities to be acquired or assumed by Buyer pursuant to this Agreement. The prorations shall, insofar as feasible, be determined and paid on the Closing Date, with final settlement and payment to be made within forty-five (45) days after the Closing Date.

(b) If the Parties are unable to agree upon the prorations within forty-five days after the Closing Date, then such determination shall be made by the Accounting Firm (whose costs shall be paid one-half by Buyer and one-half by Sellers) within seventy-five (75) days after the Closing Date and thereafter Buyer shall pay to Sellers or Sellers shall pay to Buyer, as the case may be, the net amounts due within ten (10) days of such determination.

**2.6 Inability to Assign Assigned Contracts.**

(a) Notwithstanding anything to the contrary contained in this Agreement or in any other Transaction Document with the exception of the last sentence of this Section 2.6(a), to the extent that the assignment or attempted assignment to Buyer of any Assigned Contract or Assigned Authorization, or any claim, right or benefit arising thereunder or resulting therefrom, is prohibited by any Law, or would require any consent, waiver, authorization, notice or novation by any Person, and such consent, waiver, authorization, notice or novation has not been obtained or made prior to the Closing in a form and substance reasonably acceptable to Buyer, or with respect to which any attempted assignment would be ineffective or would materially and adversely affect the rights of Buyer or either Seller thereunder, then neither this Agreement nor any other Transaction Document will constitute an assignment or attempted assignment thereof, and the same will not be assigned at the Closing. Notwithstanding the foregoing, subject to obtaining the FCC Consent, the FCC Authorizations and the Channel Sharing Agreement shall be assigned at Closing and shall not be subject to the provisions of this *Section 2.6*.

(b) Both prior and subsequent to the Closing, Sellers will use commercially reasonable efforts and cooperate with Buyer to obtain promptly all consents, waivers, authorizations or



novations and to timely give all notices required with respect to the Assigned Contracts and Assigned Authorizations, in form and substance reasonably acceptable to Buyer. Buyer will bear and pay the cost of all filing, recordation and similar fees and Taxes payable to any Governmental Authority in connection with the assignment of the Assigned Contracts and the Assigned Authorizations and any additional fees or charges (howsoever denominated) required by any Person in connection with the assignment of any of the Assigned Contracts, the Assigned Authorizations or any related consent, waiver, authorization, novation or notice. Notwithstanding the foregoing, neither Sellers, Buyer nor any of their respective Affiliates shall be required to pay consideration to any Third Party to obtain any consent.

(c) If any consent, waiver, authorization, novation or notice that is required for the effective assignment to Buyer of any Assigned Contract cannot be obtained or made and, as a result, the material benefits of such Assigned Contract cannot be provided to Buyer following the Closing as otherwise required in accordance with this Agreement, then Sellers will use their reasonable best efforts to provide Buyer with the economic (taking into account all burdens and benefits, including Tax costs and benefits) and operational benefits of any such Assigned Contract, and to permit Buyer to perform the applicable Seller's obligations and enforce such Seller's rights under such Assigned Contract as if such Assigned Contract had been assigned to Buyer (and as if such Seller had obtained or made such consent, waiver, authorization, novation, or notice as the case may be), including (i) enforcing, at Buyer's request, any rights of such Seller arising with respect thereto, including the right to terminate such Assigned Contract upon the request of Buyer, and (ii) permitting Buyer to enforce any rights arising with respect thereto. Sellers will pay to Buyer, when received, all income, proceeds and other monies received by Sellers from Third Parties to the extent related to Buyer's intended rights under any Assigned Contract, as contemplated by this Agreement, including this *Section 2.5(c)*. Once any such consent, waiver, authorization or novation is obtained or notice is properly made in form and substance reasonably acceptable to Buyer, Sellers will assign such Assigned Contract to Buyer at no additional cost to Buyer. Any expenses incurred by Sellers, and any reasonable expenses incurred by Buyer, in connection with the arrangements contemplated by this *Section 2.5(c)* will be borne by Sellers.

(d) For purposes of this *Section 2.5*, it shall be reasonable for Buyer not to accept the form and substance of any consent, waiver, authorization, novation or notice if it (i) changes or modifies, in any material respect, any Assigned Contract; (ii) results in any cost to Buyer (other than de minimis costs); or (iii) makes any representations concerning, or attempts to impose any conditions on, Buyer (other than the obligation to pay or perform the obligations expressly set forth in such Assigned Contract to the extent such obligations constitute Assumed Liabilities hereunder).

**2.7 Tax Withholding.** Buyer will be entitled to deduct and withhold from any payment otherwise payable pursuant to this Agreement the amounts required to be deducted and withheld under the Code, or any other Tax Law, or such amounts as Buyer reasonably determines should be withheld in order to comply with any applicable remittance requirements, with respect to the making of such payment and Buyer actually makes remittance to the appropriate Government Authority of any such amounts. To the extent that amounts are so withheld, such amounts will be treated for all purposes of this Agreement as having been paid to Sellers or such other Person in respect of whom such withholding was made.



### **ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLERS**

Except as set forth on the disclosure schedule of Sellers attached hereto (the “**Disclosure Schedule**”) (it being understood and agreed that each disclosure set forth in the Disclosure Schedule will qualify or modify each of the representations and warranties set forth in this *Article III* to the extent the applicability of the disclosure to such representation and warranty is reasonably apparent from the text of the disclosure made), Sellers hereby jointly and severally represent and warrant to Buyer, as of the date hereof and as of the Closing Date, as follows:

**3.1 Organization and Authority.** Each Seller is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware. Each Seller has the limited liability company power and authority necessary to (a) own and operate its assets, properties and business, (b) carry on its business as presently conducted, (c) execute, deliver and perform this Agreement and all Transaction Documents to which such Seller is, or at the Closing will be, a party, and (d) consummate the transactions contemplated by this Agreement and the Transaction Documents to which such Seller is, or at the Closing will be, a party. Each Seller is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the ownership of the Purchased Assets owned by such Seller or the operation of the Station and the Purchased Assets by such Seller makes such licensing or qualification necessary, except where the failure to be so qualified would not reasonably be expected to have a Material Adverse Effect.

**3.2 Authorization and Binding Obligation; No Conflicts.**

(a) The execution, delivery and performance of this Agreement and the other Transaction Documents to which each Seller is, or at the Closing will be, a party, and the consummation of the transactions contemplated hereby and thereby, have been and will be duly and validly authorized by all necessary limited liability company and other action on the part of such Seller. This Agreement, and the other Transaction Documents to which each Seller is, or at the Closing will be, a party, has been or will have been duly signed and delivered by such Seller and each constitutes the legal, valid and binding obligations of such Seller, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar Laws affecting or relating to enforcement of creditors’ rights generally and general principles of equity (regardless of whether enforcement is considered in a proceeding at law or in equity).

(b) Except as listed on *Disclosure Schedule 3.2(b)*, the execution, delivery and performance by each Seller of this Agreement and the Transaction Documents to which such Seller is or will be a party, and the consummation of the transactions contemplated hereby and thereby, will not (a) constitute a breach or violation of, or conflict with, any organizational document of such Seller, (b) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice under, any Contract or Government Authorization to which such Seller is a party or by which such Seller is bound or by which the Station or any of such Seller’s assets or properties (including any Purchased Asset) is bound or affected in each case except for such breach, default,



acceleration, termination, termination, amendment, modification or cancellation that would not reasonably be expected to result in a Material Adverse Effect, (c) constitute a breach or violation of or a default under (with or without due notice or lapse of time or both) any Law, Order or other restriction of any Governmental Authority to which such Seller, the Station or any of such Seller's assets or properties (including any Purchased Asset) is subject, or (d) result in the creation or imposition of any Encumbrance (other than Permitted Encumbrances) upon any of the Purchased Assets.

### **3.3      *Contracts.***

(a)      *Disclosure Schedule 3.3(a)* lists each Contract (including all modifications and amendments thereto) to which either Seller is a party or by which any of its assets or properties is bound that are material, or otherwise primarily relate, to the business and operations of the Station (each, a “**Station Contract**”). Sellers have provided Buyer a true, complete and correct copy of each Station Contract.

(b)      Each Assigned Contract is in full force and effect and is a legal, valid and binding obligation of a Seller party to such Assigned Contract. Sellers have delivered or made available to Buyer a true and correct copy of each Assigned Contract and each other Station Contract required to be listed on *Disclosure Schedule 3.3(a)*. Each Seller has fully and timely performed all of its material obligations pursuant to each of the material Assigned Contracts to which such Seller is a party or otherwise bound and is not in default or material breach of any such material Assigned Contract. Neither Seller has received notice from any Person party to any material Assigned Contract that such Person contends that either Seller is in default or breach under any material Assigned Contract. To the Knowledge of Sellers, there has not been, and is not, any default or breach of any material Assigned Contract by the other party to such Assigned Contract. Neither Seller has been notified by any other party to any material Assigned Contract that such party has a present intent to terminate or not to renew any material Assigned Contract. For avoidance of doubt, the parties agree and acknowledge that the Channel Sharing Agreement (including all amendments, joinders, exhibits and supplements) is a material Assigned Contract.

### **3.4      *Channel Sharing Agreement and Station Matters.***

(a)      Without limiting the generality of *Section 3.3*, (A) Sellers have provided Buyer a true, complete and correct copy of (i) the Channel Sharing Agreement, including all amendments, joinders, exhibits and supplements, (ii) the Budget and Shared Operating Expenses for the years 2020 and 2021, (iii) the Capacity Allocation Percentage, (iv) the Sharer Site Lease, as amended, (v) any Other Real Property Leases, including leases for tower sites or tower space, and (vi) all material correspondence or notices received by any Seller or its Affiliates relating to the Channel Sharing Agreement or a party thereto, including from the FCC or in respect of the Shared Channel, the Shared Equipment, the Shared Transmission Path and the DTS Authorization; and (B) the Channel Sharing Agreement is in full force and effect and, except as set forth on *Disclosure Schedule 3.4(a)* to the Knowledge of Seller, is not subject to any claim, threat, or assertion of breach or default by any party thereto. Capitalized terms used in this *Section 3.4* that are not otherwise defined in this Agreement shall have the meaning given to such terms in the Channel Sharing Agreement.



