

## **ASSET PURCHASE AGREEMENT**

**THIS ASSET PURCHASE AGREEMENT** (the “Agreement”) is entered into as of this 13<sup>th</sup> day of October, 2021 (the “Effective Date”) by and between **SUGAR RIVER MEDIA, LLC**, a New Hampshire limited liability company (“Buyer”), and **TRUSTEES OF DARTMOUTH COLLEGE**, a New Hampshire institution of higher education (“Seller”) (each a “Party” and, collectively, the “Parties”).

### **RECITALS**

**WHEREAS**, Seller is the licensee and operator of FM radio station WFRD, Facility ID No. 68281, Hanover, New Hampshire (the “Station”), holding valid authorizations for the operation thereof from the Federal Communications Commission (the “FCC”), and Seller owns other assets used in connection with the operation of the Station; and

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

**NOW, THEREFORE**, taking the foregoing into account, and in consideration of the mutual covenants and agreements set forth herein, the sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby agree to the following terms and conditions:

### **ARTICLE 1: SALE AND PURCHASE**

1.1 **Assets**. Subject to the terms and conditions herein contained, Seller shall grant, convey, sell, assign, transfer and deliver to Buyer on the Closing Date (as defined below) all of the assets, properties, interests, and rights, both tangible and intangible, real, personal or mixed, that are owned, leased, or held by Seller and used or held for use exclusively in connection with the present operations of the Station and which are specifically set out below (collectively, the “Assets”):

(a) **Licenses and Authorizations**. All licenses, authorizations, permits and approvals issued with respect to the Station by the FCC (the “FCC Authorizations”), as set forth on Schedule 1.1(a) attached hereto.

(b) **Tangible Personal Property**. Certain studio and broadcasting equipment that are used or held for use in the operation of the Station as set forth on Schedule 1.1(b) attached hereto (collectively referred to as the “Tangible Personal Property”).

(c) **Intangible Property**. All intangible property used solely in the operation of the Station, including the Station’s respective call letters, copyrights, programming materials, trademarks, service marks, slogans, jingles, logos, internet domain names, websites, Facebook and any other social media accounts, the content located and publicly accessible from such domain names and websites, “visitor” email databases, trade secrets, choses in action relating primarily to the Station, and goodwill relating to the Station, all as more specifically set out in

Schedule 1.1(c) attached hereto, and any additions and improvements thereto between the Effective Date and the Closing Date (collectively, the “Intangible Property”).

(d) **Contracts and Leases.** Those contracts and leases listed in Schedule 1.1(d) (the “Contracts and Leases”).

(e) **Books and Records.** Certain of the books and records of Seller relating to the business and operations of the Station and maintained in the ordinary course of business, as follows: technical operating data, customer lists, sales literature, advertising and promotional materials, and all FCC logs, the FCC local public inspection and political files, and engineering records (the “Books and Records”).

1.2 **Excluded Assets.** Seller will retain all of its assets not listed in Section 1.1, which shall include, without limitation, Seller’s right, title and interest in all cash, cash equivalents, security deposits, reserves, prepaid expenses, bank deposits, and checking, savings and other bank accounts, marketable securities, advances to employees, officers or directors, assets related to its employee benefit plans, insurance contracts and claims against insurers, its governing instruments or other corporate records, documents and identification numbers, the Pre-LMA Receivables, and leases, contracts, commitments, understandings and agreements, whether oral or written, not specifically identified in Schedule 1.1(d) (collectively “Excluded Assets”). For the avoidance of doubt, properties that would otherwise constitute Intangible Property but that include the name “Dartmouth” or any other indicia (including logos, trademarks, service marks, or otherwise) of Seller that are in use for any other purpose other than the operation of the Station shall be Excluded Assets hereunder and shall remain the sole property of Seller.

1.3 **Liabilities.**

(a) Subject to Section 3.11 below, the Assets shall be transferred by Seller to Buyer free and clear of all debts, security interests, mortgages, trusts, claims, pledges, conditional sales agreements, equipment leases, and other liens, liabilities and encumbrances of every kind and nature (“Liens”), other than the following (the “Permitted Liens”):

- (i) Liens for taxes not yet due and payable;
- (ii) Liens that will be discharged prior to Closing;
- (iii) imperfections of title and encumbrances, if any, which are not material, do not materially detract from the marketability or value of the properties subject thereto, and do not materially impair the operations of the owner thereof; and
- (iv) Liens for carriers, warehousemen, materialmen, landlords and the like that do not materially adversely affect the full use and enjoyment, or detract from the marketability or value, of the properties subject thereto.

(b) Buyer shall assume and undertake to pay, discharge and perform all obligations and liabilities relating to the Contracts and Leases and other Assets arising or

occurring after Closing (“Assumed Liabilities”). Buyer shall not assume (i) any obligations or liabilities under the Contracts and Leases or other Assets relating to the period prior to Closing; (ii) any obligations or liabilities of Seller that are unrelated to the Assets; (iii) any obligations or liabilities relating to employees of Seller; (iv) any obligations or liabilities relating to the Excluded Assets; (v) any federal, state or local franchise, income or other taxes of Seller; or (vi) any other obligations or liabilities of Seller, including obligations or liabilities arising from Seller’s failure to obtain any required license, permit, or other authorization to conduct the operation of the Station prior to Closing (collectively, the “Retained Obligations”).

1.4 **Purchase Price.** The purchase price to be paid for the Assets will be Two Hundred and Twenty-Five Thousand and 00/100 Dollars (\$225,000.00) (the “Purchase Price”), payable by Buyer in cash by wire transfer of immediately available funds as follows:

(a) Within one (1) business day of the execution and delivery of this Agreement, Buyer will deposit Thirty Thousand and 00/100 Dollars (\$30,000.00) (the “Escrow Amount”) of the Purchase Price into escrow. The Escrow Amount shall be held and disbursed by Kozacko Enterprises, Inc., d/b/a Kozacko Media Services (“Kozacko”), as the escrow agent (the “Escrow Agent”) pursuant to the terms of an Escrow Agreement substantially in the form attached hereto as Exhibit A (the “Escrow Agreement”).

(b) At the Closing, Buyer shall pay to Seller the balance of the Purchase Price of One Hundred and Ninety-Five Thousand and 00/100 Dollars (\$195,000.00), plus or minus any adjustments made at the Closing pursuant to Section 1.5 and Section 1.7 of this Agreement.

1.5 **Prorations.** Except as provided in the LMA (as defined below), the Parties agree to prorate all income and expenses arising out of the operation of the Station which are incurred, accrued, or payable, as of 11:59 p.m. local time of the day immediately preceding the Closing Date so that (a) Seller shall be entitled to all income with respect to advertisements airing prior to the Closing Date and responsible for all expenses and costs allocable for the period prior to and on such time, and (b) Buyer shall be entitled to all income with respect to advertisements airing on and after the Closing Date (but specifically excluding any Excluded Assets) and responsible for all expenses and costs allocable for the period after such time. The items of expense to be prorated shall include, without limitation, FCC regulatory fees (based on the most recent publicly available information about the cost of such regulatory fees for the Station), and tower rent. Sales commissions related to the sale of advertisements broadcast prior to the LMA Date (as defined below) shall be the responsibility of Seller, and sales commissions related to the sale of advertisements broadcast on or after the LMA Date shall be the responsibility of Buyer. With respect to trade, barter or similar agreements for the sale of airtime that are included in the Contracts listed on Schedule 1.1(d), there shall be no proration or adjustment, unless the Station’s net aggregate barter liability exceeds Five Thousand and 00/100 Dollars (\$5,000.00). The prorations shall, insofar as feasible, be determined and paid on the Closing Date, with final settlement and payment to be made within sixty (60) days after the Closing Date. In the event of any disputes between the Parties as to such prorations and adjustments, the amounts not in dispute shall nonetheless be prorated at Closing, and such disputes shall be determined by an independent certified public accountant or other party mutually acceptable to the Parties whose determination shall be final. The fees and expenses of such accountant or other party shall be paid one-half by Buyer and one-half by Seller.

1.6 **Allocation of Purchase Price.** On or before the Closing, Buyer and Seller shall each act in good faith and agree to a reasonable allocation of the Purchase Price to the Assets for all purposes, including federal and state tax reporting purposes. Filings with the Internal Revenue Service shall be made by Seller and Buyer consistent with such allocation.

1.7 **Local Marketing Agreement.**

(a) Contemporaneous with the Effective Date of this Agreement, Buyer and Seller are entering into a local marketing agreement, to be effective as of even date herewith (the “LMA Date”), substantially in the form of Exhibit B attached hereto (the “LMA”).

(b) To the extent that any Assets are assigned, Assumed Liabilities are assumed, or assets and liabilities are prorated under the LMA, then notwithstanding anything contained herein to the contrary, any obligation of Seller under this Agreement to assign such Assets, of Buyer to assume such Assumed Liabilities, or of either party to prorate such assets or liabilities, shall be determined as of the LMA Date.

(c) Notwithstanding anything contained herein to the contrary, Seller shall not be deemed to have breached any of its representations, warranties, covenants or agreements contained herein or to have failed to satisfy any condition precedent to Seller’s obligation to perform under this Agreement (nor shall Seller have any liability or responsibility to Buyer in respect of any such representations, warranties, covenants, agreements or conditions precedent), in each case to the extent that the inaccuracy of any such representations, the breach of any such warranty, covenant or agreement or the inability to satisfy any such condition precedent arises out of or otherwise relates to (i) any actions taken by or under the authorization of Buyer in connection with Buyer’s performance of its obligations under the LMA, or (ii) the failure of Buyer to perform any of its obligations under the LMA.

(d) Buyer acknowledges and agrees that Seller, in its capacity as licensee of the Station, shall not be deemed responsible for or have authorized or consented to any action or failure to act on the part of Buyer in connection with the LMA, solely by reason of the fact that prior to Closing, Seller shall have the legal right to control, manage and supervise the operation of the Station and the conduct of its business.

**ARTICLE 2: FCC CONSENT; CLOSING**

2.1 **FCC Consent; Assignment Application.** Buyer and Seller shall execute, file, and vigorously prosecute an application to the FCC (the “Assignment Application”) requesting the FCC’s consent (the “FCC Consent”) to the assignment from Seller to Buyer of all FCC Authorizations pertaining to each Station. The Assignment Application shall be filed not later than five (5) days after the Effective Date. Buyer and Seller shall take all reasonable steps to cooperate with each other and with the FCC in order to secure such FCC Consent without delay and to promptly consummate the transactions contemplated in this Agreement; provided, however, that no Party hereto shall be required to take any action which such Party reasonably determines would have a material adverse effect upon such Party. Buyer shall reimburse Seller

for one-half of the FCC filing fee paid in connection with the FCC application. Each Party shall be responsible for all of its other costs with respect to the preparation, filing and prosecution of the Assignment Application. Buyer and Seller shall promptly notify each other of, and provide copies of, all documents filed with or received from the FCC or any other governmental agency with respect to this Agreement, the Assignment Application or the transactions contemplated hereby. If Buyer or Seller becomes aware of any fact which would prevent or delay the FCC Consent or the Final Order (as defined below), it shall promptly notify the other Party.

