

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "*Agreement*") is made as of September 2021, between Codcomm, Inc., a Massachusetts corporation ("*Seller*"), and Coxswain Communications, Inc., a Massachusetts corporation, or its assignee ("*Buyer*").

RECITALS

WHEREAS, Seller owns and operates the following radio broadcast stations (the "*Station*") pursuant to certain authorizations issued by the Federal Communications Commission (the "*FCC*"):

WFRQ(FM), Harwich Port, MA, Facility ID 29570

WHYA(FM), Mashpee, MA, Facility ID 29571

WPXC(FM), Hyannis, MA, Facility ID 54620

WKFY(FM), East Harwich, MA, Facility ID 189527

W278DW, Vineyard Haven, MA, Facility ID 14919

W263CU, Hyannis, MA, Facility ID 140925

W234DP, Hyannis, MA, Facility ID 140929

WHEREAS, pursuant to the terms and subject to the conditions set forth in this Agreement, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, substantially all of the assets of the Station, including the business and operations of the Station and the goodwill associated therewith.

AGREEMENT

NOW, THEREFORE, taking the foregoing into account, and in consideration of the mutual covenants and agreements set forth herein, the parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1: PURCHASE OF ASSETS

1.1 Station Assets. On the terms and subject to the conditions hereof, at Closing (defined below), except as set forth in Sections 1.2 and 1.3, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase and acquire from Seller, all right, title and interest of Seller in and to the assets, properties and interests of Seller, real and personal, tangible and intangible, that are used or useful in the operation of the Station, and the goodwill associated therewith (the "*Station Assets*"), including, but not limited to, the following:

(a) The licenses, permits and other authorizations issued to Seller by the FCC with respect to the Station (the "*FCC Licenses*") including those listed on *Schedule 1.1(a)*, and including any modifications or renewals thereof between the date hereof and Closing;

(b) All of Seller's equipment, transmitters, antennas, cables, vehicles, furniture, fixtures, spare parts and other tangible personal property, including those items listed on **Schedule 1.1(b)**, except for any retirements or dispositions thereof made between the date hereof and Closing in the ordinary course of business and in accordance with Article 4 (the "**Tangible Personal Property**");

(c) Seller's interest in the leased real property used or useful in the operation of the Station (including any appurtenant easements and improvements located thereon) and listed on **Schedule 1.1(c)** (the "**Real Property**") and the rights to any security deposits held by third parties related to the Real Property for which Seller receives a credit under Section 1.5;

(d) all agreements for the sale of advertising time on the Station that exist at Closing, and all other contracts, agreements and leases that are used in the operation of the Station and listed on **Schedule 1.1(d)** together with all contracts, agreements and leases made between the date hereof and Closing in accordance with this Agreement (the "**Station Contracts**");

(e) all of Seller's rights in and to the Station's call letters and Seller's rights in and to the trademarks, trade names, service marks, internet domain names, copyrights, websites, web content, computer software programs, programs and programming material, jingles, slogans, logos, social media accounts and other intangible property which are used in the operation of the Station, including those listed on **Schedule 1.1(e)** (the "**Intangible Property**");

(f) Seller's rights in and to all the files, documents, records, and books of account (or copies thereof) relating to the operation of the Station that currently exist, including the Station's online public files, programming information and studies, technical information, engineering data, advertising studies, marketing and demographic data, sales correspondence, lists of advertisers, credit and sales reports, and logs, but excluding records relating to Excluded Assets (defined below); and

(g) all claims (including warranty claims), deposits, and prepaid expenses for which Seller receives a credit under Section 1.5, and the going concern value of the Station.

The Station Assets shall be transferred to Buyer free and clear of liens, claims and encumbrances ("**Liens**") except for Permitted Liens. "**Permitted Liens**" means the following (of which Buyer shall be provided with written advance notice): (i) liens for current taxes not yet due and payable; (ii) rights reserved to any governmental authority to regulate the affected property; (iii) as to interests in real property, zoning laws and ordinances and similar laws, any easements, rights-of-way, servitudes, permits, restrictions and minor imperfections or irregularities in title that are reflected in the public records and that do not individually or in the aggregate materially detract from the value of the real property or interfere with the right or ability to own, use, lease or operate the real property as currently utilized; and (iv) any Liens set forth in **Schedule 1.1(x)**.

1.2 Excluded Assets. Notwithstanding anything to the contrary contained herein, the Station Assets shall not include the following assets or any rights, title and interest therein (the "**Excluded Assets**");

(a) all cash and cash equivalents of Seller, including without limitation certificates of deposit, commercial paper, treasury bills, marketable securities, money market accounts and all such similar accounts or investments;

(b) all tangible and intangible personal property of Seller retired or disposed of between the date of this Agreement and Closing in accordance with Article 4.

(c) all pension, profit sharing plans and trusts and the assets thereof and any other employee benefit plan or arrangement and the assets thereof, if any, maintained by Seller;

(d) the Station's accounts receivable and any other rights to payment of cash consideration for goods or services sold or provided prior to the Effective Time (defined below) or otherwise arising during or attributable to any period prior to the Effective Time (the "**Accounts Receivable**") (unless it applies to future goods and services to be provided by Buyer in which case a credit shall be applied in favor of Buyer pursuant to Section 1.5 with respect to any prepayments received for time to be aired or services to be provided after Effective Time);

(e) any non-transferable computer software and any other non-transferable computer licenses that are not material to the operation of the Station;

(f) all rights and claims of Seller, whether mature, contingent or otherwise, against third parties with respect to the Station and the Station Assets, to the extent arising during or attributable to any period prior to the Effective Time;

(g) all deposits and prepaid expenses (and rights arising therefrom or related thereto), unless applies to future Station obligations and except to the extent Seller receives a credit therefor under Section 1.5; and

(h) the assets listed on **Schedule 1.2** (if any).

1.3 Assumption of Obligations. On the Closing Date (defined below), Buyer shall assume the obligations of Seller under the Station Contracts arising during, or attributable to, any period of time after the Effective Time, and shall further assume any other disclosed liabilities of Seller to the extent Buyer receives a credit therefor under Section 1.5 (collectively, the "**Assumed Obligations**"). Except for the Assumed Obligations, Buyer does not assume, and will not be deemed by the execution and delivery of this Agreement or any other agreement, instrument or document delivered pursuant to or in connection with this Agreement or the consummation of the transactions contemplated hereby to have assumed, any other liabilities, obligations or commitments of Seller of any kind, whether or not disclosed to Buyer (collectively, the "**Retained Obligations**").