(b) Except for the Channel Sharing Agreement, neither Seller is a party to any joint venture, partnership, limited liability company or similar agreements (other than solely with an Affiliate), including any other sharing agreements or any related option agreement or other Contract ancillary to such sharing agreement (including time brokerage or local marketing agreements, joint sales agreements, and shared services agreements), or any Sub-Sharing Agreement with respect to the Station.

(c) Neither Seller is a party to any Interference Agreement.

(d) *Disclosure Schedule 3.4(d)* contains a list of (i) the Station's call letters and over-the-air channel numbers, (ii) the Station's power/type, (iii) the legal name of the entity issued the Station's FCC Authorizations, and (iv) the expiration date of all Governmental Authorizations, including the FCC Authorizations, applicable to the Station.

### **3.5    *Assets.***

(a) Sellers have good and valid title to, a valid leasehold interest in or a valid license to use, all of the Purchased Assets used or held for us by such Purchaser, free and clear of all Encumbrances other than Permitted Encumbrances. The Purchased Assets constitute all of the assets and properties necessary to (i) conduct the over-the-air broadcast operations of the Station, and (ii) transmit the Station's signal and programming by MVPD distribution, in each case in accordance with the FCC Authorizations, as applicable, and in all material respects in the manner presently conducted.

(b) *Disclosure Schedule 3.5(b)(i)* lists all material items of equipment, computers, tools, vehicles, fixtures, furniture, office equipment, inventory, spare parts and other tangible personal property, in each case that is (i) used, held for use or useful primarily in the business or operations of the Station, including in all events any such item that constitutes Exclusive Equipment, and (ii) that is not Shared Equipment.

(c) To Sellers' Knowledge, based solely on information received from Sharer, *Disclosure Schedule 3.5(b)(ii)* lists all material items of Shared Equipment.

(d) Except as expressly provided in this *Section 3.5*, (i) neither of Sellers has made or is making any representations or warranties with respect to the Purchased Tangible Property, and (ii) Buyer is acquiring the Purchased Tangible Property on an "as is, where is" basis.

### **3.6    *Intellectual Property and Station Materials.***

(a) *Disclosure Schedule 3.6* contains a list of all Purchased Intellectual Property. The Purchased Intellectual Property does not include any material registration or pending application or registration.

(b) Each Seller is the sole and exclusive owner of all right, title and interest to the Purchased Intellectual Property used or held for use by such Seller, including rights in and to call letters used in the operation of the business of the Station, free and clear of any Encumbrances except Permitted Encumbrances, and, to Sellers' Knowledge, no Person has infringed or is infringing any of the Purchased Intellectual Property. Neither Seller has received written notice



of any claims, demands or proceedings pending by any Person challenging such Seller's right to use any of the Purchased Intellectual Property or that any Purchased Intellectual Property or the operation of the Station conflicts with, infringes or otherwise violates the intellectual property rights of any Person. Neither Seller has received any written notice that any of the Purchased Intellectual Property is the subject of an outstanding judicial or administrative finding, opinion or office action materially restricting the use thereof by either Seller or has been adjudged invalid, unenforceable or unregistrable in whole or in part.

(c) Sellers own, and have all necessary rights to sell, transfer and convey, all of the materials, documents and property included in the Station Documents, free and clear of all Encumbrances, except Permitted Encumbrances.

### **3.7 *FCC and Governmental Matters.***

(a) Seller LicenseCo is the FCC-approved holder of, and is qualified under the FCC Rules to assign to Buyer, the FCC Authorizations existing as of the date hereof. The FCC Authorizations existing as of the date hereof, including any special temporary authorization (STA) issued by the FCC in respect of the Station, (y) are all listed on *Disclosure Schedule 3.7(a)(i)*, and (z) constitute all of the Governmental Authorizations issued to Seller LicenseCo or any of its Affiliates by the FCC with respect to the Station and, together with the Assigned Authorizations constitute all Governmental Authorizations otherwise necessary or required for the operations of the Station or the ownership, lease, use or operation of the Purchased Assets as operated by Sellers. Seller LicenseCo has maintained, in full force and effect, and has complied in all material respects with, all FCC Authorizations. None of the FCC Authorizations has been revoked, suspended, canceled, rescinded or terminated. Except as set forth on *Disclosure Schedule 3.7(a)(ii)*, (i) there are no pending actions before the FCC or any other Governmental Authority to revoke, suspend, cancel or rescind any FCC Authorization, (ii) there are not now issued, pending or outstanding, by or before the FCC or any other Governmental Authority, any orders to show cause, notices of violation, notices of apparent liability, or notices of forfeiture with respect to any FCC Authorization, (iii) neither Seller or any of their respective Affiliates has received any written communication from the FCC or any other Governmental Authority indicating that either Seller is not in compliance with any Law, Governmental Authorization or the FCC Rules or the applicable requirements of any other Governmental Authority with respect to the FCC Authorization, and (iv) to Sellers' Knowledge, there are no facts or circumstances that could reasonably be expected to result in any FCC Authorizations being suspended or revoked or otherwise lapsing prematurely.

(b) Except as set forth on *Disclosure Schedule 3.7(b)*, all required registrations, reports, notifications, filings and other documents necessary or required for the operations of the Station or the ownership, lease, use or operation of the Purchased Assets, including the Assigned Authorizations, have been timely filed with or submitted to the FCC and each other applicable Governmental Authority, all such registrations, reports, notifications, filings and other documents are accurate and complete in all material respects, and all fees required to be paid to the FCC or any other Governmental Authority by Seller LicenseCo or any of its Affiliates have been fully and timely paid in all material respects. The online public inspection file for the Station contains such filings necessary to comply with the Communications Act and all FCC Rules in all material respects.



(c) The Channel Sharing Agreement complies in all material respects with the FCC Rules; and neither Seller has received notice that the Channel Sharing Agreement or any party thereto is in violation of the FCC Rules.

(d) Except as set forth on *Disclosure Schedule 3.7(d)*, (i) the Station was not silent or operating on less than the required minimum schedule for a period of time of more than thirty (30) days during the current license term of the main FCC Authorization and (ii) the Station is not operating under any special temporary authority from the FCC as of the date hereof.

(e) The Station is not, on the date hereof, subject to Repacking.

(f) Seller LicenseCo, together with Sharer, is an intervenor in the DTS Litigation. Sellers are not otherwise party to the DTS Litigation.

### **3.8 MVPD Matters.**

(a) The Station has validly and timely made a must-carry election, whether through notice or by default, for the Station for, and with respect to, all MVPDs with more than 5,000 subscribers in the Market, as modified pursuant to Section 76.59 of the FCC Rules, 47 C.F.R. §76.59 for the Station (“*Station’s Market*”) for the 2021-2023 election cycle. Sellers have elected Must Carry consistent with the procedure set forth in Section 76.64(h) of the FCC’s Rules, 47 C.F.R. §76.64(h).

(b)

(c)

(d) Since January 1, 2018 and until the date hereof, (i) no MVPD has provided written notice to Sellers or any of its Affiliates of any material signal quality issue or has failed to respond to, or purported to reject, a request for carriage (including in respect of certain communities within the Station’s Market) or, sought any form of relief from carriage of the Station from the FCC; (ii) none of Sellers or any of their Affiliates has received any written notice from any MVPD of its intention to delete the Station from carriage, and (iii) none of Sellers or any of their Affiliates has received notice of a petition seeking FCC modification of the Station’s market for purposes of carriage by such MVPD, nor has any MVPD advised any of Sellers of such MVPD’s intent to file any such petition.

(e) There are no Contracts with any MVPD with respect to the Station that (i) constitute a “retransmission consent agreement” for purposes, or within the meaning, of the FCC Rules, or (ii) purport to waive or otherwise agree not to enforce such Station’s must-carry rights under the FCC Rules.



(f)

(g)

**3.9 Absence of Litigation.** Except as otherwise set forth on *Disclosure Schedule 3.9*, there is not, and has not been in the previous year, any claim (whether or not commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority) or other action, suit, arbitration, mediation, claim, audit, investigation (including with respect to harassment, sexual harassment or workplace violence) demand, hearing, petition, dispute, controversy, complaint, charge, inquiry, litigation, proceeding or administrative investigation (each, a “**Legal Proceeding**”) pending or, to Sellers’ Knowledge, threatened, in any way involving or relating to the Station or any Purchased Asset which, if determined adversely to Sellers, would reasonably be expected to result in a Material Adverse Effect. Neither Seller is, or has been, subject to any order, conciliation, settlement, stipulation, ruling, requirement, notice, directive, award, decree, judgment or other determination of any Governmental Authority (each, an “**Order**”) in any way involving or relating to the Station or any Purchased Asset, and there is no, and has not been any, Order against either Seller, or any of their respective stockholders, officers, directors or managers (in each case, in its, his or her capacity as such) that could prevent, enjoin or alter or delay any of the transactions contemplated hereunder or under any Transaction Document. Sellers have provided to Buyer true and correct copies of all material documents, including pleadings, received by Sellers, including from Sharer, in connection with or relating to any DTS Litigation.

**3.10 Real Estate and Environmental Matters.**

(a) Except for any leasehold rights contemplated under the Channel Sharing Agreement, neither of Sellers owns, leases, subleases or licenses any real property for use in the ownership and operation of the Station.