2.2 **Closing Date; Closing Place.** The closing (the “Closing”) of the transactions contemplated in this Agreement shall occur on the date (the “Closing Date”) that is the first business day on or after ten (10) business days following the date the FCC shall have published its Public Notice of FCC Consent having been granted in its Daily Digest or such other date as shall be agreed in writing by Buyer and Seller, provided that the other conditions to closing set forth in Sections 8 and 9 have either been waived or satisfied. The Closing shall be held by exchange of documents via the electronic exchange of documents and signature pages in “portable document format” simultaneously, or as Seller and Buyer may otherwise agree. In the event the Closing occurs and, prior to the FCC Consent becoming a Final Order, the FCC rescinds the FCC Consent and orders an unwinding of the Closing, Buyer shall return the Assets to Seller and Seller shall return the Purchase Price to Buyer, and each of Seller and Buyer shall take all other steps reasonably required to return the Parties to the status quo ante existing immediately prior to the Closing on the Closing Date. For purposes of this Agreement, the term “Final Order” means action by the FCC consenting to the Assignment Application, and such consent shall not have been reversed, stayed, enjoined, set aside, annulled, or suspended, and with respect to which action no timely request for stay, petition for rehearing, petition for reconsideration, application for review, or notice of appeal is pending, and as to which the times for filing any such request, petition, application, notice, or appeal, or for reconsideration or review by the FCC on its own motion, shall have expired.

### **ARTICLE 3: REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller makes the following representations and warranties to Buyer:

3.1 **Organization and Authorization.** Seller is an institution of higher education established by Royal Charter and existing in the State of New Hampshire. Seller has the power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby on Seller’s part have been duly and validly authorized by Seller, and no other proceedings on the part of Seller are necessary to authorize the execution and delivery of, or the performance of Seller’s obligations under, this Agreement, or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Seller. This Agreement constitutes the legal, valid, and binding obligation of Seller enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency, or other laws affecting generally the enforcement of creditors’ rights or the application of principles of equity.

3.2 **No Defaults.** The execution, delivery, and performance of this Agreement by Seller will not (i) constitute a violation of, or conflict with, either Seller’s articles of

incorporation, bylaws, or other similar organizational documents, (ii) result in a default (or give rise to any right of termination, cancellation, or acceleration) under, or conflict with, any of the terms, conditions, or provisions of any note, bond, mortgage, indenture, agreement, lease, or other instrument or obligation relating to the Station and to which Seller or any of the Assets may be subject, (iii) violate any statute, regulation, order, injunction, or decree of any federal, state, or local governmental authority or agency which is applicable to Seller or any of the Assets, or (iv) result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the Assets, other than Permitted Liens

3.3 **Title**. Seller owns and has good and marketable title to the Assets, subject only to Permitted Liens.

3.4 **Intangible Property**. Seller's use of the Intangible Property does not infringe upon any third party rights in any material respect; none of the Intangible Property is being infringed by any third party; and Seller has not received any written notice that its use of the Intangible Property in connection with the Station is unauthorized or violates or infringes upon the rights of any other party or challenging the ownership, use, validity or enforceability of any Intangible Property.

3.5 **FCC Authorizations and Other Licenses**.

(a) Schedule 1.1(a) hereto contains a true and complete list of the FCC Authorizations and all other licenses, permits, or other authorizations from governmental or regulatory authorities that are required for the lawful conduct of the business and operations of the Station in the manner and to the extent that the Station are presently operated.

(b) The FCC Authorizations and other licenses, permits, and authorizations listed on Schedule 1.1(a) are in full force and effect, unimpaired by any act or omission of Seller.

(c) Seller lawfully holds each of the FCC Authorizations and the other licenses, permits, and authorizations listed on Schedule 1.1(a), none of which is subject to any restrictions or conditions or, to Seller's knowledge, pending proposals that would limit or change in any material respect the operations of the Station, other than (i) as may be set forth on the faces of such FCC Authorizations and other licenses, permits, and authorizations, or (ii) as may be applicable to substantial segments of the radio broadcasting industry.

(d) There are not now pending, or, to Seller's knowledge, threatened, any action by or before the FCC to revoke, cancel, rescind, modify, or refuse to renew any of such FCC Authorizations, and Seller has not received any notice of, and has no knowledge of, any pending, issued, or outstanding order by or before the FCC, or of any investigation, order to show cause, notice of violation, notice of apparent liability, notice of forfeiture, or material complaint against either the Station or Seller with respect to the Station.

(e) All material reports, filings, and fees required to be filed with or paid to the FCC by Seller with respect to the operation of the Station have been timely filed, and all such reports and filings are accurate and complete in all material respects.

3.6 **Performance of Contracts and Leases.** Seller has delivered to Buyer true, correct and complete copies of the Contracts and Leases set out on Schedule 1.1(d). Each of the Contracts and Leases is in full force and effect and there has not been, and is not, any default or breach under any of the Contracts and Leases by any party to any of the Contracts and Leases in any material respect.

3.7 **Approvals and Consents.** The execution, delivery and performance by Seller of this Agreement and the consummation by Seller of the transactions contemplated hereby will not require any consent, permit, license or approval of any person, entity or government or regulatory authority other than the FCC Consent and any third party consents required in connection with the assignment of the Contracts and Leases as so designated on Schedule 1.1(d) as to which Seller (or Buyer, as agreed between Buyer and Seller) shall obtain any necessary consents set forth on Schedule 1.1(d) in order to assign the Contracts and Leases prior to the Closing.

3.8 **Taxes.** Seller has duly, timely, and in the required manner filed all federal, state, and local income, franchise, sales, use, property, excise, payroll, and other tax returns and forms required to be filed in connection with the Station for all periods ending on or before the Closing Date, and has paid in full or discharged all taxes, assessments, excises, interest, penalties, deficiencies, and losses required to be paid in connection with the Station for all periods ending on or before the Closing Date. To Seller's knowledge, no event has occurred prior to the Closing Date which could impose upon Buyer any liability for any taxes, penalties, or interest due or to become due from Seller from any taxing authority in relation to the Station.

3.9 **Employees.** There are no employment agreements included in the Contracts and Leases. Seller has complied with and is in compliance with all labor and employment laws, rules and regulations applicable to the Station's business, including, without limitation, those which relate to prices, wages, hours, discrimination in employment and collective bargaining, and is not liable for any arrears of wages or any taxes or penalties for failure to comply with any of the foregoing. There is no unfair labor practice charge or complaint against Seller in respect of the Station's business pending or threatened before any court or governmental authority, and there is no strike, dispute, request for representation, slowdown or stoppage pending or threatened in respect of the Station's business.

3.10 **Brokers.** Other than Kozacko, Seller has retained no broker or finder or other person who would have any valid claim for a commission or a brokerage fee in connection with this Agreement or the transactions contemplated hereby as a result of any agreement, understanding, or action on the part of Seller. Seller will be solely responsible for all fees due to Kozacko in connection with the transactions contemplated by this Agreement.

3.11 **Knowledge of Seller.** Except for the representations and warranties set forth in Sections 3.1, 3.2, 3.5(b) through (e), 3.8 and 3.10, the foregoing representations and warranties of Seller are made to the actual (not constructive or imputed) knowledge of Anna Hall, Addison Neva, Christopher Fazio, Gary Savoie, Scott Brown, and Dianne Ingalls, without any obligation on any of their part to make any independent investigation of the matters being represented and

warranted, excepting only a review of the files, records, books, correspondence and the like in Seller's possession relating to the Station.

#### **ARTICLE 4: REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller:

4.1 **Organization and Authorization.** Buyer is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of New Hampshire and qualified to do business in the State of New Hampshire. Buyer has the power and authority to execute and deliver this Agreement, and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby on Buyer's part have been duly and validly authorized by Buyer, and no other proceedings on the part of Buyer are necessary to authorize the execution and delivery of, or the performance of Buyer's obligations under this Agreement, or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Buyer. This Agreement constitutes the legal, valid, and binding agreement of Buyer enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency, or other laws affecting generally the enforcement of creditors' rights or the application of principles of equity.

4.2 **No Defaults.** The execution, delivery, and performance of this Agreement by Buyer will not (i) conflict with or result in any breach of any provision of the articles of organization or operating agreement of Buyer, or (ii) result in a default (or give rise to any right of termination, cancellation, or acceleration) under, or conflict with, any of the terms, conditions, or provisions of any note, bond, mortgage, indenture, agreement, lease, or other instrument or obligation relating to Buyer or its business, except for such defaults (or rights of termination, cancellation, or acceleration) or conflicts as to which requisite waivers or consents have been obtained and delivered to Seller, or (iii) violate any statute, regulation, order, injunction, or decree of any federal, state, or local governmental authority or agency which is applicable to Buyer.

4.3 **Buyer's Qualification.** Buyer is legally, financially, and technically qualified to acquire, and to become the FCC licensee of, the Station and, upon satisfaction of the conditions precedent to Closing set forth in Articles 8 and 9 below, to perform its obligations under this Agreement.

4.4 **Approvals and Consents.** The execution, delivery and performance by Buyer of this Agreement and the consummation by Buyer of the transactions contemplated hereby will not require any consent, permit, license or approval of any person, entity or government or regulatory authority other than the FCC Consent. Buyer is not subject to nor a party to any order, writ, injunction, judgment, litigation, arbitration, decision, or decree having a binding effect which restrains or enjoins, or purports to restrain or enjoin, or could reasonably be expected to restrain or enjoin, the transactions contemplated hereby or which could provide the basis for the refusal of the FCC to grant the FCC Consent.

4.5 **Brokers.** Buyer has retained no broker or finder or other person who would have any valid claim for a commission or a brokerage fee in connection with this Agreement or the transactions contemplated hereby as a result of any agreement, understanding, or action on the part of Buyer.

## ARTICLE 5: COVENANTS OF SELLER

Seller covenants and agrees that:

5.1 **Representations and Warranties.** From the Effective Date and until the completion of the Closing, Seller shall give detailed written notice to Buyer promptly upon learning of the occurrence of any event that would cause or constitute a breach or would have caused a breach had such event occurred or been known to Seller prior to the Effective Date, of any of the representations and warranties of Seller contained in this Agreement.

5.2 **Consummation of Agreement.** Seller shall use all commercially reasonable efforts to fulfill and perform all conditions and obligations on its part to be fulfilled and performed under this Agreement, and to cause the transactions contemplated by this Agreement to be fully carried out.