1.4 Purchase Price; Escrow Deposit; Holdback Escrow.

(a) In consideration for the sale of the Station Assets to Buyer, at Closing Buyer shall pay Seller in cash the sum of Three Million Two Hundred Thousand Dollars (\$3,200,000), subject to adjustment pursuant to Section 1.5 (the "**Purchase Price**"). Within three (3) business days after the date of this Agreement, Buyer shall make a cash deposit in immediately available funds in the amount of One Hundred Sixty Thousand Dollars (\$160,000)

(the “**Deposit**”) with Kalil & Co. (the “**Escrow Agent**”) pursuant to the Escrow Agreement (the “**Escrow Agreement**”) of even date herewith among Buyer, Seller and the Escrow Agent. The Deposit shall be refundable to Buyer if Closing does not occur because the Assignment Application is not granted, the Agreement is terminated pursuant to Section 10.1(d), or Closing does not occur due to a material Seller breach or default, and such material Seller breach or default leads Buyer to terminate this Agreement pursuant to Section 10.1(b), and, provided further that the Buyer is not then in default under this Agreement. Upon disbursement of the Deposit to either Buyer or Seller, any interest accrued thereon shall be disbursed to Buyer. Failure by Buyer to fund the Deposit within three (3) business days after the date hereof constitutes a material default as to which the Cure Period under Section 10.2 does not apply entitling Seller to immediately terminate this Agreement.

(b) At Closing, the Deposit shall be held in escrow pursuant to the terms of the Holdback Escrow Agreement (“**Holdback Escrow Agreement**”) among the same parties to the Escrow Agreement and automatically convert to secure the indemnification obligations of Seller hereunder. The Deposit after the Closing shall be referred to as the “**Holdback Escrow Deposit**”). The Holdback Escrow Deposit shall be maintained in an interest-bearing account pending the expiration of the survival period set forth in Section 9.1 and shall be disbursed in accordance with the terms of the Holdback Escrow Agreement. The Escrow Agent shall hold the Holdback Escrow Deposit until the date that is fifteen (15) months after the Closing Date provided that 75 percent of the Holdback Escrow Deposit not then subject to outstanding indemnification claims by Buyer shall be released twelve (12) months after the Closing Date. The parties shall execute and deliver written instructions to the Escrow Agent to make the disbursements provided for in this Section 1.4.

1.5 Prorations and Adjustments.

(a) All prepaid and deferred income and expenses relating to the Station Assets and arising from the operation of the Station shall be prorated between Buyer and Seller in accordance with generally accepted accounting principles (“**GAAP**”) as of 11:59 p.m. on the day before the Closing Date (the “**Effective Time**”). Such prorations shall include without limitation all ad valorem, real estate and other property taxes, music and other license fees, FCC annual regulatory fees, utility expenses, rent and other amounts under Station Contracts and similar prepaid and deferred items. Seller shall receive a credit for all of the Station’s applicable deposits and prepaid expenses to the extent the benefit of the same is transferred to Buyer. Sales commissions related to the sale of advertisements broadcast on the Station prior to the Effective Time shall be the responsibility of Seller, and sales commissions related to the sale of advertisements broadcast on the Station after the Effective Time shall be the responsibility of Buyer. Prorations and adjustments shall be made at Closing to the extent practicable. Notwithstanding the foregoing, Buyer will assume the rights and obligations with respect to trade, barter or similar agreements for the sale of time for goods or services (“**Trade Agreements**”) that remain outstanding as of the Closing and are listed in Schedule 1.1(d)

(b) No later than ninety (90) calendar days after Closing, Buyer shall prepare and deliver to Seller a proposed pro rata adjustment of income and expenses in the manner described in this Section 1.5 (the “**Settlement Statement**”), together with a schedule setting forth, in reasonable detail, the components thereof. During such 90-day period, Buyer and its

representatives shall be provided reasonable access, upon reasonable advance notice and during normal business hours, to such books and records of Seller, and to employees of Seller as Buyer may reasonably request. The Settlement Statement shall become final and binding upon the parties on the 30th day following delivery thereof to Seller, unless Seller gives written notice of its disagreement with the Settlement Statement (the “*Notice of Disagreement*”) to Buyer prior to such date. If a Notice of Disagreement is given to Buyer in the period specified, then the Settlement Statement (as revised in accordance with clause (i) or (ii) below) shall become final and binding upon the parties on the earlier of (i) the date Buyer and Seller resolve in writing any differences they have with respect to the matters specified in the Notice of Disagreement, or (ii) the date any disputed matters are finally resolved in writing by a mutually agreeable independent accounting firm. A payment in cash to reflect such prorations and adjustments on a net basis made by Seller to Buyer, or by Buyer to Seller, as the case may be, no later than the date the Settlement Statement becomes final or the date any differences set forth in the Notice of Disagreement are resolved.

1.6 Allocation. At or before Closing, Buyer and Seller shall use reasonable efforts to agree to an allocation of the Purchase Price for tax purposes in accordance with the respective fair market values of the Station Assets and the goodwill being purchased and sold in accordance with the requirements of Section 1060 of the Internal Revenue Code of 1986, as amended (the “*Code*”). In the event the parties are unable to agree on an allocation of the Purchase Price, then Buyer and Seller shall use separate allocations in completing and filing Internal Revenue Code Form 8594 for federal income tax purposes.

1.7 Closing. The consummation of the sale and purchase of the Station Assets provided for in this Agreement (the “*Closing*”) shall take place on or before the tenth (10th) business day after the date the initial FCC Consent (defined below) is granted without any conditions materially adverse to either party, subject to the satisfaction or waiver of the conditions set forth in Articles 6 and 7 below; provided, however, in the event the FCC Consent occurs prior to December 1, 2021 when the license renewal applications are due, the parties will use their best efforts to consummate the transaction before December 1, 2021. The date on which the Closing is to occur is referred to herein as the “*Closing Date*.”

(a) Within five (5) business days of the date of this Agreement, Buyer and Seller shall (at their own independent expense) jointly prepare and file an application with the FCC (the “*FCC Application*”) requesting FCC consent to the assignment of the FCC Licenses to Buyer. FCC consent to the FCC Application without any material adverse conditions other than those of general applicability is referred to herein as the “*FCC Consent*”. Buyer and Seller shall diligently prosecute the FCC Application and otherwise use their commercially reasonable efforts to obtain the FCC Consent as soon as possible.

(b) Buyer and Seller shall notify each other of all documents filed with or received from any governmental agency with respect to the Station, this Agreement or the transactions contemplated hereby. Buyer and Seller shall furnish each other with such information and assistance as the other may reasonably request in connection with their preparation of any governmental filing hereunder.