(b) Each Seller has complied and is in compliance in all material respects with all Environmental, Health and Safety Requirements to the extent relating to the business and operations of the Station. Neither Seller nor any of their respective Affiliates has received any notice, report or other information regarding any actual or alleged violation or breach of any Environmental, Health and Safety Requirement or any investigatory, remedial or corrective Liabilities.

**3.11 Taxes and Tax Returns.** Each Seller has properly prepared and timely filed all material Tax Returns that were required to be filed by it, and, except as set forth on *Disclosure Schedule 3.11*, no extensions are currently in effect. All Taxes owed by or with respect to either Seller with respect to any Pre-Closing Tax Period were paid when due, or, in the case of Taxes not yet due, will be paid in full when due, in each case, whether or not shown as due on a Tax Return. There are no Encumbrances on any of the Purchased Assets in connection with any failure (or alleged failure) to pay any Tax by either Seller or any of their respective Affiliates. To Sellers’ Knowledge, (a) no Tax Return relating to or the Purchased Assets is currently under audit or



examination by any Governmental Authority, and (b) there are no Legal Proceedings pending with respect to any Taxes relating to the Purchased Assets.

**3.12 Compliance with Laws.** Except as set forth on *Disclosure Schedule 3.12*, each Seller has at all times complied with, and is in compliance with, in all material respects with the Assigned Authorizations and all applicable Laws. Neither Seller, nor, to Sellers' Knowledge, any of their respective employees, consultants, agents, representatives or independent contractors acting on behalf of any Seller has been (a) excluded from participation in any governmental program, (b) suspended or declared ineligible to participate in or voluntarily excluded from any program by any Governmental Authority, or (c) subject to any disciplinary or similar Legal Proceeding or other form of monitoring or review by any Governmental Authority, trade association, professional review organization, accrediting board or certifying agency based upon any alleged improper activity on the part of Sellers or such individual. Neither Seller has received any notice of deficiency from any Governmental Authority.

**3.13 No Restrictions.** Neither Seller is subject to, or a party to, any charter, by-law, Encumbrance, Governmental Authorization or Contract that would prohibit or restrict (a) the Station's ability to compete in any business anywhere in any geographic area (other than programming agreements limiting the broadcast of such programs to specific markets, (b) the customers with which the Station may do business, or (c) the prices the Station may charge.

**3.14 Approvals and Consents.** Except for the FCC Consent and as set forth on *Disclosure Schedule 3.14*, the execution, delivery and performance by each Seller of this Agreement and the Transaction Documents to which such Seller is, or will be a party, and the consummation of the transactions contemplated hereby and thereby will not require any license, approval, permit, certificate, consent, waiver, authorization, novation or notice of or to any Person, including any Governmental Authority or any party to any material Assigned Contract.

**3.15 Brokers and Financial Advisors.** Neither Sellers nor any Person acting on either Seller's behalf has employed or engaged any financial advisor, broker or finder or incurred any Liability for any financial advisory, brokerage or finder's fee or commission in connection with this Agreement, any Transaction Document or the transactions contemplated hereby or thereby for which either Seller or Buyer or any of their respective Affiliates is or may become liable.

## **ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Sellers, as of the date hereof and as of the Closing Date, as follows:

**4.1 Organization and Standing.** Buyer is duly organized, validly existing and good standing under the applicable Laws of the state of Wisconsin and, as of the Closing, will be qualified to do business in New York and Connecticut, and has the organizational power and authority necessary to (a) execute, deliver and perform this Agreement and all Transaction Documents to which Buyer is, or at the Closing will be, a party, and (b) consummate the transactions contemplated by this Agreement and the Transaction Documents to which Buyer is, or at the Closing will be, a party.



#### **4.2     *Authorization and Binding Obligation.***

(a)     The execution, delivery and performance of this Agreement and the other Transaction Documents to which Buyer is, or at the Closing will be, a party, and the consummation of the transactions contemplated hereby and thereby, have been and will be duly and validly authorized by all necessary corporate and other action on the part of Buyer. This Agreement, and the other Transaction Documents to which Buyer is, or at the Closing will be, a party, has been or will have been duly signed and delivered by Buyer and each constitutes the legal, valid and binding obligations of Buyer, enforceable in accordance with its terms except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar Laws affecting or relating to enforcement of creditors' rights generally and general principles of equity (regardless of whether enforcement is considered in a proceeding at law or in equity).

(b)     The execution, delivery and performance by Buyer of this Agreement and the Transaction Documents to which Buyer is or will be a party, and the consummation of the transactions contemplated hereby and thereby, will not (a) constitute a breach or violation of, or conflict with, any organizational document of Buyer, (b) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, any Contract or license by which Buyer is bound or affected, in each case except for any such breach, default, acceleration, termination, amendment, modification, or cancellation that would not reasonably be expected to prevent, enjoin or alter or materially delay the transactions contemplated hereunder, or (c) constitute a breach or violation of or a default under (with or without due notice or lapse of time or both) any Law, Order or other restriction of any Governmental Authority to which Buyer is subject, except as would not reasonably be expected to prevent, enjoin or alter or materially delay the transactions contemplated hereunder.

**4.3     *FCC Qualifications.*** Buyer is legally, financially and otherwise qualified to be the licensee of, and to acquire, own, operate and control, the Station under the Communications Act, including the provisions relating to media ownership and attribution, foreign ownership and control, and character qualifications. To Buyer's Knowledge, there are no facts or circumstances regarding Buyer's FCC qualifications that would, under the Communications Act, the FCC Rules or any other applicable Laws, disqualify Buyer as the direct or indirect assignee of the Assigned Authorizations or as the owner and operator of the Station. No waiver of or exemption from any FCC Rule is necessary to be obtained by Buyer in order for the FCC Consent to be granted. There are no matters related to Buyer which might reasonably be expected to result in the FCC's denial or material delay of approval of the FCC Application.

**4.4     *Absence of Litigation.*** There is not any Legal Proceeding by or before any Governmental Authority pending or, to the Knowledge of Buyer, threatened, against Buyer or any of its Affiliates that would reasonably be expected to prevent, enjoin or alter or materially delay the transactions contemplated hereunder. As of the date hereof, there is no, and has not been any, Order against Buyer or any of its Affiliates, or any of their respective stockholders, officers, directors, managers or employees (in each case, in its, his or her capacity as such) that would reasonably be expected to prevent, enjoin or alter or delay the transactions contemplated hereunder.



**4.5 Approvals and Consents.** Except for the FCC Consent, the execution, delivery and performance by Sellers of this Agreement and the Transaction Documents to which Buyer is, or will be a party, and the consummation of the transactions contemplated hereby and thereby will not require any license, approval, permit, certificate, consent, waiver, authorization, or novation of or to any Person, including any Governmental Authority or any party to any Contract, except as would not reasonably be expected to prevent, enjoin or alter or materially delay the transactions contemplated hereunder.

**4.6 Brokers and Financial Advisors.** None of Buyer nor any Person acting on its or such Person's behalf has employed or engaged any financial advisor, broker or finder or incurred any Liability for any financial advisory, brokerage or finder's fee or commission in connection with this Agreement, any Transaction Document or the transactions contemplated hereby or thereby for which either Sellers or Buyer or any of their respective Affiliates are or may become liable.

**4.7 Financing.** At Closing, Buyer will have sufficient cash, available lines of credit or other sources of immediately available funds to enable it to make payment of the Purchase Price, all related fees and expenses in connection with the transactions contemplated by this Agreement and any other amounts to be paid by it in accordance with the terms of this Agreement.

**4.8 Other Information.** Buyer represents that neither Sellers nor any of their respective Affiliates nor any other Person has made any representation or warranty, express or implied, as to the accuracy or completeness of any information regarding Sellers, or the transactions contemplated by this Agreement not expressly set forth in this Agreement, and neither Sellers nor any of their Affiliates or any other Person will have or be subject to any liability to Buyer or any other Person resulting from the distribution to Buyer or its representatives or Buyer's use of any such information or other publications or data room information provided to Buyer or its representatives, or any other document or information in any form provided to Buyer or its representatives in connection with the sale of the Purchased Assets and the transactions contemplated hereby.

**4.9 Solvency.** Buyer is not entering into the transactions contemplated hereby with the intent to hinder, delay or defraud either present or future creditors. Immediately after giving effect to all of the transactions contemplated hereby, including the payment of the Purchase Price and payment of all related fees and expenses, Buyer and its Affiliates will be Solvent. For purposes of this Section 4.9, the term "**Solvent**" with respect to any Person means that, as of any date of determination, (a) the amount of the fair saleable value of the assets of such Person exceeds, as of such date, the value of all liabilities of such Person, including contingent and other liabilities, as of such date, as such quoted terms are generally determined in accordance with the applicable federal Laws governing determinations of the solvency of debtors, (b) such Person will not have, as of such date, an unreasonably small amount of capital for the operation of the business in which they are engaged or proposed to be engaged following such date, and (c) such Person will be able to pay its liabilities, including contingent and other liabilities, as they mature. For purposes of this definition, "not have an unreasonably small amount of capital for the operation of the business in which it is engaged or proposed to be engaged" means that the Person will be able to generate enough cash from operations, asset dispositions or refinancing, or a combination thereof, to meet their financial obligations as they become due.