5.3 **Station Operations.** Subject to the LMA, from the date hereof until Closing, Seller shall:

(a) operate the Station as it is being operated as of the Effective Date and keep its books and accounts, records and files in the ordinary course, preserve the business and goodwill of the Station and the Assets, and collect the Station's A/R (as defined below) only in the ordinary course of business consistent with past practice and not discount or otherwise reduce the amount of any of the Station's A/R;

(b) operate the Station in accordance with the terms of the FCC Authorizations and in compliance with the Communications Act, FCC rules, regulations and policies, and all other applicable laws, rules and regulations, and maintain the FCC Authorizations in full force and effect; and

(c) keep all Tangible Personal Property in the condition it was in as of the Effective Date (ordinary wear and tear excepted) and otherwise preserve intact the Assets and maintain in effect its current insurance policies with respect to the Station and the Assets.

5.4 **Collection of Receivables.** Seller shall continue to collect all cash, receivables and other amounts due to Seller in connection with Seller's operation of the Station (collectively, "A/R") in advance of the LMA Date (collectively, the "Pre-LMA Receivables"). Buyer covenants and agrees to provide commercially reasonable assistance to Seller as may be requested from time to time by Seller in connection with Seller's collection of Pre-LMA Receivables.

## ARTICLE 6: COVENANTS OF BUYER

Buyer covenants and agrees that:

6.1 **Representations and Warranties.** From the Effective Date until the completion of the Closing, Buyer shall give detailed written notice to Seller promptly upon learning of the occurrence of any event that would cause or constitute a breach or would have caused a breach had such event occurred or been known to Buyer prior to the Effective Date, of any of the representations and warranties of Buyer contained in this Agreement.

6.2 **Consummation of Agreement.** Buyer shall use all commercially reasonable efforts to fulfill and perform all conditions and obligations on its part to be fulfilled and performed under this Agreement, and to cause the transactions contemplated by this Agreement to be fully carried out.

6.3 **FCC Eligibility.** Buyer shall not take any action or omit to take any action that would cause it to become unqualified to purchase the Station or cause the FCC to withhold the FCC Consent.

## ARTICLE 7: JOINT COVENANTS

7.1 **Control.** Consistent with FCC rules, 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 Authorizations.

## ARTICLE 8: CONDITIONS TO THE OBLIGATIONS OF SELLER

The obligations of Seller under this Agreement are subject to the fulfillment of the following conditions prior to or on the Closing Date. Upon the Closing, each such condition shall be deemed to have been satisfied.

### 8.1 **Representations, Warranties and Covenants.**

(a) Each of the representations and warranties of Buyer contained in this Agreement was true and correct, in all material respects, as of the date when made and is deemed to be made again on and as of the Closing Date and is then true and correct, in all material respects, except to the extent changes are permitted or contemplated pursuant to this Agreement.

(b) Buyer shall have performed and complied, in all material respects, with each and every covenant and agreement required by this Agreement to be performed or complied with by it prior to or on the Closing Date.

8.2 **Proceedings.** Neither Seller nor Buyer shall be subject to any restraining order or injunction (or similar action) restraining or prohibiting the consummation of the transactions contemplated hereby.

8.3 **FCC Consent.** The FCC Consent shall have been initially granted or shall have become a Final Order.

8.4 **Deliveries.** Buyer shall have complied with each and every one of its obligations set forth in Section 10.2.

## **ARTICLE 9: CONDITIONS TO THE OBLIGATIONS OF BUYER**

The obligations of Buyer under this Agreement are subject to the fulfillment of the following conditions prior to or on the Closing Date. Upon the Closing, each such condition shall be deemed to have been satisfied.

### **9.1 Representations, Warranties and Covenants.**

(a) Each of the representations and warranties of Seller contained in this Agreement was true and correct, in all material respects, as of the date when made and is deemed to be made again on and as of the Closing Date and is then true and correct, in all material respects, except to the extent changes are permitted or contemplated pursuant to this Agreement.

(b) Seller shall have performed and complied, in all material respects, with each and every covenant and agreement required by this Agreement to be performed or complied with by it prior to or on the Closing Date.

9.2 **Proceedings.** Neither Seller nor Buyer shall be subject to any restraining order or injunction (or similar action) restraining or prohibiting the consummation of the transactions contemplated hereby.

9.3 **FCC Consent.** The FCC Consent shall have been granted or shall have become a Final Order.

9.4 **Deliveries.** Seller shall have complied with each and every one of the obligations set forth in Section 10.1.

9.5 **Material Contracts.** Seller shall have obtained any necessary consents required to assign the Contracts and Leases to Buyer as set forth on Schedule 1.1(d).

## **ARTICLE 10: ITEMS TO BE DELIVERED AT CLOSING**

10.1 **Deliveries by Seller.** At Closing, Seller shall deliver to Buyer, duly executed by Seller or such other signatory as may be required by the nature of the document:

(a) a bill of sale and assignment sufficient to sell, convey, transfer and assign the Assets (including the FCC Authorizations) to Buyer free and clear of any Liens, other than Permitted Liens, in a form reasonably acceptable to Buyer and Seller (the "Bill of Sale and Assignment");

(b) a certificate dated as of the Closing Date and duly executed by an officer of Seller to the effect that the conditions set forth in Section 9.1 have been satisfied;

(c) joint instructions to the Escrow Agent directing the payment of the Escrow Deposit to Seller;

(d) to the extent not addressed in the Bill of Sale and Assignment, an Assignment and Assumption Agreement duly executed by Seller with respect to the Contracts and Leases in a form reasonably acceptable to Buyer and Seller (the “Assignment and Assumption Agreement”);

(e) the login information, including passwords, for the Station’s social media accounts; and

(f) such additional documents, instruments, and agreements as Buyer may reasonably request in connection with the consummation of the transactions contemplated by this Agreement.

10.2 **Deliveries by Buyer.** At the Closing, Buyer shall deliver to Seller, duly executed by Buyer or such other signatory as may be required by the nature of the document:

(a) the payment of the Purchase Price in accordance with Section 1.4;

(b) the Bill of Sale and Assignment;

(c) a certificate dated as of the Closing Date and duly executed by and officer Buyer to the effect that the conditions set forth in Section 8.1 have been satisfied;

(d) joint instructions to the Escrow Agent directing the payment of the Escrow Deposit to Seller;

(e) the Assignment and Assumption Agreement (if applicable); and

(f) such additional documents, instruments, and agreements as Seller may reasonably request in connection with the consummation of the transactions contemplated by this Agreement.

## **ARTICLE 11: SURVIVAL AND INDEMNITY**

The rights and obligations of Buyer and Seller under this Agreement shall be subject to the following terms and conditions:

### 11.1 **Survival.**

(a) Except as further set out in paragraphs (b) and (c) below, the representations and warranties of Buyer and Seller contained in this Agreement shall survive and may be enforced by the Party benefitting from such representation or warranty after the Closing for six (6) months from the Closing Date. Neither Seller nor Buyer shall have any liability whatsoever with respect to any such representation or warranty unless a claim is made hereunder or an action at law or in equity is commenced prior to expiration of the six-month survival period for such representation or warranty. The covenants and agreements in this Agreement shall survive Closing until performed.

(b) The representations and warranties of Seller contained in Sections 3.3, 3.5, and 3.8 of this Agreement shall survive and may be enforced by Buyer after the Closing for twelve (12) months from the Closing Date. Seller shall not have any liability whatsoever with respect to any such representation or warranty unless a claim is made hereunder or an action at law or in equity is commenced prior to expiration of the twelve-month survival period for such representation or warranty.

(c) The representations and warranties Seller contained in Section 3.1 of this Agreement shall survive and may be enforced by Buyer indefinitely after Closing.

#### 11.2 **General Agreement to Indemnify.**

(a) Seller on the one hand, and Buyer on the other hand, shall indemnify, defend and hold harmless each other and any employee, representative, agent, director, officer, affiliate or permitted assign of each other (each, an “Indemnified Party”) from and against any and all claims, actions, suits, proceedings, liabilities, obligations, losses and damages, interest, costs and expenses (including reasonable attorneys’ fees, court costs and other out-of-pocket expenses incurred in investigating, preparing or defending the foregoing) (collectively, “Losses”) asserted against, incurred or suffered by any Indemnified Party as a result of a third party claim, action, suit or proceeding (a “Third Party Claim”) arising out of or relating to: (i) the failure in any material respect of any representation or warranty of the Indemnifying Party made in the Agreement to have been true and correct when made or as of the Closing Date as though such representation or warranty were made at and as of the Closing Date; or (ii) the breach by the Indemnifying Party in any material respect of any covenant or agreement of such Party contained in this Agreement or any collateral agreement to the extent not waived by the other Party hereto.

(b) Seller further agrees to indemnify and hold harmless Buyer and any other Indemnified Party of Buyer from and against any Losses asserted against, incurred or suffered by Buyer or any other Indemnified Party of Buyer arising out of, resulting from, or relating to any liabilities or obligations of Seller or the ownership or operations of the Station or the Assets prior to the Closing other than the Assumed Liabilities, except in respect of acts and circumstances attributable to Buyer’s purchase of broadcast time under the LMA.

(c) Buyer further agrees to indemnify and hold harmless Seller and any other Indemnified Party of Seller from and against any Losses asserted against, incurred or suffered by Seller or any other Indemnified Party of Seller arising out of, resulting from, or relating to the Assumed Liabilities, or the ownership or operations of the Station or the Assets after the Closing.

#### 11.3 **General Procedures for Indemnification.**

(a) The Indemnified Party seeking indemnification under this Agreement shall promptly notify in writing the Party or Parties against whom indemnification is sought (the “Indemnifying Party”) of the assertion and basis or the commencement and basis of any Third Party Claim in respect of which indemnity may be sought hereunder and will give the Indemnifying Party such information with respect thereto as the Indemnifying Party may reasonably request, but failure to give such notice shall not relieve the Indemnifying Party of any liability hereunder (unless the Indemnifying Party has suffered material prejudice by such

failure). The Indemnifying Party shall have the right, but not the obligation, exercisable by written notice to the Indemnified Party within thirty (30) days of receipt of notice from the Indemnified Party of the commencement of a Third Party Claim, to assume the defense and control the settlement of such Third Party Claim that involves (and continues to involve) solely money damages. Failure by the Indemnified Party to notify the Indemnifying Party shall not result in the waiver of indemnity rights with respect to such Claim unless such failure materially prejudices the ability of the Indemnifying Party to defend such Claim and then only to the extent thereof.

(b) Whether or not the Indemnifying Party chooses to defend or prosecute any Third Party Claim, the Parties hereto shall cooperate in the defense or prosecution thereof and shall furnish such records, information and testimony, and attend such conferences, discovery proceedings, hearings, trials and appeals, as may be reasonably requested in connection therewith.

(c) The Indemnifying Party or the Indemnified Party, as the case may be, shall have the right to participate in (but not control), at its own expense, the defense of any Third Party Claim that the other is defending, as provided in this Agreement.

(d) The Indemnifying Party, if it has assumed the defense of any Third Party Claim as provided in this Agreement, shall not consent to, or enter into, any compromise or settlement of, or consent to the entry of any judgment arising from, any such Third Party Claim (which compromise, settlement, or judgment: (i) commits the Indemnified Party to take, or to forbear to take, any action; or (ii) does not provide for a complete release by such Third Party of the Indemnified Party) without the Indemnified Party's prior written consent. If the conditions set forth herein are met but the Indemnified Party refused to settle any Third Party Claim, the Indemnifying Party may tender the settlement amount and be relieved of further liability.