ARTICLE 2: SELLER REPRESENTATIONS AND WARRANTIES

Seller makes the following representations and warranties to Buyer:

2.1 Organization. Seller is duly organized, validly existing and in good standing under the laws of the Commonwealth of Massachusetts, and, to the extent required, is qualified to do business in each jurisdiction in which the Station Assets are located. Seller has the requisite power and authority to own and operate the Station Assets, to carry on the Station's business as now conducted and to execute, deliver and perform this Agreement and all of the other agreements and instruments to be made by Seller pursuant hereto (collectively, the "***Seller Ancillary Agreements***") and to consummate the transactions contemplated hereby.

2.2 Authorization. The execution, delivery and performance of this Agreement and the Seller Ancillary Agreements by Seller have been duly authorized and approved by all necessary action of Seller and do not require any further authorization or consent of Seller. This Agreement is, and each Seller Ancillary Agreement when made by Seller and the other parties thereto will be, a legal, valid and binding agreement of Seller enforceable in accordance with its terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) (but no bankruptcy related matters applicable to Seller or the Station exist to Seller's knowledge).

2.3 No Conflicts. Except as set forth on ***Schedule 2.3*** and except for the FCC Consent, the execution, delivery and performance by Seller of this Agreement and the Seller Ancillary Agreements and the consummation by Seller of any of the transactions contemplated hereby or thereby does not conflict with any organizational documents of Seller, any contract or agreement to which Seller is a party or by which it is bound, including any Station Contract, or any law, judgment, order, or decree to which Seller is subject, or require the consent or approval of, or a filing by Seller with, any governmental or regulatory authority, court or any third party.

2.4 FCC Licenses. Except as set forth on ***Schedule 1.1(a)***:

Seller is the holder of the FCC Licenses described on ***Schedule 1.1(a)***, which are all of the licenses, permits and authorizations required for the current operation of the Station. The FCC Licenses are in full force and effect and have not been revoked, suspended, canceled, rescinded or terminated and have not expired. There is not pending, nor, to Seller's knowledge, threatened, any action by or before the FCC to revoke, suspend, cancel, rescind or materially adversely modify any of the FCC Licenses (other than proceedings of general applicability). There is not issued or outstanding, by or before the FCC, any order to show cause, notice of violation, notice of apparent liability, or order of forfeiture against the Station or against Seller with respect to the Station that could result in any such action, and to Seller's knowledge, no such order or proceeding is threatened. The Station is operating in compliance in all material respects with the FCC Licenses, the Communications Act of 1934, as amended (the "***Communications Act***"), and the rules, regulations and policies of the FCC. All material reports and filings required to be filed with the FCC by Seller with respect to the Station have been timely filed. All such reports and filings are accurate and complete in all material respects (a copy of the current FCC license if not available on the FCC's website will be provided to Buyer).

The FCC Licenses are not subject to any conditions except for those conditions that appear on the face of the FCC Licenses or those conditions applicable to radio broadcast licenses generally. The FCC Licenses constitute all of the authorizations required under the Communications Act or the rules, regulations and policies of the FCC for the present operation of the Station.

2.5 Taxes. Seller has, in respect of the Station's business, filed all foreign, federal, state, county and local income, excise, property, sales, use, franchise and other tax returns and reports which are required to have been filed by it under applicable law, and has paid all taxes which have become due pursuant to such returns or pursuant to any assessments which have become payable.

2.6 Personal Property. *Schedule 1.1(b)* contains a list of material items of Tangible Personal Property included in the Station Assets that are used or useful in the operation of the station as currently operated. Except as set forth on *Schedule 1.1(b)*, Seller has good and marketable title to the Tangible Personal Property free and clear of Liens other than Permitted Liens. Except as set forth on *Schedule 1.1(b)*, all material items of Tangible Personal Property are in good operating condition and repair, ordinary wear and tear excepted.

2.7 Contracts. *Schedule 1.1(d)* contains a list of all contracts used in the operation of the Station that are to be assumed by Buyer at Closing, other than agreements for the sale of advertising time entered into in the ordinary course of business. Each of the Station Contracts (including without limitation each Real Property Lease) is in effect and is binding upon Seller and, to Seller's knowledge, the other parties thereto (subject to bankruptcy, insolvency, reorganization or other similar laws relating to or affecting the enforcement of creditors' rights generally). Seller has performed its obligations under each of the Station Contracts in all material respects, and is not in default in any material respect thereunder, and no event has occurred and is continuing that constitutes or, with notice or the passage of time or both, would (a) constitute a default, violation or breach by Seller in any material respect thereunder, or (b) to Seller's knowledge, constitute a default, violation or breach by any other party in any material respect thereunder. True and correct copies of each Station Contract (including each Real Property Lease), together with all amendments thereto, have been delivered to Buyer by Seller.

2.8 Real Property. *Schedule 1.1(c)* includes a description of all leases, licenses or similar agreements under which Seller is lessee or licensee of, or holds, uses or operates, any real property included in the Station Assets (the "**Real Property Leases**"). The Real Property Leases provide sufficient access to the Station's facilities without need to obtain any other access rights. To Seller's knowledge, no part of any Real Property is subject to any pending or threatened suit for condemnation or other taking by any public authority. All buildings and other improvements owned by Seller conveyed to Buyer as part of the Station Assets are in operating condition and repair, ordinary wear and tear excepted, and to Seller's knowledge comply in all material respects with applicable zoning, health and safety laws and codes. Seller has provided to Buyer prior to the date of this Agreement true and complete copies of all Real Estate Leases. None of the rights of Seller under any Real Estate Lease is or will be subject to termination or modification as a result of the consummation of the transactions contemplated by this Agreement. To Sellers' knowledge, the Real Estate Leases include utilities and other services necessary for the operation of the Station.

2.9 Intangible Property. *Schedule 1.1(e)* contains a description of the material Intangible Property included in the Station Assets. Except as set forth on *Schedule 1.1(e)*, (i) to Seller's knowledge, Seller's use of the Intangible Property does not infringe upon any third party rights in any material respect, (ii) no material Intangible Property is the subject of any pending, or, to Seller's knowledge, threatened legal proceedings claiming infringement or unauthorized use, and (iii) Seller has not received any written notice that its use of any material Intangible Property is unauthorized or infringes upon the rights of any other person. Except as set forth on *Schedule 1.1(e)*, to Seller's knowledge, Seller owns or has the right to use the Intangible Property free and clear of Liens other than Permitted Liens.