## ARTICLE V COVENANTS

### 5.1 *Covenants of Sellers.*

(a) ***Interim Operations.*** From the date hereof until the earlier to occur of the Closing Date and the termination of this Agreement in accordance with *Article IX* (the “***Interim Period***”), except as disclosed in writing to and approved in writing by Buyer (which approval shall not be unreasonably withheld, conditioned or delayed), Sellers shall operate the Station solely in the ordinary course of business and in accordance with past practice (including incurring only ordinary and necessary business expenses consistent with past practices for the Station), and shall pay and perform all of the obligations with respect to the Station (including those required under the Assigned Contracts) in the ordinary course. During the Interim Period, except as contemplated by this Agreement or with the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed, Sellers hereby jointly and severally covenant and agree:

(i) to not sell, transfer, dispose of or further encumber any of the Purchased Assets except for sales of immaterial assets in the ordinary course of business consistent with past practices and except for Permitted Encumbrances;

(ii) to maintain the existing insurance policies on the Purchased Assets or other policies providing substantially similar coverages;

(iii) to maintain and preserve the FCC Authorizations and goodwill associated therewith;

(iv) to not terminate, extend or amend any material Assigned Contract (except for Contracts which terminate pursuant to their terms);

(v) to not take or omit to take any action which, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect;

(vi) maintain in effect, and to cause the Station to comply in all material respects with, the Channel Sharing Agreement and the FCC Rules applicable thereto;

(vii) continue to operate and maintain the Station in all material respects in accordance with the terms of all FCC Authorizations and in compliance in all material respects with all Laws and the FCC Rules;

(viii) deliver to Buyer, promptly after filing, copies of any material reports, applications, or responses to the FCC, or any material communications from the FCC, or if from any other person directed to the FCC, promptly after receipt by either Seller or any of their respective Affiliates, related to the Station that are filed or received during the Interim Period;

(ix) deliver to Buyer, promptly after receipt by either Seller or any of their respective Affiliates, copies of any written notice received by during the Interim Period from an MVPD disputing or stating its intention to challenge or dispute, the Must-Carry Election for the



Station with respect to carriage by such MVPD, including in any specific community in the Market or notifying the Station of any signal quality or signal delivery issue with respect to such MVPD;

(x) except as contemplated in the FCC Application and except as disclosed in *Disclosure Schedule 5.1(a)(x)*, not apply to the FCC for any construction permit, authorization or any modification to the FCC Authorizations that would restrict in any material respect the Station's operations or make any material changes in the assets of the Station that is not in the ordinary course of business, including the filing of any application with the FCC requesting authority to modify the Station's facilities;

(xi) maintain in full force and effect in accordance with the FCC Rules the Must-Carry Election, including (A) maintaining in full force and effect the Station's delivery of a good quality signal to the applicable receiving facility of each MVPD providing service to the Station's Market, and (B) diligently oppose any petition that may be filed by any MVPD seeking FCC modification of the Station's market for purposes of carriage by such MVPD; and

(xii) take all reasonable actions necessary to (A) keep the FCC Authorizations, including all material permits and applications pending before the FCC, valid and in full force and effect and (B) to preserve all material rights for the continued use of all the FCC Authorizations for the Station; and promptly take all commercially reasonable action to obtain a grant of any required FCC renewal application for the Station, including negotiating and entering into a tolling agreement with the FCC if necessary.

The Parties acknowledge and agree that this Agreement and, without limitation, the covenants in this *Section 5.1(a)*, is not intended to and shall not be construed to transfer control of the Station or the Assigned Authorizations or to give Buyer any right to, directly or indirectly, control, supervise or direct, or attempt to control, supervise or direct, the programming, operations, or any other matter relating to the Station or the Purchased Assets prior to the Closing, and Sellers shall have complete control and supervision of the programming, operations, policies and all other matters relating to the Station and Purchased Assets up to the time of the Closing.

(b) ***Notification of Certain Matters.*** During the Interim Period:

(i) Sellers will give prompt written notice to Buyer of any event, occurrence or development causing, or allegation by a Third Party which, if true, would cause, or which would reasonably be expected to cause, (A) a breach or inaccuracy of any of the representations and warranties of Sellers in this Agreement, (B) any breach or nonperformance of or noncompliance with any covenant or agreement of Sellers in this Agreement or any Transaction Document, (C) the failure of any condition set forth in *Section 6.1*, (D) any material damage to or loss or destruction of any Purchased Asset (whether or not insured) or (E) the occurrence or threatened occurrence of any event or condition which resulted in, or would reasonably be expected to result in, a Material Adverse Effect. During the Interim Period, in connection with any notice that either Seller or any of their respective Affiliates receives from the FCC or any other Person with respect to any interference the Station may create, Sellers shall: (x) promptly forward such notice to Buyer, (y) consult in good faith with Buyer regarding the resolution of such interference, and (z) otherwise take all actions necessary to preserve all rights for the continued use of the Assigned Authorizations. No disclosure pursuant to this *Section 5.1(b)(i)* shall be



deemed to amend or supplement the Disclosure Schedule or prevent or cure any misrepresentation, breach of warranty, or breach of covenant, agreement or obligation.

(ii) Sellers will provide to Buyer true and correct copies of all material documents, including pleadings, received by Sellers, including from Sharer, in connection with or relating to the DTS Litigation.

(c) **Access to Information.** During the Interim Period, Sellers shall give Buyer and its employees, agents and other authorized representatives (collectively, the “**Buyer Authorized Parties**”), during normal business hours and with reasonable written prior notice, reasonable access to the Purchased Assets, to all books, records and documents of Sellers relating to the Station, and Sellers’ officers, directors, managers, employees, attorneys, auditors and accountants concerning customary due diligence matters, and to furnish or cause to be furnished to any Buyer Authorized Party, upon reasonable notice, all information with respect to the Station’s business that any Buyer Authorized Party may reasonably request; *provided, however*, that no such investigation or examination shall be permitted to the extent that it would require either Seller to disclose information subject to attorney-client privilege or conflict with any confidentiality obligations to which such Seller is bound.

(d) **Employment Matters.** Sellers acknowledge and agree that Buyer shall not have any obligation to offer employment to any employee of Sellers or the Station or any post-closing liability with respect to any such employee or for any such employee’s benefits of any kind or nature, except to the extent that Buyer shall offer employment to any such employee and then only from and after the time at which such offer shall have been extended, and accepted by such employee, and subject to the terms and conditions thereof.

## **5.2 Joint Covenants.**

(a) **FCC Application.** The Parties shall cooperate fully with each other and their respective counsel in connection with any actions required to be taken in connection with obtaining the FCC Consent, including (i) the filing of an application on FCC Form 2100, Schedule 314 (or such successor form thereto) with the FCC for all necessary consent of the FCC to the assignment of the FCC Authorizations from Seller LicenseCo to Buyer as proposed in this Agreement (the “**FCC Application**”); and (ii) the defense against any petition to deny or informal objection filed against the FCC Application, *provided, however*, that none of the Parties shall be required to participate in a trial-type hearing or judicial appeal in pursuit of a grant of the FCC Application. Seller LicenseCo and Buyer shall each prepare its portion of the FCC Application, which shall be filed with the FCC within five (5) Business Days after the execution of this Agreement. Buyer, on the one hand, and Sellers, on the other hand, shall share equally all application processing fees associated with the FCC Application. Each Party shall pay its own attorneys’ fees incurred in filing and prosecuting the FCC Application. The Parties acknowledge that the purchase and sale of the Purchased Assets as contemplated by this Agreement is subject to the receipt of the FCC Consent. Each Party will promptly provide to the other a copy of any pleading, order or other document served on or delivered to it relating to the FCC Application. The Parties shall each use its commercially reasonable efforts to oppose any petitions to deny or other objections filed with respect to the FCC Application and any requests for reconsideration or review of the FCC Consent. No Party shall agree to participate in any meeting with the FCC in respect of any filing, consent, approval, investigation or other inquiry relating to this Agreement or the



transactions contemplated hereby unless it consults with the other Party in advance and, to the extent permitted by the FCC, gives the other Party the opportunity to attend and participate in such meeting.

(b) ***Further Assurances.*** Each of Sellers and Buyer shall use its commercially reasonable efforts to: (i) take all actions necessary or appropriate to consummate the transactions contemplated by this Agreement and (ii) cause the fulfillment at the earliest practicable date of all of the conditions to their respective obligations to consummate the transactions contemplated by this Agreement. In case at any time after the Closing any further action is necessary or reasonably required to carry out the purposes of this Agreement or any Transaction Document or any transaction contemplated hereby or thereby, each Party will take such further action (including the execution and delivery of such further instruments and documents) as any other Party may reasonably request, all at the requesting Party's cost and expense (unless the requesting Party is entitled to indemnification therefor under *Article VIII*). From and after the Closing, Buyer will be entitled to possession of all of the Station Documents, and Assigned Authorizations, including documents or other tangible materials in either Seller's (or its Affiliates') possession evidencing the foregoing.

(c) ***Designated Measures.*** In no event shall anything contained in this Agreement, including *Sections 5.2(a)* and *(b)* above, be deemed to require either Party to take or agree to take any Designated Measure.

(d) ***Confidentiality.***

(i) During the Interim Period, none of the Parties will use or disclose to any other Person (except as may be necessary for the consummation of the transactions contemplated hereby, or as required by Law, and then only with prior notice to the other Party) this Agreement or any information received from the other Party or their agents in the course of investigating, negotiating and performing the transactions contemplated by this Agreement; *provided, however*, that each Party may disclose such information to such Party's officers, directors, employees, lenders, advisors, attorneys, accountants and financial advisors who need to know such information in connection with the consummation of the transactions contemplated by this Agreement and who are informed by such Party of the confidential nature of such information. Nothing shall be deemed to be confidential information that: (A) is already in such Party's possession, provided that such information is not subject to an obligation of confidentiality or other obligation of secrecy to the other Party, (B) becomes generally available to the public other than as a result of a disclosure by such Party or such Party's officers, directors, employees, lenders, advisors, attorneys or accountants, (C) becomes available to such Party on a nonconfidential basis from a source other than another Party or its advisors, provided that such source is not known by such Party to be bound by an obligation of confidentiality or other obligation of secrecy to the other Party, or (D) is developed independently by any Party without resort to the confidential information of the other Party.

