

EXECUTION COPY

**ASSET PURCHASE AGREEMENT**

This ASSET PURCHASE AGREEMENT (this "Agreement") is dated as of November 30, 2021, by and between, **WNET**, a New York education corporation chartered by the Board of Regents of the State University of New York ("Buyer") and **W245BA, Inc.**, a New York corporation ("Seller") (and, collectively "Parties").

**WITNESSETH:**

WHEREAS, Seller is the licensee of FM translator station W245BA, Manorville, NY (Facility ID No. 139341) (the "Station"), pursuant to authorizations issued by the Federal Communications Commission (the "FCC"); and

WHEREAS, Seller desires to sell, transfer, assign, convey and deliver to Buyer, and Buyer desires to acquire from Seller, certain assets used in connection with the operation of the Station and

WHEREAS, FCC authorizations may be assigned only with the prior consent of the FCC;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. **Sale of Assets.**

(a) At Closing (as hereinafter defined), Seller agrees to sell, transfer, assign, convey and deliver to Buyer and Buyer shall purchase and assume from Seller, free and clear of any security interests, liens or other encumbrances of any kind of nature ("Liens") other than Liens for taxes not yet due and payable, the following assets used in connection with the operation of the Station ("Assets"), but excluding the Excluded Assets described in subparagraph (b) below:

(i) Seller's equipment and other tangible personal property used in the operations of the Station (the "Tangible Personal Property") identified on Schedule 1 hereto;

(ii) All licenses, permits and other authorizations issued by the FCC, to Seller in connection with the operations of the Station (collectively, the "FCC Authorizations"), identified on Schedule 2 hereto;

(iii) Seller's right, title and interest in and to the leasehold interests in the transmitter site lease (the "Lease") to lease space at the current tower site for the Station (the "Tower Site"), as identified on Schedule 3 hereto;

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

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

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

(iii) Seller's corporate records.

2. **Consideration.** Upon the terms and subject to the conditions contained in this Agreement, and in consideration of the sale of the Assets, on the Closing Date Buyer shall pay to Seller the aggregate sum of **One Hundred and Fifty Thousand Dollars (\$150,000.00)** (the "**Purchase Price**"). The Purchase Price shall be payable to Seller at Closing in cash by wire transfer of immediately available federal funds.

(a) **Method of Payment.** The Purchase Price shall be paid as follows:

(i) **Deposit.** Buyer has made a cash deposit in the amount of **Fifteen Thousand Dollars (\$15,000.00)** (the "**Deposit**") with John C. Trent, Esquire (the "**Escrow Agent**") to be held in his non-interest-bearing attorney trust account. At Closing, the Deposit shall be disbursed to Seller and applied to the Purchase Price. If this Agreement is terminated by Seller pursuant to Section 12(c), the Deposit shall be disbursed to Seller. If this Agreement is terminated for any other reason, the Deposit shall be disbursed to Buyer. The parties shall each instruct the Escrow Agent to disburse the Deposit to the party entitled thereto and shall not, by any act or omission, delay or prevent any such disbursement. This obligation to instruct the Escrow Agent shall survive Closing.

(ii) **Cash at Closing.** In addition to the release of the Deposit, the additional sum of **One Hundred Thirty-Five Thousand Dollars (\$135,000.00)** shall be paid to Seller at Closing. Said cash sum shall be delivered to Seller *via* wire transfer (unless otherwise requested by Seller). Wire instructions will be provided to Buyer by Seller at or before the Closing.

3. **Assumed Obligations; Retained Liabilities.**

(a) On the Closing Date, Buyer shall assume the obligations of Seller arising after the Closing under the Lease except to the extent such obligations arise out of or are related to activities, events or transactions occurring, or conditions existing, on or prior to the Closing Date (the "**Assumed Obligations**").