(e) The Indemnifying Party shall not be entitled to require that any action be brought against any other person before action is brought against it hereunder by the Indemnified Party, but shall be subrogated to any right of action to the extent that it has paid or successfully defended against any Third Party Claim.

#### 11.4 **Limitations on Liability.**

(a) Notwithstanding anything to the contrary contained in this Agreement, in no event shall Seller's liability pursuant to Section 11.2(a)(i) exceed the Purchase Price, both for each individual claim and in the aggregate. The limitations set forth in this Section 11.4 shall not apply to Losses arising under Sections 11.2(a)(ii), 11.2(b) or 11.2(c).

(b) In no event will any Indemnifying Party have any liability to any Indemnified Party, under this Article 11 or otherwise, for any indirect, incidental, consequential, punitive, special, exemplary, or other similar types of damages, including, without limitation, lost profits and diminution in value.

(c) The amount payable by an Indemnifying Party to an Indemnified Party with respect to a Loss shall be reduced by the amount of any insurance proceeds received by the Indemnified Party with respect to the Loss, and each of the Parties hereby agrees to use

commercially reasonable efforts to collect any and all insurance proceeds to which it may be entitled in respect of any Loss.

11.5 **Exclusive Remedy**. After the Closing, the rights provided in this Article 11 shall be the sole remedy, exclusive of any other rights or remedies arising under contract, at law, in equity, or otherwise, available to the Parties against one another for any claims in any way arising out of or relating to this Agreement or the transactions contemplated hereby (but excluding with respect to any claims arising out of the LMA).

## ARTICLE 12: TERMINATION

12.1 **Termination**. This Agreement may be terminated at any time prior to Closing:

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

(b) by written notice of Seller to Buyer if Buyer: (i) does not satisfy the conditions or perform the obligations to be satisfied or performed by Buyer on or before the Closing Date in any material respect; (ii) breaches in any material respect any of Buyer's representations or warranties; or (iii) defaults in any material respect in the performance of any of Buyer's covenants or agreements under this Agreement or the LMA; and in any of which events such breach or default is not cured within the Cure Period (as herein defined), if applicable;

(c) by written notice of Buyer to Seller if Seller: (i) does not satisfy the conditions or perform the obligations to be satisfied or performed by Seller on or before the Closing Date in any material respect; (ii) breaches in any material respect any of Seller's representations or warranties; or (iii) defaults in any material respect in the performance of any of Seller's covenants or agreements under this Agreement or the LMA; and in any of which events such breach or default is not cured within the Cure Period, if applicable; or

(d) by written notice of either Party to the other if:

(i) the Closing has not been consummated on or before December 1, 2021; provided, however, that such right to terminate this Agreement shall not be available to any Party whose breach of this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before such date;

(ii) the FCC denies or dismisses the Assignment Application and such denial or dismissal has become a Final Order;

(iii) the Assignment Application is designated for an evidentiary hearing; or

(iv) if a judicial appeal is taken from the grant of FCC Consent.

12.2 **Cure Period**. The term "Cure Period" as used herein means a period commencing with the date that Buyer or Seller receives from the other Party written notice of breach or default hereunder and continuing until thirty (30) days thereafter; provided, however,

that if the breach or default cannot reasonably be cured within such period but can be cured before the Closing Date, 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 Closing Date. Except as set forth below and subject to the limitations set forth in Section 11.4, 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.

12.3 **Liability; Right to Terminate.** A termination of this Agreement shall not relieve any party hereto of any liability for which it otherwise would be subject. Notwithstanding anything in this Agreement to the contrary, no Party that is in material breach of this Agreement shall be entitled to terminate this Agreement except with the written consent of the other Party.

12.4 **Payment of Escrow Amount.**

(a) **Buyer's Default.** Upon a termination of this Agreement by Seller pursuant to Section 12.1(b), Seller's sole remedy shall be delivery to Seller of the Escrow Amount, including all interest earned thereon, from the Escrow Agent, as liquidated damages. Seller and Buyer each acknowledge that these liquidated damages are reasonable in light of the anticipated harm that would be caused by Buyer's breach of any of its material obligations under this Agreement and the difficulty of ascertaining damages and proof of loss and that these damages are not a penalty.

(b) **Other Termination.** Upon a termination of this Agreement for any reason other than as set forth in Section 12.1(b), Buyer shall be entitled to the return to Buyer of the Escrow Amount, excluding all interest earned thereon, which shall be returned to Buyer, and thereafter neither Party shall have any further obligation to the other under this Agreement.

### ARTICLE 13: MISCELLANEOUS

13.1 **Governing Law.** The construction and interpretation of this Agreement shall at all times and in all respects be governed by the laws of the State of New Hampshire (exclusive of those relating to conflicts of laws). Any action at law, suit in equity or judicial proceeding arising directly, indirectly, or otherwise in connection with, out of, related to or from this Agreement, or any provision hereof, shall be litigated only in the courts located in Grafton County, New Hampshire. The Parties hereby consent to the personal and subject matter jurisdiction of such courts and waive any right to transfer or change the venue of any litigation between them.

13.2 **Expenses.** Each Party hereto shall bear all of its expenses incurred in connection with the transactions contemplated by this Agreement, including without limitation, accounting, engineering and legal fees incurred in connection herewith.

13.3 **Entire Agreement; Amendment; No Waiver.** This Agreement and the LMA, including the schedules and exhibits hereto, contain the entire agreement and understanding by and between the Parties, and no other representations, promises, agreements, or understanding, written or oral, not contained herein shall be of any force or effect, including the Letter of Intent to Purchase Radio Station WFRD-FM, Hanover NH by and between Buyer and Seller dated as of

September 2, 2021 (as amended), the terms of which are superseded and replaced by this Agreement, but excluding that certain Confidentiality Agreement by and between Buyer and Seller entered into as of September 22, 2021 (the “Confidentiality Agreement”), which shall remain in full force and effect in accordance with its terms with respect to the subject matter thereof. To the extent of any conflict between any provision of this Agreement and the LMA, the LMA shall control. This Agreement may only be amended in a writing signed by the Parties. No oral agreement shall have any effect. No failure or delay in exercising any right hereunder shall be deemed or construed to be a waiver of such right, either prospectively or in the particular instance. This Agreement has been prepared by all of the Parties hereto, and no inference of ambiguity against the drafter of a document therefore applies against any Party hereto.

13.4 **Confidentiality.** Buyer and each Seller shall keep confidential all information obtained by it with respect to the other Party in connection with this Agreement in accordance with the terms of the Confidentiality Agreement. If the transactions contemplated hereby is not consummated for any reason, Buyer and Seller shall return to each other, without retaining a copy thereof in any medium whatsoever, any schedules, documents or other written information, including all financial information, obtained from the other in connection with this Agreement and the transactions contemplated hereby.

13.5 **Public Announcements; Use of Name.**

(a) Prior to the Closing Date, no Party shall, without the approval of the other Party hereto, make any press release or other public announcement concerning the transactions contemplated by this Agreement, except as and to the extent that such Party shall be so obligated by law or in connection with the Assignment Application, in which case such Party shall give advance notice to the other Party and the Parties shall use their best efforts to cause a mutually agreeable release or announcement to be issued. Without limitation to the generality of the foregoing, the use by either Party of the name, trademarks, trade names, logos, or any adaptations thereof, of the other Party or photographs or other images depicting such Party’s property, students, faculty or employees in any publication, press release, advertisement, announcement, promotional material, or promotional activity requires the prior written consent of such other Party.

(b) Notwithstanding the foregoing, the Parties acknowledge that the rules and regulations of the FCC require that local public notice of the transactions contemplated by this Agreement be made after the Assignment Application has been filed with the FCC.

13.6 **Risk of Loss.** The risk of loss to any of the Assets on or prior to the Closing shall be upon Seller.

13.7 **Successors and Assigns.** Except as otherwise expressly provided herein, this Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their respective representatives, successors and assigns. Neither Party may assign this Agreement or any part hereof without the prior written consent of the other Party.

13.8 **Notices.** All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing (which shall include notice by facsimile

transmission) and shall be deemed to have been duly made and received when personally served, or when delivered by Federal Express or a similar overnight courier service, expenses prepaid, or, if sent by facsimile communications equipment, delivered by such equipment, addressed as set forth below:

If to Seller, then to:

Trustees of Dartmouth College  
6003 Parkhurst Hall, Suite 102  
Hanover, NH 03755-3529  
Attn: Dean of the College  
Email: dean.of.the.college@dartmouth.edu

and to (which shall not constitute notice):

Office of the General Counsel  
63 Main Street, Suite 301  
Hanover, NH 03755  
Attn: General Counsel  
E-mail: office.of.general.counsel@dartmouth.edu

If to Buyer, then to:

Sugar River Media, LLC  
Attention: John Landry  
PO Box 610  
Lebanon, NH 03766-0610  
Email: john@sugarrivermedia.com

and to (which shall not constitute notice):

Womble Bond Dickinson (US) LLP  
Attention: F. Reid Avett, Esq.  
1200 19<sup>th</sup> Street, NW, Suite 500  
Washington, DC 20036  
E-mail: Reid.Avett@wbd-us.com

Any Party may change the address to which communications are to be sent by giving notice of such change of address in conformity with the provisions of this Section 13.8 providing for the giving of notice.

**13.9 Further Assurances.** From time to time prior to, on and after the Closing Date, each Party hereto will execute all such instruments and take all such actions as any other Party shall reasonably request, without payment of further consideration, in connection with carrying out and effectuating the intent and purpose hereof and all transactions contemplated by this Agreement, including without limitation the execution and delivery of any and all confirmatory and other instruments in addition to those to be delivered on the Closing Date, and any and all

actions which may reasonably be necessary to complete the transactions contemplated hereby. The Parties shall cooperate fully with each other and with their respective counsel and accountants in connection with any steps required to be taken as part of their respective obligations under this Agreement.

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

13.11 **Closing Efforts**. Each Party agrees to use its commercially reasonable efforts to satisfy the conditions to the Closing set forth in this Agreement and otherwise to consummate the transactions contemplated by this Agreement. Specifically, but without limiting the generality of the foregoing, the Parties shall use their commercially reasonable efforts to make or obtain all consents, approvals, authorizations, registrations and filings with all federal, state or local judicial or governmental authorities or administrative agencies as are required in connection with the consummation of the transactions contemplated by this Agreement.

13.12 **Facsimile; Counterparts**. This Agreement may be executed by facsimile or email transmission and in counterparts, each of which shall constitute an original but together will constitute a single document. The exchange of a fully executed Agreement (in counterparts or otherwise) by electronic transmission in PDF format shall be sufficient to bind the parties hereto to the terms of this Agreement.

[Signatures Appear on Following Page]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the Effective Date.