(ii) No Party shall publish any press release or make any other public announcement concerning this Agreement or the transactions contemplated hereby prior to the Closing Date without the prior written consent of the other Party, which shall not be withheld, conditioned, or delayed unreasonably; *provided, however*, that nothing contained in this



Agreement shall prevent any Party from making any filings with Governmental Authorities, including in respect of filings or public announcements in accordance with applicable Laws, including federal securities Laws and the FCC Rules that, in the judgment of the disclosing party, may be required or advisable in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

(iii) From and after the Closing, each Seller will, and will instruct its Affiliates, employees, officers, directors, managers, members, partners, equityholders, advisors, representatives and agents (each, a “***Seller Representative***”) to, (a) treat and hold as confidential and proprietary all information concerning the Purchased Assets, the Assumed Liabilities, Buyer and its Affiliates and the business and affairs of Buyer that is not generally available to the public as of the Closing (provided, that any information generally available to the public as a result of such Seller’s or any Seller Representative’s breach of this *Section 5.2(c)* will not be deemed to be generally available to the public hereunder) (collectively, the “***Buyer Confidential Information***”), (b) refrain from using any Buyer Confidential Information except as otherwise expressly contemplated by this Agreement and (c) promptly deliver to Buyer or destroy, at the election of Buyer, all tangible embodiments (and all copies) of any Buyer Confidential Information that are in the possession or under the reasonable control of such Seller or any of its Affiliates, employees, officers, directors, managers, members, partners, equityholders, advisors, representatives or agents. In the event that either Seller or any of its Affiliates, employees, officers, directors, managers, members, partners, equityholders, advisors, representatives and agents is requested or required (pursuant to written or oral question or request for information or documents in any Legal Proceeding, interrogatory, subpoena, civil investigative demand, or similar process) to disclose any Buyer Confidential Information, such Seller will promptly notify Buyer of the request or requirement so that Buyer may seek an appropriate protective order or waive compliance with the provisions of this *Section 5.2(c)(iii)*. If, in the absence of a protective order or the receipt of a waiver hereunder, either Seller (or such other Person) is, on the advice of counsel, compelled to disclose any Buyer Confidential Information to any tribunal, such Seller (or such other Person), as applicable, may disclose that portion of the Buyer Confidential Information that is required to be disclosed to the tribunal; provided, however, that such Seller will use commercially reasonable efforts to obtain, at the reasonable request of Buyer, an order or other assurance that confidential treatment will be accorded to such portion of the Buyer Confidential Information required to be disclosed as Buyer will designate. The existence and terms of this Agreement and the Transaction Documents will be deemed Buyer Confidential Information.

(e) ***Exclusivity.*** Neither Seller will, and each Seller will cause each of its Seller Representatives not to, (i) directly or indirectly solicit, initiate, encourage (including by way of furnishing information), or take any other action to facilitate any inquiry or the making of any proposal which constitutes, or could reasonably be expected to lead to, any acquisition or purchase of the Station or the Purchased Assets (whether by merger, sale of assets, equity, or otherwise), the consummation of which would or could reasonably be expected to prevent or materially delay the consummation of the transactions contemplated by this Agreement (any of the foregoing, an “***Alternate Transaction Proposal***”) or agree to or endorse any Alternate Transaction Proposal or (ii) propose, enter into or participate in any discussions or negotiations regarding any Alternate Transaction Proposal, or furnish to any other Person any information with respect to the Station or the Purchased Assets in connection with an Alternate Transaction Proposal, or otherwise cooperate



in any way with, or assist or participate in, facilitate or encourage, any effort or attempt by any other Person to do or seek any of the foregoing.

### **5.3 Tax Matters.**

(a) **Allocation of Taxes.** For all purposes of this Agreement, any Taxes (other than Transfer Taxes) incurred with respect to the Station or the Purchased Assets for a Straddle Period shall be allocated between the Pre-Closing Tax Period and Post-Closing Tax Period of such Straddle Period as follows: (i) any such Tax that is a property or similar ad valorem Tax shall be allocated prorated based on the relative number of days in such Pre-Closing Tax Period and such Post-Closing Tax Period, and (ii) any such Tax not described in the foregoing clause (i) hereof shall be allocated based on an interim closing of the books as of the close of business on the Closing Date; *provided* that exemptions, allowances or deductions that are calculated on an annual basis (or on a monthly basis, where required) shall be allocated between the period ending prior to the Closing Date and the period beginning on the Closing Date (or with respect to federal income Taxes in proportion to the number of days in each period).

(b) **Transfer Taxes.** Any Transfer Taxes payable in respect of the purchase and sale of the Purchased Assets pursuant to this Agreement shall be borne and paid one-half by Buyer and one-half by Sellers. Buyer and Sellers agree to (i) cooperate in the execution and delivery of all instruments and certificates necessary to enable the appropriate party to file any Tax Returns relating to the Transfer Taxes and (ii) cooperate and use commercially reasonable efforts to mitigate any Transfer Taxes.

### **5.4 Retention of Records; Post Closing Access to Records.**

(a) Notwithstanding anything to the contrary contained in this Agreement, Sellers and their Affiliates may retain and use, at their own expense, copies of all documents or materials transferred hereunder, in each case, which (i) are used in connection with the businesses of Sellers or their Affiliates, other than the Station, (ii) Sellers or any of their Affiliates in good faith determine that they are reasonably likely to need access to in connection with the defense (or any counterclaim, cross-claim or similar claim in connection therewith) of any action against or by Sellers or any of their Affiliates pending or threatened as of the Closing Date (other than a dispute with Buyer), or (iii) Sellers or any of their Affiliates in good faith determine they are reasonably likely to need access to in connection with any filing, report, or investigation to or by any Governmental Authority.

(b) Notwithstanding anything to the contrary contained in this Agreement, for a period of three (3) years after the Closing Date, Buyer shall maintain, and provide Sellers and their representatives reasonable access to, those Station Documents of Buyer insofar as they relate to the Purchased Assets that relate to periods prior to the consummation of the Closing, during normal business hours and on at least ten (10) Business Days' prior written notice (or such shorter time period as necessitated by the urgency of the underlying facts and circumstances). If Buyer shall desire to dispose of any of such Station Documents prior to the expiration of such three (3)-year period in accordance with the record retention policies of Buyer then in effect, Buyer shall, prior to such disposal, give Sellers a reasonable opportunity, at Sellers' expense, to segregate and remove such Station Documents as Sellers may select, subject to destruction of correspondence



and other similar documents in the ordinary course, in accordance with customary retention policies and applicable Law.

## ARTICLE VI CONDITIONS TO CLOSING

**6.1 Conditions to Obligations of Buyer.** The obligation of Buyer to consummate the transactions contemplated by this Agreement is subject to the satisfaction at or before the Closing of all of the following conditions, any one or more of which may be waived by Buyer, in the Buyer's sole discretion:

(a) Sellers must have delivered to Buyer or have caused to be delivered to Buyer each of the items set forth in *Section 7.2*;

(b) Each of (i) the Fundamental Representation of Sellers shall be true and accurate in all respects as of the Closing Date as if made on the Closing Date (except to the extent such Fundamental Representations speak as of an earlier date, in which case such Fundamental Representations shall have been true and correct as of such earlier date); and (ii) the other representations and warranties of Sellers contained in this Agreement that are not contemplated by the preceding clause (i) shall be true and accurate in all material respects as of the Closing Date as if made on the Closing Date, disregarding all qualifiers and exceptions relating to "materiality", "**Material Adverse Effect**", or other similar qualifications as to materiality, shall be true and accurate in all respects as of the Closing Date (except, in the case of this clause (ii), to the extent such representations and warranties speak as of an earlier date, in which case such representations and warranties shall have been true and correct, disregarding all qualifiers and exceptions relating to "materiality", "**Material Adverse Effect**", or other similar qualifications as to materiality, as of such earlier date) except (x) for changes expressly contemplated or permitted by this Agreement or (y) where the failure to be true and correct, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

(c) Sellers shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by Sellers prior to or on the Closing Date;

(d) There shall not have been a Material Adverse Effect;

(e) Buyer shall have received, no later than three (3) business days prior to the Closing, evidence, acceptable to Buyer in its reasonable discretion, that all Encumbrances, other than Permitted Encumbrances, have been properly terminated or released on or before the Closing; and

(f) Except as set forth on *Disclosure Schedule 6.1(f)*, there shall be no (i) Legal Proceeding pending or threatened by any Governmental Authority or other Person seeking any Order that prohibits the consummation of all or any part of the transactions contemplated by this Agreement or any other Transaction Document or seeking to recover any material damages or obtain other relief as a result of the consummation of such transactions; provided, that if the Sellers agree to indemnify Buyer against damages resulting from a Legal Proceeding by a Person other than a Governmental Authority, this condition shall be deemed satisfied.



**6.2 Conditions to Obligations of Sellers.** The obligation of Sellers to consummate the transactions contemplated by this Agreement is subject to the satisfaction at or before the Closing of all of the following conditions, any one or more of which may be waived by Sellers, in the Sellers' sole discretion:

(a) Buyer must have delivered to Sellers or have caused to be delivered to Sellers, each of the items set forth in *Section 7.3*;

(b) Each of (i) the Fundamental Representation of Buyer shall be true and accurate in all respects as of the Closing Date as if made on the Closing Date (except to the extent such Fundamental Representations speak as of an earlier date, in which case such Fundamental Representations shall have been true and correct as of such earlier date); and (ii) the other representations and warranties of Buyer contained in this Agreement that are not contemplated by the preceding clause (i), disregarding all qualifiers and exceptions relating to "materiality" or other similar qualifications, shall be true and accurate in all material respects as of the Closing Date (except, the case of this clause (ii), to the extent such representations and warranties speak as of an earlier date, in which case such representations and warranties shall have been true and correct, disregarding all qualifiers and exceptions relating to "materiality" or other similar qualifications, as of such earlier date), except the case of this clause (ii) where any failure to be so true and accurate, individually or in the aggregate, has not had, and would not reasonably be expected to have, a material adverse effect on the ability of Buyer to perform its obligations under this Agreement; and

(c) Buyer shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by Buyer prior to or on the Closing Date.