2.10 Insurance. Seller maintains insurance policies or other arrangements with respect to the Station and the Station Assets providing coverage customary in the radio broadcast industry and will maintain such policies or arrangements until the Effective Time (a copy of which shall be provided to Buyer upon request). Seller has not received notice from an issuer of any such policies of its intention to cancel, terminate or refuse to renew any such insurance policy.

2.11 Compliance with Law. Except as set forth on *Schedule 2.9*, (i) Seller has complied in all material respects with all laws, rules, regulations, injunctions, and ordinances applicable to the ownership of the Station Assets and the operation of the Station, including environmental laws, the Communications Act and all FCC and Federal Aviation Administration rules and regulations, and with all decrees and orders of any court or governmental authority which are applicable to the ownership of the Station Assets and the operation of the Station, and (ii) to Seller's knowledge, there are no governmental claims or investigations pending or threatened against Seller in respect of the Station except those affecting the radio broadcast industry generally.

2.12 Litigation. Except as set forth on *Schedule 2.10*, there is no action, suit or proceeding pending or, to Seller's knowledge, threatened against Seller in respect of the Station that might subject Buyer to liability or which might affect Seller's ability to perform its obligations under this Agreement. Seller is not operating under or subject to any order, writ, injunction or decree relating to the Station or the Station Assets of any court or governmental authority which might have a material adverse effect on the condition of the Station or any of the Station Assets or on the ability of Seller to enter into this Agreement or consummate the transactions contemplated hereby, other than those of general applicability.

2.13 Environmental. As used herein, (i) the term "Environmental Laws" means any and all state, federal, and local statutes, regulations and ordinances relating to the protection of human health and the environment, (ii) the term "Hazardous Material" means any hazardous or toxic substance, material, or waste including, without limitation, those substances, materials, pollutants, contaminants and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 C.F.R. § 172.101) or by the United States Environmental Protection Agency as hazardous substances (40 C.F.R. Part 302 and amendments thereto), petroleum products (as defined in Title I to the Resource Conservation and Recovery Act, 42 U.S.C. § 6991-6991(i)) and their derivatives, and such other substances, materials, pollutants, contaminants and wastes as become regulated or subject to cleanup authority under any Environmental Laws. To Seller's knowledge, no Hazardous Material has been generated, stored,

transported or released by Seller on, in, from or to the Real Property in violation of Environmental Laws. To Seller's knowledge, Seller is in compliance in all material respects with all Environmental Laws applicable to the Stations.

2.14 Financial Information. The financial information provided to Buyer has been prepared from the books and records of Seller in accordance with GAAP and fairly presents in all material respects the revenues, operating expenses and broadcast cash flow of the Station for the historical period reflected therein. Between January 1, 2021 and the date of this Agreement, the Station has been operated in all material respects in the ordinary course of business consistent with the past practices and there has been no material change in the financial condition of the results of operations of the Station.

2.15 Station Assets. Except for the Excluded Assets the Station Assets constitute all of the assets that are owned or leased by Seller and used or useful in the business or operation of the Station in all material respects as currently operated. Seller has good and marketable title to the Station Assets, free and clear of Liens, except for Permitted Liens.

2.16 Employees. Seller is in compliance in all material respects with all labor and employment laws applicable to the operation of the Station. With respect to the Station, there is no unfair labor practice charge or complaint, or equal employment opportunity complaint, pending or, to Seller's knowledge, threatened, before any governmental authority. There is no collective bargaining or similar agreement with respect to any of the employees at the Station, and to Seller's knowledge no union represents or claims to represent, or is attempting to organize, such employees.

2.17 Finders. Other than Kalil & Co., Inc., no broker, finder or other person is entitled to a commission, brokerage fee or similar payment in connection with the transactions contemplated hereby as a result of any agreement or action of Seller or any party acting on its behalf. Seller shall pay to the Broker a fee as agreed between Seller and Broker in a separate agreement and shall hold Buyer harmless from any and all obligations to Seller's Broker and any other broker or finder claiming a commission or fee because of Seller's actions.

ARTICLE 3: BUYER REPRESENTATIONS AND WARRANTIES

Buyer hereby makes the following representations and warranties to Seller:

3.1 Organization. Buyer is duly organized, validly existing and in good standing under the laws of the state of Delaware. Buyer has the requisite power and authority to execute, deliver and perform this Agreement and all of the other agreements and instruments to be executed and delivered by Buyer pursuant hereto (collectively, the "***Buyer Ancillary Agreements***") and to consummate the transactions contemplated hereby.

3.2 Authorization. The execution, delivery and performance of this Agreement and the Buyer Ancillary Agreements by Buyer have been duly authorized and approved by all necessary action of Buyer and do not require any further authorization or consent of Buyer. This Agreement is, and each Buyer Ancillary Agreement when made by Buyer and the other parties thereto will be, a legal, valid and binding agreement of Buyer enforceable in accordance with its

terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

3.3 No Conflicts. Except for the FCC Consent, the execution, delivery and performance by Buyer of this Agreement and the Buyer Ancillary Agreements and the consummation by Buyer of any of the transactions contemplated hereby and thereby does not conflict with any organizational documents of Buyer, any contract or agreement to which Buyer is a party or by which it is bound, or any law, judgment, order or decree to which Buyer is subject, or require the consent or approval of, or a filing by Buyer with, any governmental or regulatory authority or any third party.

3.4 Litigation. There is no action, suit or proceeding pending or, to Buyer's knowledge, threatened against Buyer which questions the legality or propriety of the transactions contemplated by this Agreement or could materially adversely affect the ability of Buyer to perform its obligations hereunder.

3.5 Qualification. Buyer is legally, financially and otherwise qualified to acquire the FCC Licenses and to own and operate the Station Assets under the Communications Act and the rules, regulations and policies of the FCC. No waiver of or exemption from any provision of the Communications Act or any FCC rule or policy is necessary for the FCC Consent to be obtained. To Buyer's knowledge, there are no matters which might reasonably be expected to result in the FCC's denial or delay of approval of the FCC Application.

3.6 Finders. No broker, finder or other person is entitled to a commission, brokerage fee or similar payment in connection with the transactions contemplated hereby as a result of any agreement or action of Buyer or any party acting on its behalf.