**SELLER:**

**TRUSTEES OF DARTMOUTH COLLEGE**

By:   
\_\_\_\_\_  
Scott C. Brown  
Interim Dean of the College

By: \_\_\_\_\_  
Dianne Ingalls  
Interim Vice President for Finance and Controller

**BUYER:**

**SUGAR RIVER MEDIA, LLC**

By: \_\_\_\_\_  
John S. Landry  
Manager

By: \_\_\_\_\_  
Robert Landry  
Chief Executive Manager

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the Effective Date.

**SELLER:**

**TRUSTEES OF DARTMOUTH COLLEGE**

By: \_\_\_\_\_  
Scott C. Brown  
Interim Dean of the College

By: *Dianne Ingalls*  
Dianne Ingalls  
Interim Vice President for Finance and Controller

**BUYER:**

**SUGAR RIVER MEDIA, LLC**

By: \_\_\_\_\_  
John S. Landry  
Manager

By: \_\_\_\_\_  
Robert Landry  
Chief Executive Manager

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the Effective Date.

**SELLER:**

**TRUSTEES OF DARTMOUTH COLLEGE**

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

Scott C. Brown  
Interim Dean of the College

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

Dianne Ingalls  
Interim Vice President for Finance and Controller

**BUYER:**

**SUGAR RIVER MEDIA, LLC**

By: John S Landry

John S. Landry  
Manager

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

Robert Landry  
Chief Executive Manager

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the Effective Date.

**SELLER:**

**TRUSTEES OF DARTMOUTH COLLEGE**

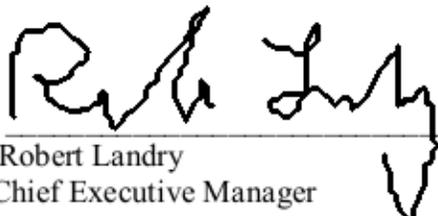
By: \_\_\_\_\_  
Scott C. Brown  
Interim Dean of the College

By: \_\_\_\_\_  
Dianne Ingalls  
Interim Vice President for Finance and Controller

**BUYER:**

**SUGAR RIVER MEDIA, LLC**

By: \_\_\_\_\_  
John S. Landry  
Manager

By:  \_\_\_\_\_  
Robert Landry  
Chief Executive Manager

**Exhibit A**  
**Escrow Agreement**  
**(attached)**

**ESCROW AGREEMENT**

This ESCROW AGREEMENT (the “Agreement”), is made as of the 13<sup>th</sup> day of October, 2021 by and among, **Trustees of Dartmouth College** (“Seller”); **Sugar River Media, LLC** (“Buyer”); and **Kozacko Enterprises, Inc., d/b/a Kozacko Media Services**, a North Carolina corporation (“Escrow Agent”).

**RECITALS**

Upon the execution of that certain Asset Purchase Agreement by and between Seller and Buyer for Radio Station WFRD-FM dated as of even date herewith (the “Asset Purchase Agreement), the following procedure will take place.

1. **FUNDS DEPOSITED WITH ESCROW AGENT.** Within one (1) business day of the signing of the Asset Purchase Agreement, thirty thousand dollars (\$30,000.00) (“Escrow Deposit”) will be paid to Escrow Agent and deposited into the Escrow Account (the “Escrow Funds”).
2. **DEPOSIT:** This amount represents the full and entire Escrow Deposit.
3. **INVESTMENT OF ESCROW FUNDS.** Escrow Agent shall invest and reinvest the Escrow Funds in federally insured savings accounts (or in such other investment as Buyer shall instruct, as reasonably acceptable to Seller, provided, however, that Escrow Agent shall not be required to invest in or hold any instrument in bearer form). Escrow Agent shall hold the Escrow Funds together with all interest accumulated thereon and proceeds therefrom in accordance with this Agreement.
4. **DISPOSITION OF ESCROW FUNDS.** Escrow Agent shall distribute the Escrow Funds as follows:
  - (a) In the event the purchase and sale closes in the manner contemplated in the Asset Purchase Agreement, at the Closing in accordance with the Asset Purchase Agreement, the principal of the Escrow Funds shall be paid to Seller to be credited toward Buyer’s payment of the Purchase Price, and all accrued interest earned, minus bank fees thereon shall be paid to Buyer. At the Closing, Escrow Agent may use the Escrow Funds for any commissions due as the broker in the transaction pursuant to an agreement between Escrow Agent and Seller in connection therewith.
  - (b) In the event the purchase and sale does not close due to the material breach of Buyer or Buyer’s wrongful failure to close under the terms of the Asset Purchase Agreement, and Seller is not then in material breach under the Asset Purchase Agreement, the principal of the Escrow Funds shall be paid to Seller as liquidated damages as provided in the Asset Purchase Agreement, and all interest accrued on the Escrow Funds minus bank fees shall be paid to Buyer.
  - (c) In all other events, if the Asset Purchase Agreement is terminated or if the transactions or closing contemplated thereby are not consummated, the Escrow Funds shall be returned to Buyer, together with all accrued interest minus bank fees, unless the Escrow Agent receives joint written instructions signed by Buyer and Seller directing a another disbursement, in which event the Escrow Agent shall follow such instructions as to the distribution of the Escrow Funds and the interest earned thereon.

(d) If any provision of this Section 4 with respect to the disposition of the Escrow Funds is in conflict with any provision of the Asset Purchase Agreement with respect to such disposition, then such provision in the Asset Purchase Agreement, as executed, shall control.

5. **CONTROVERSIES WITH RESPECT TO ESCROW FUNDS.** Except as set out in the last sentence of Section 4(a) above, notwithstanding the foregoing, Escrow Agent shall only dispose of the Escrow Funds upon the joint written instructions of Seller and Buyer or their duly designated representatives. Escrow Agent shall have no duty or obligation to any party claiming escrow proceeds in absence of joint written instructions directing Escrow Agent to pay said third party. If Escrow Agent has not received joint written instructions, Escrow Agent shall continue to hold the Escrow Funds and the income earned or accrued thereon until:

(a) The receipt by Escrow Agent of the joint written instructions of Seller and Buyer as to the disposition of the Escrow Funds and the interest earned thereon; or

(b) The receipt by Escrow Agent of a final order entered by a court of competent jurisdiction determining the disposition of the Escrow Funds and the interest earned or accrued thereon; or

(c) Escrow Agent shall have, at its option, filed an action or bill in interpleader, or similar action for such purpose, in a court of competent jurisdiction and paid the Escrow Funds and all income earned or accrued thereon, minus any bank fees into said court, in which event, the duties, responsibilities and liabilities of Escrow Agent with respect to the Escrow Funds, the interest earned thereon and this Agreement shall terminate.

6. **ESCROW AGENT.**

(a) Escrow Agent shall charge no fees for its services hereunder, but shall be reimbursed for all reasonable expenses, bank fees, disbursements and advancements incurred or made by Escrow Agent in performance of its duties hereunder. Any such expenses, disbursements and advances incurred by Escrow Agent shall be paid one-half by Buyer and one-half by Seller.

(b) Escrow Agent may resign and be discharged from its duties hereunder at any time by giving written notice of such resignation to Buyer and Seller specifying the date when such resignation shall take effect. Upon such notice, a successor Escrow Agent shall be appointed with the consent of Buyer and Seller and the service of such successor Escrow Agent shall be effective as of the date of resignation specified in the notice, which date shall not be less than thirty (30) days after the giving of such notice. If Buyer and Seller are unable to agree upon a successor Escrow Agent within thirty (30) days after such notice, Escrow Agent shall be authorized to appoint its successor. Escrow Agent shall continue to serve until its successor accepts the escrow by written notice to the parties hereto and Escrow Agent deposits the Escrow Funds with such successor.

(c) Escrow Agent undertakes to perform only such duties as are specifically set forth herein and may conclusively rely, and shall be protected in acting or refraining from acting, on any written notice, instrument or signature believed by it to be genuine and to have been signed or presented by the proper party or parties duly authorized to do so. Escrow Agent shall have no

responsibility for the contents of any writing contemplated herein and may rely without any liability upon the contents thereof.

- (d) Escrow Agent shall not be liable for any action taken or omitted by it in good faith and believed by it to be authorized hereby or within the rights and powers conferred upon it hereunder, nor for action taken or omitted by it in good faith, or in accordance with advice of counsel (which counsel may be of Escrow Agent's own choosing) and it shall not be liable for any mistake of fact or error of judgment or for any acts or omissions of any kind unless caused by its own misconduct or gross negligence.
- (e) Buyer and Seller agree to indemnify Escrow Agent and hold it harmless against any and all liabilities incurred by it hereunder as a consequence of such party's action and against any and all other liabilities incurred by it arising out of this Agreement, except in the case of liabilities incurred by Escrow Agent resulting from its own misconduct or gross negligence.
- (f) Escrow Agent acts hereunder as a depository only, and is not responsible or liable in any manner for the sufficiency, correctness, genuineness or validity of any cash, document, bill, or security deposited with it, nor is it responsible in any manner for collection of bills, securities or documents, nor for any restrictions on the transferability or collection of the aforesaid bills, securities or documents, *provided that* Escrow Agent will notify all parties if funds are uncollectible. The parties hereto acknowledge that each has approved the form of Escrow Deposit if other than cash or check.

## 7. MISCELLANEOUS.

- (a) This Agreement shall be construed by and governed in accordance with the laws of the State of North Carolina, applicable to agreements executed and wholly to be performed therein.
- (b) This Agreement shall be binding upon and shall inure to the benefit of the parties, their successors and permitted assigns.
- (c) This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. The exchange of a fully executed Agreement (in counterparts or otherwise) by electronic transmission in PDF format shall be sufficient to bind the parties hereto to the terms of this Agreement.
- (d) Section headings contained in this Agreement have been inserted for reference purposes only, and shall not be construed as part of this Agreement.
- (e) All notices, requests, demands and other communications hereunder shall be in writing, shall be given simultaneously to all parties hereunder and shall be deemed to have been given if delivered or mailed (certified mail, postage pre-paid, return receipt requested) as follows:

If to Seller:

Trustees of Dartmouth College  
6003 Parkhurst Hall, Suite 102  
Hanover, NH 03755-3529  
Attn: Dean of the College  
Email: dean.of.the.college@dartmouth.edu

and to (which shall not constitute notice):

Office of the General Counsel  
63 Main Street, Suite 301  
Hanover, NH 03755  
Attn: General Counsel  
E-mail: office.of.general.counsel@dartmouth.edu

If to Buyer, then to:

Sugar River Media, LLC  
Attention: John Landry  
PO Box 610  
Lebanon, NH 03766-0610  
Email: john@sugarrivermedia.com

and to (which shall not constitute notice):

Womble Bond Dickinson (US) LLP  
Attention: F. Reid Avett, Esq.  
1200 19<sup>th</sup> Street, NW, Suite 500  
Washington, DC 20036  
E-mail: Reid.Avett@wbd-us.com

If to Escrow Agent:

Kozacko Enterprises, Inc.  
*d/b/a* Kozacko Media Services  
P.O. Box 90841  
Raleigh, NC 27675-0841  
Attn: Richard Kozacko  
Telephone: (607) 733-7138

or to such other addresses as any party may have furnished to the other in writing, in accord herewith.