**6.3 Conditions to Obligations of Buyer and Sellers.** The respective obligations of Buyer and Sellers to consummate the transactions contemplated by this Agreement is subject to the satisfaction at or before the Closing, of each of the following conditions, any one or more of which may be waived by Buyer, on the one hand, or Sellers, on the other hand, in such Party's sole discretion:

(a) The FCC Consent shall have been granted by initial grant and shall be effective, and such consent shall include no condition materially adverse to either Party or that would be inconsistent in any material respect with the performance of the transactions contemplated by this Agreement; and

(b) There shall not be in effect any Law or Order restraining, enjoining or otherwise prohibiting or materially impairing the consummation of the transactions contemplated by this Agreement or any other Transaction Document, or causing any of the transactions contemplated by this Agreement or any Transaction Document to be rescinded following consummation.

**6.4 Frustration of Closing Conditions.** Neither of Sellers nor Buyer may rely on the failure of any condition set forth in this *Article VI* if such failure was caused by such Party's failure to comply with any provision of this Agreement.



## ARTICLE VII CLOSING

**7.1 Time and Procedure.** The closing of the transactions contemplated by this Agreement (the “**Closing**”) will take place by email (in portable document format) transmission to the respective offices of legal counsel for the Parties of the requisite documents, duly executed where required, delivered upon actual confirmed receipt, on the fifth (5th) Business Day following the receipt of the FCC Consent or such other place, date, time or delivery method as mutually agreed upon by the Parties (the date on which the Closing occurs, the “**Closing Date**”). The Closing shall be deemed to occur as of the Effective Time.

**7.2 Sellers’ Deliveries at Closing.** At the Closing, Sellers shall deliver or cause to be delivered to Buyer the following documents and instruments and any other documents and instruments as Buyer may reasonably request to carry out the transaction contemplated by this Agreement (“**Transaction Documents**”):

(a) A general bill of sale and assignment and assumption agreement in customary form conveying the Purchased Assets from each Seller to Buyer and providing for the assumption by Buyer of the Assumed Liabilities, duly executed by such Seller (“**Bill of Sale, Assignment and Assumption Agreement**”);

(b) An assignment and assumption in customary form assigning the Channel Sharing Agreement from Sellers to Buyer, duly executed by Sellers (“**Assignment of Channel Sharing Agreement**”);

(c) An assignment and assumption in customary form of the FCC Authorizations from Seller LicenseCo to Buyer, duly executed by Seller LicenseCo (“**Assignment of Authorizations**”);

(d) A certificate, dated as of the Closing Date, executed by an authorized officer of each Seller to the effect that the conditions set forth in *Section 6.1(b)* and *Section 6.1(c)* have been satisfied; and

(e) A non-foreign person affidavit, dated as of the Closing Date, from each Seller in the form required by Section 1445(b)(2) of the Code, and duly executed by such Seller.

**7.3 Buyer’s Deliveries at Closing.** At Closing, Buyer shall deliver or cause to be delivered to Sellers the following:

(a) The Purchase Price as provided in *Article II* by wire transfer of immediately available funds;

(b) The Bill of Sale, Assignment and Assumption Agreement, duly executed by Buyer;

(c) The Assignment of Channel Sharing Agreement, duly executed by Buyer;

(d) The Assignment of Authorizations, duly executed by Buyer; and



(e) A certificate, dated as of the Closing Date, executed by an authorized officer of Buyer to the effect that the conditions set forth in *Section 6.2(b)* and *Section 6.2(c)* have been satisfied.

## ARTICLE VIII SURVIVAL AND INDEMNIFICATION

**8.1 *Survival.*** The representations and warranties in this Agreement and the covenants and agreements in this Agreement required to be performed prior to Closing will not survive Closing and, after Closing, shall expire and be at no further force or effect. This *Article VIII* shall survive the Closing for a period of three (3) months from the Closing Date. The covenants and agreements in the other Transaction Documents, and the covenants and agreements in this Agreement that are not required to be performed in full prior to Closing, will survive Closing in accordance with their respective terms until performed. No claim may be brought under this Agreement unless written notice describing in reasonable detail the nature and basis of such claim is given on or prior to the last day of such three (3) month period. In the event such notice is given, the right to indemnification with respect thereto shall survive the survival period until such claim is finally resolved and any obligations thereto are fully satisfied.

**8.2 *Indemnification by Sellers.*** From and after the Closing, Sellers jointly and severally agree to indemnify, defend, and hold Buyer and its Affiliates and each of their respective affiliates, officers, directors, managers, members, partners, equityholders, subsidiaries, employees, successors, heirs, assigns, agents and representatives (each, a “***Buyer Indemnified Person***”) harmless against and with respect to, and will reimburse each Buyer Indemnified Person for, any and all Losses which such Buyer Indemnified Person may suffer or incur as a result of or in connection with: (a) the Excluded Liabilities; (b) the ownership, business and operation of the Station prior to the Effective Time and (c) any Legal Proceeding brought by any Governmental Authority or any other Person arising out of, or related to, any of the matters referred to in the foregoing clauses.

**8.3 *Indemnification by Buyer.*** After the Closing, Buyer agrees to indemnify, defend and hold Sellers and their respective Affiliates and each of their respective affiliates, officers, directors, managers, members, partners, equityholders, subsidiaries, employees, successors, heirs, assigns, agents and representatives (each, a “***Seller Indemnified Person***”) harmless against and with respect to, and shall reimburse each Seller Indemnified Person for, any and all Losses which such Seller Indemnified Person may suffer or incur as a result of or in connection with: (a) the Assumed Liabilities; (b) the ownership, business and operation of the Station after the Effective Time and (c) any Legal Proceeding brought by any Governmental Authority or any other Person arising out of, or related to, any of the matters referred to in the foregoing clauses.

**8.4 *Procedures with Respect to Third Party Claims.*** A Party seeking indemnification under this *Article VIII* (each, an “*indemnified party*”) shall give prompt written notice to the Party from whom indemnification is sought (each, an “*indemnifying party*”) of any demand, suit, claim or assertion of liability by Third Parties that is subject to indemnification hereunder (a “***Claim***”), but a failure to give such notice or delaying such notice shall not affect the indemnified party’s rights or the indemnifying party’s obligations except to the extent the indemnifying party’s ability to remedy, contest, defend or settle with respect to such Claim is thereby materially prejudiced and



provided that, where applicable, such notice is given within the time period described in *Section 8.1*. The indemnifying party shall have the right, by giving written notice to the indemnified party within thirty (30) days after delivery of notice of any Claim (which notice must include an acknowledgment by the indemnifying party that it would have an indemnification obligation hereunder for any Losses arising from such Claim if finally determined in accordance with the terms of this Agreement), to undertake the defense or opposition to such Claim with counsel selected by it. Notwithstanding the foregoing, the indemnifying party shall not have the right to assume control of the defense of any Claim and shall pay the reasonable expenses of counsel retained by the indemnified party if (i) such Claim relates to or arises in connection with any criminal or regulatory Legal Proceeding, (ii) such Claim seeks an injunction or other equitable relief against the indemnified party or its Affiliates, or (iii) the indemnifying party has failed (after notice and a reasonable opportunity to cure) to diligently prosecute the defense of such Claim. The indemnified party or indemnifying party, as the case may be, that is not controlling the defense of any Claim shall have the right, at its own cost and expense, to participate in the defense of such Claim with counsel selected by it; *provided* that the indemnifying party shall pay the fees and expenses of such counsel (x) incurred by the indemnified party prior to the date the indemnifying party assumes control of the defense of such Claim if written notice was given by the indemnified party of its intention to participate in the defense of such Claim and the indemnifying party did not give notice that it is assuming control within five (5) Business Days of such notice from the indemnified party or (y) if the indemnified party reasonably concludes based on the advice of outside counsel that the representation of both the indemnifying party and the indemnified party by the same counsel would create a conflict of interest or that such parties have different defenses available. In the event that the indemnifying party does not undertake such defense or opposition, the indemnified party may undertake the defense, opposition, compromise or settlement of such Claim with counsel selected by it at the indemnifying party's cost, except that the indemnified party shall not, without the indemnifying party's prior written consent (which shall not be unreasonably withheld, conditioned or delayed), settle or compromise any Claim or consent to entry of any judgment relating to such Claim.

**8.5 Treatment of Indemnity Benefits.** All payments made by Sellers or Buyer, as the case may be, to or for the benefit of the other pursuant to any indemnification obligations under this Agreement shall be treated as adjustments to the Purchase Price for Tax purposes unless otherwise required by Law.

**8.6 Exclusive Remedies.** Buyer and Sellers acknowledge and agree that, if the Closing occurs, the indemnification provisions of this *Article VIII* shall be the sole and exclusive remedies of Buyer and Sellers and neither party shall have any liability to the other party under any circumstances for special, indirect, consequential, punitive or exemplary damages, or lost profits, diminution in value or any damages or liabilities based on any type of multiple of earnings of any Indemnified Party arising in connection with the transaction contemplated hereby; *provided, however*, that nothing contained in this Agreement shall relieve or limit the liability of any Party from any liability or Losses arising out of or resulting from fraud in connection with the transactions contemplated by this Agreement.