ARTICLE 4: SELLER COVENANTS

4.1 Seller's Covenants. Between the date hereof and Closing, except as permitted by this Agreement or with the prior written consent of Buyer, which shall not be unreasonably withheld, delayed or conditioned, Seller shall:

(a) operate the Station in the ordinary course of business and consistent with past practice, in accordance in all material respects with the FCC Licenses and the Communications Act and the FCC rules and regulations and with all other applicable laws, regulations, rules and orders and use commercially reasonable efforts to preserve the business and good will of the Station;

(b) maintain the FCC Licenses in full force and effect and not adversely modify any of the FCC Licenses

(c) maintain in good operating condition and repair, ordinary wear and tear excepted, the Tangible Personal Property and repair and maintain adequate and usual supplies, spare parts and other materials relating to the Station Assets as have been customarily maintained

in the past, and otherwise preserve intact the Station Assets in all material respects and maintain in effect insurance policies consistent with past practice with respect to the Station and the Station Assets;

(d) not sell, lease or dispose of, or agree to sell, lease or dispose of, any of the Station Assets unless with Buyer's prior approval and only if replaced with similar items of substantially equal or greater value and utility, or create, assume or permit to exist any Liens upon the Station Assets, except for Permitted Liens, and not dissolve, liquidate, merge or consolidate with any other entity;

(e) upon reasonable notice, give Buyer and its representatives reasonable access during normal business hours to the Station Assets, and furnish Buyer with information relating to the Station Assets and financial information relating to the Station that Buyer may reasonably request, provided that such access rights shall not be exercised in a manner that interferes with the operation of the Station;

(f) not terminate, amend, rescind or waive any material rights under any Station Contract or enter into a new contract or agreement in connection with the operation of the Station that will be binding upon Buyer after Closing other than ordinary course cash time sales agreements;

(g) provide to Buyer, promptly upon receipt thereof by Seller (or if already in Seller's possession), copies of (i) any notices from the FCC or any other governmental authority regarding the revocation, suspension, or limitation of the rights under, or of any proceeding for the revocation, suspension, or limitation of the rights under (or that such authority may in the future, as the result of failure to comply with laws or regulations or for any other reason, revoke, suspend or limit the rights under) any FCC License, or any other license or permit held by Seller respecting the Station, and (ii) all protests, complaints, challenges or other documents filed with the FCC by third parties concerning the Station, together with, promptly upon the filing or making thereof, copies of Seller's responses to such filings. Seller shall notify Buyer in writing immediately upon learning of the institution or written threat of action against the Seller involving the Station or Station Assets before the FCC or any other governmental agency (but no pending issues with the FCC applicable to Seller or the Station exist to Seller's knowledge);

(h) not permit any of the FCC Licenses to expire, terminate or to be surrendered or voluntarily modified, or take any action (or fail to take any action) which could cause the FCC or any other governmental authority to institute proceedings for the suspension, revocation or limitation of rights under any FCC License; not fail to file for license renewal when due; or not fail to prosecute with due diligence any pending applications to any governmental authority with respect to the Station or any of the FCC Licenses, except for proceedings affecting the radio broadcast industry generally;

(i) pay or cause to be paid or provided for when due (except to the extent contested in good faith and for which proper reserves have been established) all income, property, use, franchise, excise, social security, withholding, worker's compensation and unemployment insurance taxes and all other taxes of or relating to the Station, the Station Assets and the employees of the Station required to be paid to city, county, state, Federal and other

governmental units up to the Closing Date (including any past due penalties and interest if applicable);

(j) notify Buyer promptly if: (A) any Station is off the air for a continuous period of 12 hours or more or (B) if a Station's normal broadcast transmissions are materially impaired for a continuous period of more than 24 hours;

(k) make all capital expenditures with respect to the Station in the ordinary course in accordance with past practices

(l) not materially increase the commercial load on any Station;

(m) not, except in the ordinary course of business and consistent with past practice, increase the compensation or benefits payable to any Station employee, or enter into an employment, labor or union agreement that will be binding upon Buyer after Closing, or make or commit to make any payment for severance or bonus to any employee of the Station that will be binding upon Buyer after Closing; and

(n) not (A) take, agree or commit to take any action that would make any representation or warranty of Seller hereunder inaccurate at, or as of any time prior to the Closing Date, or (B) omit or agree or commit to omit to take any action necessary to prevent any such representation or warranty from becoming inaccurate at any such time.

ARTICLE 5: JOINT COVENANTS

Buyer and Seller hereby covenant and agree as follows:

5.1 Announcements. Prior to Closing, no party shall, without the prior written consent of the other, issue any press release or make any other public announcement concerning the transactions contemplated by this Agreement, except to the extent that such party is so obligated by law, in which case such party shall give advance notice to the other, and except that the parties shall cooperate to make a mutually agreeable announcement.

5.2 Control. Buyer shall not, directly or indirectly, control, supervise or direct the operation of the Station prior to Closing. Consistent with the Communications Act and the FCC rules and regulations, control, supervision and direction of the operation of the Station prior to Closing shall remain the responsibility of Seller as the holder of the FCC Licenses.

5.3 Risk of Loss. Seller shall bear the risk of any loss of or damage to any of the Station Assets at all times until the Effective Time, and Buyer shall bear the risk of any such loss or damage thereafter.

5.4 Employees. Buyer may (but is not obligated to) offer post-Closing employment to any of the Station's employees on terms and conditions determined by Buyer, in its sole discretion. Buyer shall notify Seller in writing whether or not it will offer employment to such employees upon Closing at least ten (10) days prior to the Closing Date. With respect to each such employee who accepts Buyer's offer of employment ("Transferred Employees"), Seller shall be responsible for all compensation and benefits arising prior to Closing (in accordance

with Massachusetts employment law and Seller's employment terms) and Buyer shall be responsible for all compensation and benefits arising after Closing (in accordance with Buyer's employment terms). With respect to Employees who are owed commissions based on the Accounts Receivable, Seller shall be responsible for all such commission amounts payable under Seller's customary payment system for all Accounts Receivable. Buyer does not assume any of Seller's employee obligations (including any severance obligations), all of which are Retained Liabilities and not Assumed Obligations. Promptly following the execution of this Agreement, Seller shall provide Buyer with an opportunity to meet with and interview the Station employees.

5.5 Actions. After Closing, Buyer and Seller shall use reasonable efforts to cooperate with each other in the investigation, defense or prosecution of any action which is pending or threatened against either party or its affiliates with respect to the Station, whether or not any party has notified the other of a claim for indemnification with respect to such matter. Without limiting the generality of the foregoing, each party shall make available its employees to give depositions or testimony and shall furnish all documentary or other evidence that the other party may reasonably request.

5.6 Confidentiality. Subject to the requirements of applicable law, all non-public information regarding the parties and their business and properties that is disclosed in connection with the negotiation, preparation or performance of this Agreement shall be confidential and shall not be disclosed to any other person or entity, except to the parties' representatives and lenders for the purpose of consummating the transaction contemplated by this Agreement, or as may otherwise be required by law.