8. **TERMINATION.** This Agreement shall automatically terminate upon the distribution of the Escrow Funds in accordance with the terms hereof.

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, the parties have caused their hands, or those of their duly authorized officers, and seals to be affixed as of the date first above written.

**TRUSTEES OF DARTMOUTH COLLEGE**

By:   
\_\_\_\_\_  
Scott C. Brown  
Interim Dean of the College

By: \_\_\_\_\_  
Dianne Ingalls  
Interim Vice President for Finance and Controller

**SUGAR RIVER MEDIA, LLC**

By: \_\_\_\_\_  
John S. Landry  
Manager

By: \_\_\_\_\_  
Robert Landry  
Chief Executive Manager

**KOZACKO ENTERPRISES INC.  
d/b/a KOZACKO MEDIA SERVICES**

By: \_\_\_\_\_  
Richard L. Kozacko  
President

**IN WITNESS WHEREOF**, the parties have caused their hands, or those of their duly authorized officers, and seals to be affixed as of the date first above written.

**TRUSTEES OF DARTMOUTH COLLEGE**

By: \_\_\_\_\_  
Scott C. Brown  
Interim Dean of the College

By: *Dianne Ingalls*  
Dianne Ingalls  
Interim Vice President for Finance and Controller

**SUGAR RIVER MEDIA, LLC**

By: \_\_\_\_\_  
John S. Landry  
Manager

By: \_\_\_\_\_  
Robert Landry  
Chief Executive Manager

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d/b/a KOZACKO MEDIA SERVICES**

By: \_\_\_\_\_  
Richard L. Kozacko  
President

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By: \_\_\_\_\_  
Scott C. Brown  
Interim Dean of the College

By: \_\_\_\_\_  
Dianne Ingalls  
Interim Vice President for Finance and Controller

**SUGAR RIVER MEDIA, LLC**

By: John S Landry  
John S. Landry  
Manager

By: \_\_\_\_\_  
Robert Landry  
Chief Executive Manager

**KOZACKO ENTERPRISES INC.  
d/b/a KOZACKO MEDIA SERVICES**

By: \_\_\_\_\_  
Richard L. Kozacko  
President

**IN WITNESS WHEREOF**, the parties have caused their hands, or those of their duly authorized officers, and seals to be affixed as of the date first above written.

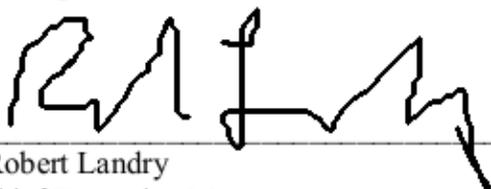
**TRUSTEES OF DARTMOUTH COLLEGE**

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Scott C. Brown  
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By:   
Richard L. Kozacko  
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**Exhibit B**  
**Local Marketing Agreement**  
**(attached)**

## **LOCAL MARKETING AGREEMENT**

**THIS LOCAL MARKETING AGREEMENT** (the “Agreement”), made as of the 13th day of October, 2021, is by and between **SUGAR RIVER MEDIA, LLC**, a New Hampshire limited liability company (“Programmer”) and **TRUSTEES OF DARTMOUTH COLLEGE**, a New Hampshire institution of higher education (“Licensee”).

### **RECITALS**

**WHEREAS**, Licensee and Programmer have entered into an Asset Purchase Agreement, dated as of October 13, 2021 (the “Asset Purchase Agreement”), and this Agreement is the LMA referred to therein. Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meanings assigned to them in the Asset Purchase Agreement;

**WHEREAS**, Licensee is the licensee and operator of FM radio station WFRD, Facility ID No. 68281, Hanover, New Hampshire (the “Station”); and

**WHEREAS**, pending consummation of the transactions provided in the Asset Purchase Agreement, and commencing on the Commencement Date (as defined below), Programmer desires to acquire time on the Station for its programming and advertising, subject to the limitations set forth herein and in accordance with the rules, regulations and policies of the Federal Communications Commission (the “FCC”).

**NOW, THEREFORE**, taking the foregoing into account, and in consideration of the mutual covenants and agreements set forth herein, the sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree to the following terms and conditions:

#### **1. SALE OF TIME**

**1.1 Broadcast of Programming.** During the Term (as defined below), Licensee shall make available broadcast time on the Station for the broadcast of Programmer’s programs, including programming on digital in-band-on-channel streams (the “Programming”) for up to one hundred sixty-eight (168) hours a week except for: (a) downtime occasioned by routine maintenance consistent with prior practice and upon prior notice to Programmer; (b) two (2) hours between 5:00 a.m. and 8:00 a.m. on Sunday mornings and at other times mutually agreeable to Licensee and Programmer, during which time Licensee may broadcast programming designed to address the concerns, needs and interests of the Station’s listeners; (c) times when Programmer’s programs are not accepted or are preempted by Licensee pursuant to its rights under this Agreement; and (d) times when the Station is not broadcasting because of Force Majeure Events (as defined below).

**1.2 Advertising and Programming Revenues.** During the broadcast time on the Station made available to Programmer pursuant to the terms of this Agreement, Programmer shall have full authority to sell for its own account commercial time on the Station. Programmer shall retain all revenues from the broadcast or sale of all advertising time on the Station and all other sources of revenue and advertising, to the extent the foregoing relate to programming provided for broadcast on the Station by Programmer or to the extent such revenues relate to the actions or

activities of Programmer related to the Station on or after the Commencement Date, and all the same shall be the sole and exclusive assets of Programmer.

**1.3 Force Majeure.** Any failure or impairment of facilities, any delay or interruption in broadcasting the Programming, or any failure at any time to furnish the facilities, in whole or in part, for broadcasting, due to acts of God, strikes or threats thereof, war, acts of terrorism, civil disturbance, force majeure, or any other causes beyond the reasonable control of Licensee or Programmer (collectively, "Force Majeure Events"), shall not constitute a breach of this Agreement, and neither Licensee nor Programmer, as the case may be, will be liable to the other party therefor. Licensee and Programmer each agrees to exercise its reasonable best efforts to remedy the conditions of this **Section 1.3** as soon as practicable.

**1.4 Studio Facilities.** The parties agree that Programmer will originate the Programming from Programmer's office and studio facilities, and the parties shall co-operate with each other to enable origination of Programming from Programmer's facilities.

**1.5 Payments.** In consideration of the rights granted under this Agreement, Programmer shall reimburse certain of Licensee's costs as specifically provided in Schedule 1.5 hereto.

**1.6 Term.** The term of this Agreement (the "Term") shall commence at 12:01 a.m. Eastern on October 20, 2021 ( the "Commencement Date"), and shall terminate on the earliest of (a) 12:00 a.m. on the date of the consummation of the purchase of the Station pursuant to the Asset Purchase Agreement, (b) 12:01 a.m. on December 1, 2021, and (c) such time as this Agreement is terminated in accordance with its terms pursuant to **Section 8**.

**1.7 License to Use Call Signs and Trademarks.** During the Term, Licensee will retain all rights to the call letters of the Station and other trademarks and names relating to the Station (the "Marks") but hereby grants Programmer a license to use such call signs and trademarks and names in connection with the broadcast and promotion of the Programming during the Term. Programmer agrees to notify Licensee in writing of any legal action commenced against it which relates to the Marks within ten days of Programmer's receipt of notice of such action. Notwithstanding the foregoing, Licensee does not grant, nor shall Programmer enjoy, a license or any other rights in or to the name "Dartmouth" or any other indicia (including logos, trademarks, service marks, or otherwise) of Licensee that are in use for any other purpose other than the operation of the Station.

## **2. OBLIGATIONS AND RIGHTS OF LICENSEE**

Programmer acknowledges and agrees that Licensee will be responsible for operating the Station in the public interest and controlling the day-to-day operations of the Station in conformance with its FCC licenses, permits and authorizations. Without limiting the generality of the foregoing, Licensee and Programmer agree, and Programmer acknowledges, as follows:

**2.1 Right to Reject Programming.** Licensee has the right to reject any Programming, including advertising announcements or other material, which Licensee in its reasonable discretion deems contrary to the public interest, the Communications Act of 1934, as amended (the "Communications Act"), or the FCC's rules, regulations and policies (the "Rules," and together

with the Communications Act, the “Communications Laws”), or any other laws applicable to Licensee. Licensee reserves the right to refuse to broadcast any Programming containing any matter that Licensee in its reasonable discretion believes is, or is reasonably likely to be determined by the FCC or any court or other regulatory body with authority over Licensee or the Station to be, violative of any third party intellectual property rights, defamatory, indecent, obscene, profane or otherwise in violation of law. In the event Licensee suspends, cancels or refuses to broadcast any portion of the Programming pursuant to this **Section 2.1**, there shall be no reduction or offset in the payments due Licensee under this Agreement.

**2.2 Right to Preempt Programming for Special Events and Public Interest Programming.** Licensee has the right to preempt Programming in order to broadcast a program deemed by Licensee, in its reasonable discretion, to be of greater national, regional or local public interest or significance, or to provide public service programming, and to use part or all of the hours of operation of the Station for the broadcast of events of special importance. In all such cases, Licensee will use commercially reasonable efforts to give Programmer reasonable advance notice of any intention to preempt the Programming.

**2.3 Public Service Programming.** Licensee has the right to preempt Programming in order to broadcast public service programming at the times set forth in **Section 1.1(b)** hereof.

**2.4 Political Advertising, Public File, Etc.** Licensee is ultimately responsible for complying with the Communications Laws and other laws applicable to Licensee with respect to (a) the carriage of political advertisements and programming (including, without limitation, the rights of candidates and, as appropriate, others to equal opportunities, lowest unit charge and reasonable access); (b) the broadcast and nature of public service programming; (c) the maintenance of political and public inspection files and the Station’s logs; (d) the ascertainment of issues of community concern; and (e) the preparation of all quarterly issues/programs lists. Programmer shall cooperate with Licensee in complying with any such requirements.

**2.5 Maintenance and Repair of Transmission Facilities.** Licensee shall maintain the Station’s transmission equipment and facilities, including the antennas, transmitters and transmission lines, in good operating condition, and to continue to contract with local utility companies for the delivery of electrical power to the Station’s transmitting facilities at all times in order to permit operation of the Station. Subject to the reimbursement obligation set forth on Schedule 1.5 of this Agreement, Licensee shall undertake such repairs as are necessary to maintain full-time operation of the Station as expeditiously as reasonably possible following the occurrence of any loss or damage preventing such operation.