## **8.7    *Net Losses; Subrogation; Mitigation.***

(a)    Notwithstanding anything contained herein to the contrary, the amount of any Losses incurred or suffered by an Indemnified Party shall be calculated after giving effect to (i) any insurance proceeds received by the Indemnified Party (or any of its Affiliates) with respect to such Losses and (ii) any recoveries obtained by the Indemnified Party (or any of its Affiliates) from any other Third Party. Each Indemnified Party shall exercise commercially reasonable efforts to obtain such proceeds, benefits and recoveries (collectively, “***Proceeds***”). If any such Proceeds are received by an Indemnified Party (or any of its Affiliates) with respect to any Losses after an Indemnifying Party has made a payment to the Indemnified Party with respect thereto, the Indemnified Party (or such Affiliate) shall pay to the Indemnifying Party the amount of such Proceeds (up to the amount of the Indemnifying Party’s payment). With respect to any Losses incurred or suffered by an Indemnified Party, the Indemnifying Party shall have no liability for any Losses to the extent that the same Losses have already been recovered by the Indemnified Party from the Indemnifying Party (because the Indemnified Party may only recover once in respect of the same Loss).

(b)    Upon making any payment to an Indemnified Party in respect of any Losses, the Indemnifying Party shall, to the extent of such payment, be subrogated to all rights of the Indemnified Party (and its Affiliates) against any third party in respect of the Losses to which such payment relates. Such Indemnified Party (and its Affiliates) and Indemnifying Party shall execute upon request all instruments reasonably necessary to evidence or further perfect such subrogation rights.

(c)    Buyer and Sellers shall use commercially reasonable efforts to mitigate any Losses, whether by asserting claims against a third party or by otherwise qualifying for a benefit that would reduce or eliminate an indemnified matter; provided, that neither party shall be required to use such efforts if they would be detrimental in any material respect to such party.

**8.8    Computation of Indemnifiable Losses.** Any calculation of Losses for purposes of this *Article VIII* shall be (a) reduced to take account of any net Tax benefit actually realized by the Indemnified Party arising from the deductibility of any such Loss in the year such Loss is incurred; and (b) increased to take account of any net Tax liability actually realized by the Indemnified Party arising from the receipt or accrual of any indemnity obligation hereunder; provided, that the mitigation provisions hereof shall not require either party to take any action with respect to any Tax filing or claim, even if such filing or claim would likely result in a net Tax benefit.

## **ARTICLE IX TERMINATION AND REMEDIES**

**9.1    *Termination Generally.*** This Agreement may be terminated at any time prior to the Closing as follows:

- (a)    Buyer and Sellers may terminate this Agreement by mutual written consent;
- (b)    Buyer may terminate this Agreement if the Closing has not occurred on or before the Outside Date; *provided* that Buyer shall not be entitled to terminate this Agreement pursuant to this *Section 9.1(b)* if the failure of the Closing to have occurred by the Outside Date



was primarily caused by a failure of Buyer to perform its covenants or agreements to be performed by Buyer prior to Closing;

(c) Sellers may terminate this Agreement if the Closing has not occurred on or before the Outside Date; *provided* that Sellers shall not be entitled to terminate this Agreement pursuant to this *Section 9.1(c)* if the failure of the Closing to have occurred by the Outside Date was primarily caused by a failure of Sellers to perform their covenants or agreements to be performed by Sellers prior to Closing;

(d) Buyer may terminate this Agreement by giving written notice to Sellers in the event that Sellers breaches any representation, warranty, covenant, or agreement contained in this Agreement such that the condition set forth in *Section 6.1(b)* or *Section 6.1(c)* would not be satisfied, which breach, if capable of being cured, shall not have been cured within the earlier of the Outside Date or thirty (30) days following receipt by Sellers of notice thereof from Buyer; and

(e) Sellers may terminate this Agreement by giving written notice to Buyer in the event that Buyer breaches any representation, warranty, covenant, or agreement contained in this Agreement such that the condition set forth in *Section 6.2(b)* or *Section 6.2(c)* would not be satisfied, which breach, if capable of being cured, shall not have been cured within the earlier of the Outside Date or thirty (30) days following receipt by Buyer of notice thereof from Sellers.

## **9.2 *Effect of Termination.***

(a) In the event of a termination of this Agreement pursuant to *Section 9.1(e)*, this Agreement (other than *Article VIII*, *Article IX*, and *Article X*, which shall remain in full force and effect) shall forthwith become null and void, and neither party hereto (nor any of their respective Affiliates, members, directors, officers or employees) shall have any liability or further obligation, except as provided in *Sections 9.2(b)*, *(c)* and *(d)* below. A termination of this Agreement shall not terminate the confidentiality rights and obligations of the parties set forth in *Section 5.2(d)* hereof.

(b) If this Agreement is terminated by Seller pursuant to *Section 9.1(e)*, then Sellers shall be entitled to the Escrow Deposit as liquidated damages, and the parties to the Escrow Agreement shall immediately deliver joint written instructions to the Escrow Agent directing such disbursement. The parties understand and agree that the amount of liquidated damages represents Sellers' and Buyer's reasonable estimate of actual damages and does not constitute a penalty. Notwithstanding any other provision of this Agreement to the contrary, in the event that Sellers terminate this Agreement pursuant to *Section 9.1(e)*, the payment of the Escrow Deposit shall be Seller's sole and exclusive remedy for any monetary damages that Sellers may suffer as a result of Buyer's breach or default under this Agreement or Buyer's failure to consummate the transactions contemplated by this Agreement. The parties hereto acknowledge and agree that the liquidated damages amount is reasonable in light of the substantial but indeterminate harm anticipated to be caused by material breach or default under this Agreement, the difficulty of proof of loss and damages, the inconvenience and non-feasibility of otherwise obtaining an adequate remedy, and the value of the transactions to be consummated hereunder.



(c) If this Agreement is terminated by Buyer pursuant to *Section 9.1(d)* or *Section 9.1(d)*, then Buyer shall be entitled to specific performance under *Section 9.3*.

(d) If this Agreement is terminated under the provisions of this *Article IX* for any reason other than by Sellers pursuant to *Section 9.1(e)*, Sellers and Buyer shall deliver joint written instructions to the Escrow Agent directing the disbursement of the Escrow Deposit (with all interest earned thereon) to Buyer.

**9.3 *Specific Performance.*** The Parties recognize and agree that the Purchased Assets are unique and that if Sellers breach any of the covenants, promises and agreements contained in this Agreement, Buyer would be damaged irreparably and the award of monetary damages alone would not be adequate to compensate Buyer for its injuries. Accordingly, Buyer shall be entitled to injunctive relief with respect to any such breach, including, specific performance of such covenants, promises or agreements or an order enjoining a Party from any threatened, or from the continuation of any actual, breach of the covenants, promises or agreements contained in this Agreement.

## **ARTICLE X MISCELLANEOUS**

**10.1 *Notices.*** All notices, demands, requests or other communication required or permitted hereunder shall be in writing and sent by certified mail, return receipt requested, postage prepaid, overnight delivery service, email (so long as the party to whom the notice was intended to be sent affirmatively confirms receipt, and other than an automatically generated reply), or personal delivery, to the address specified below (or to such other address which a Party shall specify to the other Party in accordance herewith):

If to Sellers:

NRJ TV NY OpCo, LLC.  
NRJ TV NY License Co, LLC.  
Attn: Ted Bartley, CEO  
722 South Denton Tap Rd.  
Suite 130  
Coppell, Texas 75019-4555  
Email: [REDACTED]

With a copy to  
(which shall not constitute notice)

Greenberg, Traurig, LLP  
Attn: James Altenbach, Esq.  
3333 Piedmont Road NE  
Suite 2500  
Atlanta, Georgia 30305  
Email: [altenbachj@gtlaw.com](mailto:altenbachj@gtlaw.com)

If to Buyer:

TV-49, Inc.  
Weigel Broadcasting Co.  
26 North Halsted Street



Chicago, IL 60661  
Attn: Evan Fieldman  
Email: [REDACTED]

With a copy to  
(which shall not constitute notice)

Covington & Burling LLP  
Attn: Matthew S. DelNero  
850 10<sup>th</sup> St NW  
Washington, DC 20001  
Email: [mdelnero@cov.com](mailto:mdelnero@cov.com)

Notice shall be deemed to have been given on the date of personal delivery, the date set forth in the records of the delivery service, or on the return receipt.

**10.2 Risk of Loss.** Sellers will bear all risk of loss, destruction or damage to any of the Purchased Assets occurring prior to the Effective Time, whether due to fire, accident or other casualty, willful act, condemnation, riot, act of God or otherwise, and Buyer will bear the risk of loss on or after the Effective Time. Sellers shall bear the risk of casualty loss or damage to any of the Purchased Assets prior to the Effective Time, and Buyer shall bear such risk on and after the Effective Time. In the event of any casualty loss or damage to the Purchased Assets between the date of this Agreement and the Effective Time, Sellers shall use commercially reasonable best efforts to repair or replace (as appropriate under the circumstances) any lost or damaged Purchased Asset (the “**Damaged Asset**”) as promptly as practicable unless such Damaged Asset was obsolete and unnecessary for the continued operation of the Stations consistent with Sellers’ past practice and the FCC Authorizations. If Sellers fail to repair or replace a Damaged Asset by the Effective Time, Sellers shall indemnify and reimburse Buyer for all reasonable out-of-pocket costs incurred by Buyer in replacing the Damaged Assets or assign to Buyer the applicable portion of any insurance proceeds not previously expended by Sellers to repair or replace the Damaged Asset after the Effective Time incurred by Buyer by reason of such failure or assign. The Disclosure Schedules shall be modified to reflect any Damaged Asset for which Sellers make a payment or which is replaced by Sellers pursuant to this *Section 10.2*.

**10.3 Bulk Sales.** If the provisions of Article 6 of the Uniform Commercial Code have not been repealed in each jurisdiction where any of the Purchased Assets are located, Sellers and Buyer hereby waive compliance with the provisions of Article 6 of the Uniform Commercial Code in each such jurisdiction that has not repealed such article and where any of the Purchased Assets are located in connection with the transactions contemplated hereunder. Sellers will be responsible for all Liabilities arising out of the Parties’ waiver of such compliance.