5.7 Consents. Seller shall use commercially reasonable efforts to obtain the consents noted on *Schedule 1.1(c)* and *Schedule 1.1(d)*. To the extent that any Station Contract may not be assigned without the consent of any third party, and such consent is not obtained prior to Closing, this Agreement and any assignment executed at Closing pursuant hereto shall not constitute an assignment thereof, but to the extent permitted by law shall constitute an equitable assignment by Seller and assumption by Buyer of Seller's rights and obligations under the applicable Station Contract, with Seller making available to Buyer the benefits thereof and Buyer performing the obligations thereunder on Seller's behalf.

5.8 No Solicitation. From the date hereof, until the earlier of the Closing or the termination of this Agreement, Seller and its affiliates will not, directly or indirectly, encourage, solicit, or engage in discussions or negotiations with, or provide any information to, any person or entity (other than Buyer and its representatives) concerning any sale or disposition of any of the Station Assets, including the FCC Licenses, other than as required by the FCC.

5.9 Accounts Receivable. For a period of ninety (90) days after Closing (the "*Collection Period*"), Buyer shall, without charge to Seller, use commercially reasonable efforts to collect the Accounts Receivable related to the Station in the ordinary course of business and shall apply all amounts collected from the Station's account debtors to the oldest account first, unless the advertiser disputes in good faith in writing an older account and designates the payment to a newer account. Any amounts relating to the accounts receivable that are paid directly to Seller shall be retained by Seller. Buyer shall not discount, adjust or otherwise compromise any account receivable and Buyer shall refer any disputed account receivable to

Seller. Within ten calendar days after the end of each month, Buyer shall deliver to Seller a report showing accounts receivable collections for the prior month and Buyer shall make a payment to Seller equal to the amount of all such collections. In the event that Seller receives payment directly from an advertiser for any advertising or other services sold by Buyer after the Effective Time, Seller shall deliver the amount of such payment to Buyer. At the end of the Collection Period, any remaining accounts receivable shall be returned to Seller for collection. Buyer shall be under no obligation to commence litigation or legal action to effect collection. Following the expiration of the Collection Period, Buyer shall have no further obligations under this **Section 5.9** except to promptly pay to Seller any amounts subsequently paid to Buyer with respect to any accounts receivable.

ARTICLE 6: SELLER CLOSING CONDITIONS

The obligation of Seller to consummate the Closing hereunder is subject to satisfaction, at or prior to Closing, of each of the following conditions (unless waived in writing by Seller, with the exception of the conditions in Sections 6.1 and 6.3 which may not be so waived):

6.1 FCC Authorization. The FCC Consent shall have been obtained and shall be in full force and effect and shall contain no provision materially adverse to Buyer or the Station.

6.2 Representations and Covenants.

(a) The representations and warranties of Buyer made in this Agreement, shall be true and correct in all material respects as of the Closing Date except for changes permitted by the terms of this Agreement.

(b) The covenants and agreements to be complied with and performed by Buyer at or prior to Closing shall have been complied with or performed in all material respects.

(c) Seller shall have received a certificate dated as of the Closing Date from Buyer executed by an authorized officer of Buyer to the effect that the conditions set forth in Sections 6.2(a) and (b) have been satisfied.

6.3 Proceedings. Neither Seller nor Buyer shall be subject to any court or governmental order or injunction restraining or prohibiting the consummation of the transactions contemplated hereby.

6.4 Escrow Release. The Parties shall have delivered joint instructions to the Escrow Agent in accordance with Section 1.4.

6.5 Deliveries. Buyer shall have complied with its obligations set forth in Section 8.2.

ARTICLE 7: BUYER CLOSING CONDITIONS

In addition, the obligation of Buyer to consummate the Closing hereunder is subject to satisfaction, at or prior to Closing, of each of the following conditions (unless waived in writing

by Buyer, with the exception of the conditions in Sections 7.1 and 7.3 which may not be so waived):

7.1 FCC Authorization. The FCC Consent shall have been obtained and shall be in full force and effect and shall contain no provision materially adverse to Buyer or the Station.

7.2 Representations and Covenants.

(a) The representations and warranties of Seller made in this Agreement shall be true and correct in all material respects as of the Closing Date except for changes permitted by the terms of this Agreement.

(b) The covenants and agreements to be complied with and performed by Seller at or prior to Closing shall have been complied with or performed in all material respects.

(c) Buyer shall have received a certificate dated as of the Closing Date from Seller executed by an authorized officer of Seller to the effect that the conditions set forth in Sections 7.2(a) and (b) have been satisfied.

7.3 Proceedings. Neither Seller nor Buyer shall be subject to any court or governmental order or injunction restraining or prohibiting the consummation of the transactions contemplated hereby.

7.4 Escrow Release. The Parties shall have delivered joint instructions to the Escrow Agent in accordance with Section 1.4.

7.5 Consents. Seller shall have obtained the written consents of any third parties from whom consent is required for the assignment of any material Station Contract to Buyer.

7.6 Deliveries. Seller shall have complied with its obligations set forth in Section 8.1.

ARTICLE 8: CLOSING DELIVERIES

8.1 Seller Documents and Deliveries. At Closing, Seller shall deliver or cause to be delivered to Buyer:

- (i) the certificate described in Section 7.2(c);
- (ii) an assignment of FCC authorizations assigning the FCC Licenses from Seller to Buyer;
- (iii) an assignment and assumption of contracts (if any) assigning the Station Contracts from Seller to Buyer, and the written consents of any third parties from whom consent is required for the assignment of any material Station Contract to Buyer;
- (iv) an Assignment and Assumption of Leases assigning the Real Property Leases to Buyer.

(v) endorsed vehicle titles conveying the vehicles included in the Tangible Personal Property (if any) from Seller to Buyer;

(vi) a bill of sale conveying the other Station Assets from Seller to Buyer; and

(vii) domain name transfers assigning the Station's domain names listed on *Schedule 1.1(e)*(if any) from Seller to Buyer following customary procedures of the domain name administrator (passwords, etc); and

(viii) any other instruments of conveyance, assignment and transfer that may be reasonably necessary to convey, transfer and assign the Station Assets from Seller to Buyer, free and clear of Liens, except for Permitted Liens.