### **3. OBLIGATIONS AND RIGHTS OF PROGRAMMER**

**3.1** Programmer shall not take any action, or omit to take any action it is otherwise required to take, inconsistent with Licensee’s obligations under the Communications Laws or any other laws applicable to Licensee to retain ultimate responsibility for the programming and technical operations of the Station. Without limiting the generality of the foregoing, Programmer agrees as follows:

(a) **Compliance with Laws and Station's Policies.** Programmer has advised Licensee of the nature of the Programming. All Programming shall conform in all material respects to all applicable provisions of the Communications Laws, all other laws or regulations applicable to the broadcast of programming by the Station, and the programming regulations prescribed in Schedule 3.1 hereto. At no time during the Term shall Programmer or its employees or agents represent, hold out, describe or portray Programmer as the licensee of the Station. Programmer shall use commercially reasonable efforts to maintain the Station in the ordinary course of business and shall not modify the format of the Station without the prior written consent of Licensee which consent may be withheld in Licensee's sole discretion.

(b) **Cooperation with Licensee.** Programmer, on behalf of Licensee, shall furnish or insert within the Programming all identification announcements required by the Communications Laws, and shall, upon request by Licensee, provide (a) information about Programming that is responsive to the public needs and interests of the areas served by the Station, so as to assist Licensee in the preparation of any required programming reports, and (b) other information to enable Licensee to prepare other records, reports and logs required by the FCC or other local, state or federal governmental agencies. Programmer shall cooperate with Licensee to ensure compliance with the Rules regarding Emergency Alert System tests and alerts.

(c) **Payola and Plugola.** Programmer shall provide to Licensee in advance any information known to Programmer regarding any money or other consideration which has been paid or accepted, or has been promised to be paid or to be accepted, for the inclusion of any matter as a part of any programming or commercial material to be supplied to Licensee by Programmer for broadcast on the Station, unless the party making or accepting such payment is identified in the program as having paid for or furnished such consideration in accordance with the Communications Laws. Programmer shall at all times endeavor to proceed in good faith to comply with the requirements of Sections 317 and 507 of the Communications Act and the related Rules.

(d) **Handling of Communications.** Programmer shall provide Licensee with the original or a copy of any correspondence from a member of the public relating to the Programming to enable Licensee to comply with the requirements of the Communications Laws. Licensee shall promptly forward to Programmer all correspondence, payments, communications or other information and/or documents which it receives and which relate to the Programming, including, without limitation, invoices, billing inquiries, checks, money orders, wire transfers or other payments for services or advertising.

#### 4. **RESPONSIBILITY FOR EXPENSES**

##### 4.1 **Programmer's Responsibility for Employees and Expenses.**

(a) Programmer shall provide any transmitter duty operators required for the operation of the Station during any period when the Programming is being broadcast. Programmer shall employ and be responsible for the salaries, taxes, insurance and related costs for all of its personnel and facilities used in fulfillment of its rights and obligations under this Agreement.

(b) Programmer shall maintain at its expense and with reputable insurance companies coverage for broadcaster's liability insurance, media insurance, worker's compensation

insurance and commercial general liability insurance consistent with its practices for other stations owned by Programmer.

## **5. ASSIGNMENT AND ASSUMPTION OF CERTAIN AGREEMENTS, RIGHTS AND OBLIGATIONS**

**5.1 Assignment and Assumption.** On the Commencement Date, Licensee shall assign to Programmer, and Programmer shall assume and undertake to pay, discharge, perform or satisfy, the liabilities, obligations and commitments under the Contracts and Leases relating to the Station which will be assumed by Programmer under the APA (each, an “Assumed Contract”), to the extent they accrue or arise on or after the Commencement Date.

**5.2 Third-Party Consents.** Licensee shall use its commercially reasonable efforts to obtain any third-party consents necessary for the assignment of any Assumed Contract. Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any Assumed Contract or any claim or right or any benefit arising thereunder or resulting therefrom if such assignment, without the consent of a third party thereto, would constitute a breach or other contravention of such Assumed Contract or in any way adversely affect the rights of Licensee or Programmer thereunder. If such consent has not been obtained prior to the Commencement Date, (a) Licensee shall use its commercially reasonable efforts to (i) obtain such consent as soon as possible after the Commencement Date, (ii) provide to Programmer the financial and business benefits of any such Assumed Contract, and (iii) enforce, at the request of Programmer, for the account of Programmer, any rights of Licensee arising from any such Assumed Contract; and (b) Programmer shall assume the obligations under such Assumed Contract in accordance with this Agreement. Notwithstanding the foregoing, neither Licensee nor any of its affiliates shall be required to pay consideration (except as may be specifically contemplated by the relevant Assumed Contract) to any third party to obtain any consent.

## **6. PRORATIONS**

**6.1 Proration of Income and Expenses.** All Assets, including the Assumed Contracts, sold, assigned, transferred or conveyed to Programmer pursuant to this Agreement that would be classified as assets in accordance with GAAP, and all obligations under Assumed Contracts that would be classified as liabilities in accordance with GAAP (including accrued but unpaid commissions, but excluding equity non-cash compensation) shall be prorated between Programmer and Licensee as of 12:01 a.m., Eastern time on the Commencement Date (the “LMA Effective Time”) to effect the intent that income and expenses from the ownership or holding of such Station Assets and the operation of the Station shall be prorated between Licensee and Programmer as of the LMA Effective Time, with all income earned and expenses incurred prior to the LMA Effective Time (including income earned from advertising which has been broadcast on the Station prior to the LMA Effective Time but not yet billed) for the account of Licensee and all income earned and expenses incurred after the LMA Effective Time for the account of Programmer.

## 7. INDEMNIFICATION

**7.1 Indemnification.** From and after the date hereof, each of Programmer and Licensee shall indemnify, defend, protect and hold harmless the other, its affiliates, and their respective employees, officers, directors, members, shareholders and agents, and the successors and assigns of any of them, from and against, and reimburse them for, all claims, damages, liabilities, costs and expenses, including reasonable attorneys' fees and expenses arising from (a) any programming provided by such party for broadcast on the Station; (b) any claim for libel, slander, infringement of copyright or other intellectual property right, or violation of any right of privacy or proprietary right, as a result of the broadcast on the Station of the programming provided by such party; (c) any breach by such party of any representation, warranty, covenant or other agreement hereunder; (d) any action taken by such party or its employees or agents with respect to the Station, or any failure by such party or its employees or agents to take any action with respect to the Station, including, but not limited to, such party's payment and performance of obligations and liabilities, unless resulting from a failure by the other party to perform hereunder; or (e) any other claims of any nature, including any investigation initiated or fines or forfeitures imposed by the FCC, as a result of the broadcast on the Station of the programming provided by such party.

**7.2 Procedure for Indemnification.** The indemnified party shall give prompt written notice to the indemnifying party of any demand, suit, claim or assertion of liability by third parties or other circumstances that could give rise to an indemnification obligation hereunder against the indemnifying party (a "Claim"), but a failure to give or a delay in giving such notice shall not affect the indemnified party's right to indemnification and the indemnifying party's obligation to indemnify as set forth in this Agreement, except to the extent the indemnifying party's ability to remedy, contest or defend with respect to such Claim is thereby materially prejudiced. The obligations and liabilities of the parties with respect to any Claim shall be subject to the following additional terms and conditions:

(a) The indemnifying party shall have the right to undertake, by counsel or other representatives of its own choosing, the defense or opposition to such Claim.

(b) In the event that the indemnifying party shall elect not to undertake such defense or opposition, or, within twenty (20) days after written notice (which shall include sufficient description of background information explaining the basis for such Claim) of any such Claim from the indemnified party, the indemnifying party shall fail to undertake to defend or oppose, the indemnified party (upon further written notice to the indemnifying party) shall have the right to undertake the defense, opposition, compromise or settlement of such Claim by counsel or other representatives of its own choosing, on behalf of and for the account and risk of the indemnifying party (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, unless (x) the indemnifying party pays all amounts in full, and (y) such judgment,

settlement or compromise includes the giving by the claimant to the indemnified party of a release from all liability in respect of such Claim, and (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 or other representatives concerning such Claim and the indemnifying party and the indemnified party and their respective counsel or other representatives shall cooperate in good faith with respect to such Claim.

## **8. TERMINATION FOR ANY REASON OTHER THAN THE CLOSING**

**8.1 Termination.** In addition to the events of termination in **Section 1.6** hereof, this Agreement may be terminated by either Licensee or Programmer, by written notice to the other party if the party seeking to terminate is not then in material default or breach of its obligations hereunder, upon the occurrence of any of the following:

(a) Subject to **Section 10.4**, this Agreement shall have been declared invalid or illegal in whole or in material part by an order or a decree of the FCC or any other governmental authority or court of competent jurisdiction, and such order or decree shall have become final and shall no longer be subject to further administrative or judicial review;

(b) The material breach of this Agreement by a party and failure to cure such breach within 30 days after written notice thereof; or

(c) The mutual consent of both parties.

### **8.2 Effect of Termination.**

(a) If this Agreement expires or is terminated for any reason other than the occurrence of the Closing under the Asset Purchase Agreement, the parties shall cooperate in good faith to restore the status quo ante, including, but not limited to, the following:

(i) Programmer shall assign, transfer and convey to Licensee all of Programmer's rights in, to and under the Assumed Contracts that remain in effect on the date of such termination, and all agreements with advertisers existing on the date of such termination (collectively the "Reassumed Contracts"). Programmer shall use commercially reasonable efforts to promptly obtain and deliver to Licensee (or to such other person as is directed by Licensee), at Licensee's expense, any necessary consents to the assignment of the Reassumed Contracts to Licensee (or such other person as is directed by Licensee).

(ii) Licensee shall assume from Programmer all liabilities, obligations and commitments of Programmer arising or accruing on or after the date of termination pursuant to the Reassumed Contracts, but only to the extent such liabilities, obligations and commitments were incurred in the ordinary course of business and do not relate to any failure to perform, improper performance or other breach, default or violation by Programmer on or prior to the effective date of termination, and Programmer shall be responsible only for those obligations under the Reassumed Contracts arising at or after the LMA Effective Time and prior to the termination of this Agreement.

(iii) Licensee and Programmer shall prorate to the effective date of termination and promptly pay thereafter the payments, reimbursements and fees provided for hereunder.

(iv) Licensee shall cooperate reasonably with Programmer to the extent necessary and take all actions reasonably necessary to enable Programmer to fulfill all advertising or other programming contracts and commitments then outstanding, in which event Licensee shall be entitled to receive as compensation for the carriage of such advertising or programming that consideration which shall have already been paid to Programmer, or which otherwise would have been paid to Programmer in respect of such advertising.

(v) Licensee shall offer employment to the Transferred Employees who are then employed by Programmer on the date of termination.

(b) No expiration or termination of this Agreement shall terminate the indemnification obligations of Programmer or Licensee hereunder.

## **9. REQUIRED FCC CERTIFICATIONS**

**9.1 Licensee's Certification.** Licensee hereby certifies that, prior to Closing under the Asset Purchase Agreement, it shall maintain ultimate control over the Station's facilities, including specifically control over the Station's finances, personnel, and programming.