**10.4 Binding Effect; No Third Party Beneficiaries.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors and permitted assigns. Nothing in this Agreement shall create or be deemed to create any third-party beneficiary rights in any Person or entity not a party to this Agreement except as provided below.



**10.5 Amendments and Modifications.** Subject to applicable Law, this Agreement may be amended, modified or supplemented in any and all respects by written agreement of Sellers and Buyer at any time whether prior to or after the Closing with respect to any terms contained herein.

**10.6 Assignment.** Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the Parties, in whole or in part (whether by operation of Law or otherwise), without the prior written consent of the other party, and any such assignment without such consent shall be null and void; *provided, however*, that Buyer shall, upon prior written notice to Sellers, have the right to assign this Agreement in whole or in part to any Affiliate of Buyer or to any party acquiring Control of Buyer so long as any such assignment does not delay the FCC Application, FCC Consent or Closing. No assignment of any obligations hereunder shall relieve a Party hereto of any such obligations.

**10.7 Governing Law; Jurisdiction.** This Agreement shall be governed by the Law of the State of New York, excluding any conflicts or choice-of-law rule or principle that might otherwise refer construction or interpretation of this Agreement to the substantive Law of another jurisdiction. Each party to this Agreement irrevocably consents and agrees that any legal action, suit, or proceeding against it with respect to its obligations or liabilities under or arising out of or in connection with this Agreement may be brought in the United States District Court for the Southern District of New York or in the courts of the State of New York sitting in New York City and each hereby irrevocably accepts and unconditionally submits to the exclusive jurisdiction of each of the aforesaid courts *in personam*, with respect to any such action, suit or proceeding. Each party to this Agreement hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any legal action, suit, or proceeding against any of them with respect to their obligations or liabilities under or arising out of or in connection with this Agreement or the transaction contemplated hereby in the United States District Court for the Southern District of New York or in the courts of the State of New York sitting in New York City. Each party to this Agreement hereby irrevocably waives, to the fullest extent permitted by Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court. Each party hereto irrevocably consents and agrees that the service of any and all legal process, summons, notices and documents which may be served in any such action, suit or proceeding arising hereunder may be made by mailing a copy thereof by certified or registered mail, postage prepaid, return receipt requested, to the party to be served at the address set forth in Section 10.1, with such service to be effective upon receipt. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by Law. EACH PARTY HERETO HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY DOCUMENT OR INSTRUMENT DELIVERED IN CONNECTION HERewith AND ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. Each party hereto (a) certifies that no representative, agent or attorney of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce this foregoing waiver, and (b) acknowledges that it has been induced to enter into this Agreement and the other agreements, certificates, and other documents contemplated hereby, by, among other things, the mutual waivers and certifications in this Section 10.7.



**10.8 Captions and Interpretation.** The section captions and headings in this Agreement are for convenience and reference purposes only and should not affect in any way the meaning or interpretation of this Agreement. The Parties acknowledge and agree that this Agreement has been fully negotiated between them and shall not be interpreted or construed against the drafting Party. Capitalized terms used herein have the respective meanings ascribed thereto in this Agreement. Except where the context requires otherwise, whenever used in this Agreement, the singular includes the plural, the plural includes the singular, the use of any gender is applicable to all genders and the word “or” has the inclusive meaning represented by the phrase “and/or.” The words “include” and “including” and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation.” Unless otherwise required by the context in which they appear, the terms “shall” and “will” are used interchangeably and each is intended to signify and connote an obligation. Unless otherwise provided herein, a reference to a Contract or any other agreement, instrument or other document means such Contract, agreement, instrument or other document as amended, supplemented and modified from time to time, or with respect to parties joined thereto, in each case to the extent permitted by the provisions thereof and by this Agreement. Unless expressly stated herein to the contrary, reference to any Law means such Law as amended, modified, codified, replaced or reenacted, in whole or in part, and as in effect from time to time, including any rule or regulation promulgated thereunder. A reference in this Agreement to an Article, Section, Exhibit or Disclosure Schedule is to the referenced Article, Section, Exhibit or Disclosure Schedule of this Agreement. The wording of this Agreement shall be deemed to be the wording mutually chosen by the Parties and no rule of strict construction shall be applied against any Party. Unless expressly provided otherwise, all dollar figures in this Agreement are in the currency of the United States. Any action required to be taken “within” a specified time period following the occurrence of an event shall be required to be taken by no later than 5:00 p.m. New York time on the last day of such time period, which shall be calculated starting with the day immediately following the date of the event. If any period referenced in this Agreement expires on a day that is not a Business Day or any event or condition is required by the terms of this Agreement to occur or be fulfilled on a day that is not a Business Day, such period shall expire or such event or condition shall occur or be fulfilled, as the case may be, by 5:00 p.m. New York time on the next succeeding Business Day.

**10.9 Waiver.** Unless otherwise specifically agreed in writing to the contrary: (a) the failure of any Party at any time to require performance by the other of any provision of this Agreement shall not affect such Party’s right thereafter to enforce the same; (b) no waiver by any Party of any default by another shall be taken or held to be a waiver by such Party of any other preceding or subsequent default; and (c) no extension of time granted by any Party for the performance of any obligation or act by any other Party shall be deemed to be an extension of time for the performance of any other obligation or act hereunder.

**10.10 Expenses.** Except as otherwise expressly provided in this Agreement, each of Sellers and Buyer shall bear their own expenses incurred in connection with the negotiation and execution of this Agreement and each other agreement, document and instrument contemplated by this Agreement and the consummation of the transactions contemplated hereby and thereby.

**10.11 Severability.** If any one or more of the provisions contained in this Agreement should be found invalid, illegal or unenforceable in any respect, such provision shall be deemed



modified to the extent necessary to allow enforceability of the provision as so limited, it being intended that the Parties shall receive the benefit contemplated herein to the fullest extent permitted by law. If a deemed modification is not satisfactory in the judgment of a court, the unenforceable, invalid or illegal provision shall be deemed deleted, and the legality, validity and enforceability of the remaining provisions shall not be affected thereby.

**10.12 Disclaimer.** Each Party hereby acknowledges and agrees that (a) it has voluntarily agreed to define its rights, liabilities and obligations regarding the transactions exclusively pursuant to the express terms and provisions of this Agreement, (b) it expressly disclaims that it is owed any duties or is entitled to any remedies not expressly set forth in this Agreement, (c) this Agreement embodies the justifiable expectations of sophisticated parties derived from arm's-length negotiations, and (d) no Party has any special relationship with another Party that would justify any expectation beyond that of an ordinary buyer and an ordinary seller in an arm's-length transaction.

**10.13 Counterparts and Execution.** This Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. Counterpart signatures to the Agreement delivered and received by facsimile or by e-mail in portable document format (PDF) shall be acceptable and binding to the Parties.

**10.14 Entire Agreement.** This Agreement, the Disclosure Schedules and Exhibits hereto, and all documents to be delivered by the Parties pursuant hereto, collectively represent the entire understanding and agreement between Buyer and Sellers with respect to the subject matter hereof. This Agreement supersedes all prior memoranda, discussions and agreements between the Parties and may not be modified, supplemented or amended, except by a written instrument signed by each of the Parties designating specifically the terms and provisions so modified, supplemented or amended.

**10.15 No Recourse.** No past, present or future director, officer, employee, incorporator, member, partner, equityholder, Affiliate, agent, attorney or representative of either Sellers, Buyer or any of their Affiliates shall have any liability for any obligations or liabilities of any Seller or Buyer, respectively, under this Agreement or for any claim (whether in contract or tort, in law or in equity, or based upon any theory that seeks to "pierce the corporate veil" or impose liability of an entity against its owners or Affiliates or otherwise), liability or any other obligation arising under, based on, in respect of, in connection with, or by reason of, this Agreement or the transactions contemplated hereby, including its negotiation and/or execution.


*[Remainder of page intentionally blank; signatures on following page]*




IN WITNESS WHEREOF, the parties set forth below have executed this Agreement as of the day and year first written above.

**SELLERS:**

**NRJ TV NY OPCO, LLC**

By:   
Name: Ted B. Bartley  
Title: President

**NRJ TV NY LICENSE CO., LLC**

By:   
Name: Ted B. Bartley  
Title: President

**BUYER:**

**TV-49, INC.**

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

[Signature Page to Asset Purchase Agreement]



**IN WITNESS WHEREOF**, the parties set forth below have executed this Agreement as of the day and year first written above.

**SELLERS:**

**NRJ TV NY OPCO, LLC**

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

Name: Ted B. Bartley

Title: President

**NRJ TV NY LICENSE CO., LLC**

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

Name: Ted B. Bartley

Title: President

**BUYER:**

**TV-49, INC.**

By: Evan Fieldman

Name: Evan Fieldman

Title: Vice President



**Schedule 3.7(a)(i)**

**FCC and Governmental Matters**

**FCC Authorizations**

Call Sign: WZME(TV), Bridgeport, Connecticut

Facility ID 70493

Frequency: 680 – 686 MHz, Channel 49

Licensee: NRJ TV NY License Co., LLC

<u>DESCRIPTION</u>	<u>FILE NUMBER/TYPE</u>	<u>EXPIRATION DATE</u>
Renewal Authorization	BRC DT-20141201AMF	4/1/2023
License Authorization	0000074561 (channel share with WEDW(TV))	4/1/2023

The following FCC Authorizations are issued to Sharer for WEDW(TV) and applicable to WZME(TV) pursuant to the Channel Sharing Agreement.

<u>DESCRIPTION</u>	<u>FILE NUMBER/TYPE</u>	<u>EXPIRATION DATE</u>
DTS Construction Permit	0000122655	536 days following final action on judicial appeal
Tolling of DTS Construction Permit	0000130170	536 days following final action on judicial appeal of DTS Construction Permit
Engineering STA	0000077937	7/21/2021
STA Extension	0000130171	7/21/2021