8.2 Buyer Documents and Deliveries. At Closing, Buyer shall deliver or cause to be delivered to Seller:

- (i) the Purchase Price in accordance with Section 1.4 hereof;
- (ii) the certificate described in Section 6.2(c);
- (iii) an assignment and assumption of contracts (if any) assuming the Station Contracts;
- (iv) an assignment and assumption of Real Estate Leases; and
- (v) any other documents and instruments of assumption that may be reasonably necessary to assume the Assumed Obligations.

ARTICLE 9: SURVIVAL; INDEMNIFICATION

9.1 Survival. The representations and warranties in this Agreement shall survive Closing for a period of fifteen (15) months from the Closing Date whereupon they shall expire and be of no further force or effect, except (i) those under Section 2.5 (Taxes), which shall survive until the expiration of any applicable statute of limitations; (ii) those under Sections 2.6 and 2.8 relating to title which shall survive until the expiration of any applicable statute of limitations; and (iii) that if within such applicable period the indemnified party gives the indemnifying party written notice of a claim for breach thereof describing in reasonable detail the nature and basis of such claim, then such claim shall survive until its resolution. The covenants and agreements in this Agreement shall survive Closing until performed.

9.2 Indemnification.

(a) Subject to Section 9.2(b), from and after Closing, Seller shall defend, indemnify and hold harmless Buyer from and against any and all losses, costs, damages,

liabilities and expenses, including reasonable attorneys' fees and expenses ("**Damages**") incurred by Buyer arising out of or resulting from:

(i) any breach by Seller of its representations and warranties made under this Agreement; any Seller Ancillary Agreement or any certificate or document delivered pursuant to this Agreement;

(ii) any default or nonfulfillment by Seller of any covenant or agreement made under this Agreement;

(iii) the Excluded Assets and/or Retained Obligations; or

(iv) the business or operation of the Station before the Effective Time.

(b) Notwithstanding the foregoing or anything else herein to the contrary, after Closing, (i) Seller shall have no liability to Buyer under clause (i) of Section 9.2(a)(i) until Buyer's aggregate Damages exceed Twenty-Five Thousand Dollars (\$25,000), after which such threshold amount shall be included, not excluded, from any calculation of Damages, and (ii) the maximum aggregate liability of Seller under Section 9.2(a)(i) shall be an amount equal to Five Hundred Seventy Five Thousand Dollars (\$575,000).

(c) Subject to Section 9.2(d), from and after Closing, Buyer shall defend, indemnify and hold harmless Seller from and against any and all Damages incurred by Seller arising out of or resulting from:

(i) any breach by Buyer of its representations and warranties made under this Agreement, any Buyer Ancillary Agreement or any certificate or document delivered pursuant to this Agreement;

(ii) any default by Buyer of any covenant or agreement made under this Agreement; or

(iii) the Assumed Obligations; or

(iv) the business or operation of the Station after the Effective Time.

(d) Notwithstanding the foregoing or anything else herein to the contrary, after Closing, (i) Buyer shall have no liability to Seller under clause (i) of Section 9.2(c)(i) until Seller's aggregate Damages exceed Twenty-Five Thousand Dollars (\$25,000), after which such threshold amount shall be included, not excluded, from any calculation of Damages, and (ii) the maximum aggregate liability of Buyer under Section 9.2(c)(i) shall be an amount equal to Five Hundred Seventy Five Thousand Dollars (\$575,000).

9.3 Procedures.

(a) The indemnified party shall give prompt written notice to the 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 prejudiced and provided that such notice is given within the time period described in Section 9.1 (unless a Claim was unknown due to fraud or other reasonable delay in discovery).

(b) The indemnifying party shall have the right to undertake the defense or opposition to such Claim with counsel selected by it. In the event that the indemnifying party does not undertake such defense or opposition in a timely manner, 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 (subject to the right of the indemnifying party to assume defense of or opposition to such Claim at any time prior to settlement, compromise or final determination thereof).

(c) Anything herein to the contrary notwithstanding:

(i) the indemnified party shall have the right, at its own cost and expense, to participate in the defense, opposition, compromise or settlement of the Claim;

(ii) the indemnifying party shall not, without the indemnified party's written consent, settle or compromise any Claim or consent to entry of any judgment which does not include the giving by the claimant to the indemnified party of a release from all liability in respect of such Claim;

(iii) in the event that the indemnifying party undertakes defense of or opposition to any Claim, the indemnified party, by counsel or other representative of its own choosing and at its sole cost and expense, shall have the right to consult with the indemnifying party and its counsel concerning such Claim and the indemnifying party and the indemnified party and their respective counsel shall cooperate in good faith with respect to such Claim; and

ARTICLE 10: TERMINATION AND REMEDIES

10.1 Termination. Subject to Section 10.2, this Agreement may be terminated prior to Closing as follows:

(a) by mutual written consent of Buyer and Seller;

(b) by written notice of Buyer to Seller if Seller breaches its representations or warranties or defaults in the performance of its covenants contained in this Agreement and such breach or default is material in the context of the transactions contemplated hereby and is not cured within the Cure Period (defined below);

(c) by written notice of Seller to Buyer if Buyer breaches its representations or warranties or defaults in the performance of its covenants contained in this Agreement and such breach or default is material in the context of the transactions contemplated hereby and is not cured within the Cure Period; provided, however, that the Cure Period shall not apply to Buyer's obligations to make the Deposit within 3 business days after the date hereof and to pay the Purchase Price at Closing;

(d) by written notice of Seller to Buyer or Buyer to Seller if the FCC denies or designates for hearing the FCC Application. If either party terminates and there is no default by Buyer, the Deposit shall be promptly returned to Buyer.

(e) by written notice of Seller to Buyer or Buyer to Seller if Closing does not occur by the date which is twelve (12) months after the date of this Agreement. If Seller terminates in the absence of a default by Buyer, the Deposit shall be promptly returned to Buyer.

10.2 Cure Period. Each party shall give the other party prompt written notice upon learning of any breach or default by the other party under this Agreement. The term “Cure Period” as used herein means a period commencing on the date Buyer or Seller receives from the other written notice of breach or default hereunder and continuing until thirty (30) calendar days thereafter; provided, however, that if the breach or default is non-monetary and cannot reasonably be cured within such period but can be cured before the date the FCC Consent shall have been granted, and if diligent efforts to cure promptly commence, then the Cure Period shall continue as long as such diligent efforts to cure continue, but not beyond the fifth (5th) business day after the date the FCC Consent shall have been granted, and provided further that in no event shall the Cure Period affect a party’s right to terminate this Agreement pursuant to Section 10.1(e) hereof.