**9.2 Programmer's Certification.** Programmer hereby certifies that this Agreement complies with the provisions of Section 73.3555(a) of the Rules. In accordance with Paragraphs 49 and 50 of United States Federal Communications Commission Report and Order No. FCC 07-217, Programmer shall not discriminate in any advertising arrangements on the Station on the basis of race, gender or ethnicity, and all such arrangements shall be evaluated, negotiated and completed without regard to race, gender or ethnicity. Programmer shall include a clause to such effect in all contracts for advertising on the Station, and if requested shall provide written confirmation of compliance with such requirement.

## **10. MISCELLANEOUS**

**10.1 Amendment, Modification or Waiver.** No amendment, modification or waiver of any provision of this Agreement shall be effective unless made in writing and signed by the party adversely affected, and any such waiver and consent shall be effective only in the specific instance and for the purpose for which such consent was given.

**10.2 No Waiver; Remedies Cumulative.** No failure or delay on the part of Licensee or Programmer in exercising any right or power under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the parties to this Agreement are cumulative and are not exclusive of any right or remedies which either may otherwise have.

**10.3 Governing Law; Waiver of Jury Trial.** The construction and performance of this Agreement shall be governed by the laws of the State of New Hampshire without regard to its principles of conflict of law. THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING IN ANY WAY TO THIS AGREEMENT, INCLUDING WITH RESPECT TO ANY COUNTERCLAIM MADE IN SUCH ACTION OR PROCEEDING, AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE DECIDED SOLELY BY A JUDGE. The parties hereto hereby acknowledge that they have each been represented by counsel in the negotiation, execution and delivery of this Agreement and that their lawyers have fully explained the meaning of the Agreement, including in particular the jury-trial waiver.

**10.4 Change in FCC Rules or Policies; Severability.** In the event that the FCC determines that this Agreement does not comply with the Communications Laws, the parties shall negotiate in good faith and attempt to agree to an amendment to this Agreement that will provide the parties with a valid and enforceable agreement that conforms to the Communications Laws and preserves for each party the material terms of this Agreement. In the event that any of the provisions of this Agreement shall be held unenforceable, then the remaining provisions shall be construed as if such unenforceable provisions were not contained herein. Any provision of this Agreement that is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof, and any such unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction. To the extent permitted by applicable law, the parties hereto hereby waive any provision of law now or hereafter in effect that renders any provision hereof unenforceable in any respect.

**10.5 Construction.** Any question of doubtful interpretation shall not be resolved by any rule providing for interpretation against the party who causes the uncertainty to exist or against the drafter of this Agreement.

**10.6 No Partnership or Joint Venture.** This Agreement is not intended to be and shall not be construed as a partnership or joint venture agreement between the parties. Except as otherwise specifically provided in this Agreement, no party to this Agreement shall be authorized to act as agent of or otherwise represent any other party to this Agreement.

**10.7 Entire Agreement.** This Agreement and the Asset Purchase Agreement, and the exhibits and schedules hereto and thereto, embody the entire agreement and understanding of the parties hereto and supersede any and all prior agreements, arrangements and understandings relating to the matters provided for herein.

**10.8 Benefit and Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Neither party may assign its rights under this Agreement without the other party's prior written consent, which consent may not be unreasonably withheld or delayed, provided that a party's rights under this Agreement may be assigned without consent in connection with a permitted assignment of such party's rights without consent under the Asset Purchase Agreement.

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

**10.10 Notices.** Any notice, demand or request required or permitted to be given under the provisions of this Agreement shall be in writing, including by email, addressed to the following addresses, or to such other address as any party may request in writing.

If to Licensee, then to:

Trustees of Dartmouth College  
6003 Parkhurst Hall, Suite 102  
Hanover, NH 03755-3529  
Attn: Dean of the College  
Email: dean.of.the.college@dartmouth.edu

and to (which shall not constitute notice):

Office of the General Counsel  
63 Main Street, Suite 301  
Hanover, NH 03755  
Attn: General Counsel  
E-mail: office.of.general.counsel@dartmouth.edu

If to Programmer, then to:

Sugar River Media, LLC  
Attention: John Landry  
PO Box 610  
Lebanon, NH 03766-0610  
Email: john@sugarrivermedia.com  
and to (which shall not constitute notice):

Womble Bond Dickinson (US) LLP  
Attention: F. Reid Avett, Esq.  
1200 19<sup>th</sup> Street, NW, Suite 500  
Washington, DC 20036  
E-mail: Reid.Avett@wbd-us.com

Any such notice, demand or request shall be deemed to have been duly delivered and received (i) on the date of personal delivery, or (ii) on the date of transmission, if sent by email (but only if a hard copy is also sent by overnight courier), or (iii) on the date of receipt, if mailed by registered or certified mail, postage prepaid and return receipt requested, or (iv) on the date of a signed receipt, if sent by an overnight delivery service, but only if sent in the same manner to all persons entitled to receive notice or a copy.

**10.11 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same

instrument. Electronically transmitted copies of this Agreement and electronically transmitted signature pages shall be binding and effective as to all parties and may be used in lieu of the original Agreement, and, in particular, in lieu of original signatures, for any purpose whatsoever.

**10.12 Authority.** Each of Licensee and Programmer represents and warrants to the other that it has the power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement, and that neither the execution, delivery, nor performance by it of this Agreement conflicts with, results in a breach of, or constitutes a default or grounds for termination under any agreement to which it is a party or by which it is bound (subject to obtaining consents required for contracts assigned hereunder).

[Signature page follows]

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

**LICENSEE:**

**TRUSTEES OF DARTMOUTH COLLEGE**

By:   
\_\_\_\_\_  
Scott C. Brown  
Interim Dean of the College

By: \_\_\_\_\_  
Dianne Ingalls  
Interim Vice President for Finance and Controller

**PROGRAMMER:**

**SUGAR RIVER MEDIA, LLC**

By: \_\_\_\_\_  
John S. Landry  
Manager

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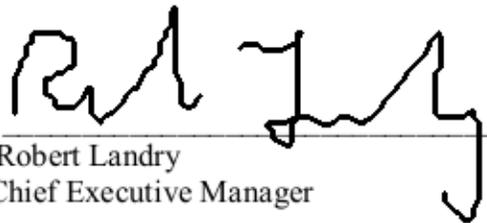
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By: \_\_\_\_\_  
Dianne Ingalls  
Interim Vice President for Finance and Controller

**PROGRAMMER:** **SUGAR RIVER MEDIA, LLC**

By: \_\_\_\_\_  
John S. Landry  
Manager

By:  \_\_\_\_\_  
Robert Landry  
Chief Executive Manager

**SCHEDULE 1.5**  
**PAYMENT SCHEDULE**

1. Programmer hereby agrees to reimburse Licensee for all verifiable, reasonable, customary and usual costs and expenses associated with the ownership and operation of the Station during the Term (collectively, the “Station’s Expenses”) subject to the terms and conditions of this Schedule 1.5. Such reimbursement by Programmer to Licensee is referred to herein as the “Expense Reimbursement”. Any Station’s Expense that straddles the Term and any period beginning or ending before or after the Term that is not clearly allocable to periods before or after the Term shall be prorated between Licensee and Programmer on the basis of the number of days elapsed. The Station’s Expenses include, but are not limited to, the following:

- (a) all lease payments for the real property leases relating to the Station and all other costs incident thereto;
- (b) all utility costs (telephone, electricity, water, etc.) to the extent relating to the Station;
- (c) all real estate and personal property taxes, if any, to the extent relating to the Station’s studios, transmitter sites and transmission equipment;
- (d) all FCC regulatory fees and filing fees with respect to applications or other filings relating to the Station, excluding any filing fees or other expenses arising out of the transactions contemplated by the Asset Purchase Agreement;
- (e) normal and ordinary maintenance costs for the Station’s transmission equipment and facilities, including the antennas, transmitters, transmission lines; and
- (f) all other usual and ordinary expenses of operation of the Station actually incurred by Licensee consistent with past practices, except as affected by operation under this Agreement.

Notwithstanding anything herein to the contrary, Programmer shall have the right to pay directly all Station’s Expenses identified in clauses (e) and (f) above to the extent permitted by applicable law.

2. Notwithstanding anything to the contrary contained in this Schedule 1.5 or in this Agreement, the Station’s Expenses shall not include, and Programmer shall not be responsible for or be required to reimburse Licensee for any of the following:

- (a) Licensee’s franchise, income, and similar taxes based on or measured by net income;
- (b) interest on and principal of loans and/or indebtedness and other fees, charges, costs and expenses relating to loans and/or indebtedness;
- (c) legal, accounting and other professional fees and expenses, including, without limitation, any in connection with or arising out of this Agreement and/or the Asset

Purchase Agreement and/or the negotiation, administration, interpretation or closing of this Agreement and/or the Asset Purchase Agreement and/or the transactions contemplated hereby and thereby; and

(d) any costs, expenses or expenditures in the nature of capital expenditures or improvements, or expenses associated with the maintenance or repair of towers or equipment, other than routine, ordinary and customary maintenance consistent in dollar amount and nature with past practice and experience of the Station, and excluding any maintenance or repairs that are the responsibility of Licensee pursuant to the Asset Purchase Agreement;

3. Programmer shall pay the Expense Reimbursement to Licensee within 30 days after receipt by Programmer of an invoice from Licensee, which such invoice shall provide such detail and back-up documentation as Programmer may reasonably request.

4. If Programmer fails to timely pay any amount within five days of the due date under this Schedule 1.5, such amount shall bear interest at the prime rate (as reported by *The Wall Street Journal* or, if not reported thereby, by another authoritative source) as in effect from time to time from the date due until the date of actual payment.

**SCHEDULE 3.1**  
**PROGRAM STANDARDS**

Programmer agrees to cooperate with Licensee in the broadcasting of programs in a manner consistent with the standards of Licensee, as set forth below:

1. Required Announcements. Programmer shall broadcast, on the Station, an announcement in a form satisfactory to Licensee at the beginning of each hour to identify the Station, and any other announcement that may be required by the Rules or the Station's policy.

2. Commercial Recordkeeping. Programmer shall maintain such records of the receipt of, and provide such disclosure to Licensee of any consideration, whether in money, goods, services, or otherwise, which is paid or promised to be paid, either directly or indirectly, by any person or company for the presentation of any programming over the Station as are required by Sections 317 and 507 of the Communications Act and by the Rules.

3. No Illegal Announcements. No announcements or promotion prohibited by federal or state law or regulation of any lottery, game or contest shall be made over the Station. Any lottery, game or contest relating to or to be presented over the Station must be fully stated and explained in advance to Licensee, which reserves the right, in its reasonable discretion to reject any game, contest or promotion.

4. Indecency, Hoaxes. No programming violative of applicable laws and rules concerning indecency or hoaxes will be broadcast over the Station.

5. Controversial Issues. Any broadcast over the Station concerning controversial issues of public importance shall comply with the Rules.

6. Credit Terms Advertising. Pursuant to the rules and regulations of the Federal Trade Commission, any advertising of credit terms shall be made over the Station in accordance with all applicable federal and state laws.