10.3 Survival. Except as provided by Section 10.5, the termination of this Agreement shall not relieve any party of any liability for breach or default under this Agreement prior to the date of termination. Notwithstanding anything contained herein to the contrary, Sections 1.4 (Deposit), 5.6 (Confidentiality), 5.1 (Announcements) and 11.1 (Expenses) shall survive any termination of this Agreement.

10.4 Specific Performance. In the event of failure or threatened failure by Seller to comply with the terms of this Agreement, Buyer shall be entitled to seek an injunction restraining such failure or threatened failure and, subject to obtaining any necessary FCC consent, to seek enforcement of this Agreement by a decree of specific performance requiring compliance with this Agreement. Notwithstanding the foregoing, if prior to Closing the condition described in Section 10.1(c) exists, Seller’s sole remedy shall be termination of this Agreement and receipt of the liquidated damages amount pursuant to Section 10.5. A party seeking the remedy of specific performance pursuant to this Section 10.4 shall not be required to post bond or other security in support thereof.

10.5 Liquidated Damages. If Seller terminates this Agreement pursuant to Section 10.1(c), the Deposit shall be delivered to Seller as liquidated damages and such delivery shall constitute Seller’s sole remedy under this Agreement. Buyer acknowledges that Seller’s recovery of the Deposit is not a penalty and that Seller’s liquidated damages amount is reasonable in light of the substantial but indeterminate harm anticipated to be caused by Buyer’s 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.

ARTICLE 11: MISCELLANEOUS

11.1 Expenses. Each party shall be solely responsible for all costs and expenses incurred by it in connection with the negotiation, preparation and performance of and compliance with the terms of this Agreement. The filing fee for the FCC Consent shall be divided equally between Buyer and Seller. All other governmental fees and charges applicable to any requests for governmental consents shall be paid by the party upon whom the applicable governmental authority imposes the fee or charge (or shall be shared equally if not imposed upon either party). The parties shall share equally any governmental taxes, fees and charges applicable solely to the transfer of Station Assets under this Agreement (but not prior existing tax obligations).

11.2 Further Assurances. After Closing, each party shall from time to time, at the reasonable request of and without further cost or expense to the other, execute and deliver such other instruments of conveyance and assumption and take such other actions as may reasonably be requested in order to more effectively consummate the transactions contemplated hereby.

11.3 Assignment. Neither party may assign this Agreement without the prior written consent of the other party hereto, provided, however, that Buyer may assign its rights hereunder to an affiliate of Buyer upon written notice to, but without consent of, Seller, provided that (i) any such assignment does not delay processing of the FCC Application, grant of the FCC Consent, or Closing, (ii) any such assignee delivers to Seller a written assumption of this Agreement, and (iii) Buyer shall remain secondarily liable for all of its obligations hereunder. The terms of this Agreement shall bind and inure to the benefit of the parties' respective successors and any permitted assigns, and no assignment shall relieve any party of any obligation or liability under this Agreement.

11.4 Notices. Any notice pursuant to this Agreement shall be in writing and shall be deemed delivered on the date of personal delivery or confirmed delivery by a nationally recognized overnight courier service, and shall be addressed as follows (or to such other address as any party may request by written notice):

If to Seller:	Codcomm Inc. 24 Fairview Drive Southborough, MA 01772 Attn: John Garabedian, President Tel: 508-361-2345
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with a copy (which shall not constitute notice) to:	Foster Garvey PC 1000 Potomac Street, NW, Suite 200 Washington, DC 20007-3501 Attn: Melodie A. Virtue Tel: 202-298-2527
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If to Buyer: Coxswain Communications, Inc.
253 Old Stockbridge Road
Lenox, MA 01240
Attn: Steve Chessare, President & CEO
Tel: 917-846-3930

with a copy (which shall not constitute notice) to: Lerman Senter PLLC
2001 L Street NW, Suite 400
Washington, DC 20036
Attn: Sally Buckman
Tel: 202-416-6762

11.5 Amendments. No amendment or waiver of compliance with any provision hereof or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by both parties.

11.6 Entire Agreement. This Agreement (including the Schedules and Exhibits hereto), and Seller Ancillary Agreements and Buyer Ancillary Agreements to be entered into in connection with this Agreement, constitute the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersede all prior agreements and understandings with respect to the subject matter hereof. No party makes any representation or warranty with respect to the transactions contemplated by this Agreement except as expressly set forth in this Agreement.

11.7 Severability. If any court or governmental authority holds any provision in this Agreement invalid, illegal or unenforceable under any applicable law, then, so long as no party is deprived of the benefits of this Agreement in any material respect, this Agreement shall be construed with the invalid, illegal or unenforceable provision deleted and the validity, legality and enforceability of the remaining provisions contained herein shall not be affected or impaired thereby.

11.8 No Beneficiaries. Nothing in this Agreement expressed or implied is intended or shall be construed to give any rights to any person or entity other than the parties hereto and their successors and permitted assigns.

11.9 Governing Law. The construction and performance of this Agreement shall be governed by the laws of the Commonwealth of Massachusetts without giving effect to the choice of law provisions thereof. The exclusive forum for the resolution of any disputes arising hereunder shall be the federal or state courts located in Massachusetts and each party (for itself and its successors and) irrevocably waives the reference of an inconvenient forum to the maintenance of any such action or proceeding. EACH OF BUYER AND SELLER (FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS) HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION BEFORE ANY FEDERAL OR STATE COURT RELATING IN ANY WAY TO THIS AGREEMENT, INCLUDING ANY COUNTERCLAIM MADE IN SUCH ACTION, AND AGREES THAT ANY SUCH ACTION SHALL BE DECIDED SOLELY BY A JUDGE.

11.10 Counterparts. This Agreement may be executed in separate counterparts, each of which will be deemed an original and all of which together will constitute one and the same agreement. The exchange of copies of this Agreement or amendments thereto and of signature pages by facsimile transmission or by email transmission in portable digital format, or similar format, shall constitute effective execution and delivery of such instrument(s) as to the Parties and may be used in lieu of the original Agreement or amendment for all purposes. Signatures of the Parties transmitted by facsimile or by email transmission in portable digital format, or similar format, shall be deemed to be their original signatures for all purposes.

11.11 Terms Generally. As used in this Agreement: The term “or” is disjunctive and the term “and” is conjunctive. The term “may” is permissive and the term “shall” is mandatory. Masculine terms apply to females and feminine terms apply to males. The terms “include,” “includes” and “including” are by way of example and not limitation.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

CODCOMM INC.

By: 
Name: **John Garabedian**
Title: **President**

COXSWAIN COMMUNICATIONS, INC.

By: 
Name: **Steve Chessare**
Title: **President & CEO**