(b) Buyer does not assume or agree to discharge or perform and will not be deemed by reason of the execution and delivery of this Agreement or any agreement, instrument or document delivered pursuant to or in connection with this Agreement or otherwise by reason of the consummation of the transactions contemplated hereby, to have assumed or to have agreed to discharge or perform any liabilities, obligations or commitments of Seller of any nature whatsoever, whether accrued, absolute, contingent or otherwise, other than the Assumed Obligations ( the "**Retained Liabilities**").

4. **FCC Consent; Assignment Application.** At a date not later than five (5) business days after the date hereof, Buyer and Seller shall execute, file and prosecute an application with the FCC (the “Assignment Application”) requesting its consent to the assignment, from Seller to Buyer, of all FCC Authorizations pertaining to the Station (the “FCC Consent”). Buyer and Seller shall take all reasonable steps to cooperate with each other and with the FCC to secure the FCC Consent as soon as possible.

5. **Closing Date; Closing Place.** The closing (the “Closing”) of the transactions contemplated by this Agreement shall occur on a mutually agreeable date (the “Closing Date”) which shall be after the FCC Consent has been granted and no later than ten (10) business days after the FCC Consent becomes effective and the other conditions to closing set forth in Section 8 have either been waived or satisfied. The Closing shall be held by mail, facsimile, or electronic mail, as the Buyer and Seller may agree.

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

(a) Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of New York. Seller has the power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Seller and constitutes the legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency or other laws affecting generally the enforcement of creditors’ rights or the application of principles of equity.

(b) Neither the execution and delivery by Seller of this Agreement nor the consummation by Seller of the transactions contemplated hereby will conflict with any organizational documents of Seller, any law, judgement, order or decree to which Seller is subject or any contract or agreement by which Seller is bound.

(c) Schedule 1 hereto contains a list of the Tangible Personal Property owned by Seller that shall be transferred to Buyer. Seller owns and has, and will have on the Closing Date, good and marketable title to the Tangible Personal Property free and clear of all Liens (other than Liens for taxes not yet due and payable). Each material item of Tangible Personal Property is in good operating condition.

(d) Schedule 2 hereto contains a true and complete list of the FCC Authorizations that are required by the FCC to operate the Station. The FCC Authorizations are in full force and effect, unimpaired by any act or omission of Seller. Seller lawfully holds each of the FCC Authorizations listed on Schedule 2, none of which is subject to any restrictions or conditions that would limit in any material respect the operations of the Station, except such conditions as are stated on the face thereof. There are no outstanding unsatisfied FCC notices of violation, citations or cease and desist orders against the Station, and any FCC citations or orders subsequently issued shall be satisfied prior to Closing. There are no ongoing investigations of Seller’s operations of the Station by the FCC or by any other federal or state governmental agency. The Station is operating with maximum power and facilities as specified in the FCC Authorizations, is not causing objectionable interference to the transmissions of any other broadcast station or communications facility, and no other broadcast station or communications facility is causing objectionable interference to the

transmissions of the Station.

(e) Schedule 3 contains a true and complete copy or description of the material terms of the Lease, which is in full force and effect, for the Tower Site. Seller has a valid leasehold interest in the Lease described on Schedule 3, and Seller is not in material breach or default with respect to the Lease.

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

(f) Other than Harold Bausemer, whose fee shall be paid by Seller, there is no broker or finder or other person who would have any valid claim for a commission or brokerage in connection with this Agreement or the transaction contemplated hereby as a result of any agreement, understanding or action by Seller.

(g) Seller has complied in all material respects with all laws, rules, regulations, writs, injunctions, ordinances, franchises, decrees and orders of any court or governmental authority which are applicable to the operation of the Station.

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

(a) This Agreement has been duly and validly executed and delivered by Buyer and constitutes the legal, valid and binding 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.

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

(c) Neither the execution and delivery by Buyer of this Agreement nor the consummation by Buyer of the transactions contemplated hereby will conflict with any organizational documents of Buyer, any law, judgement, order or decree to which Buyer is subject or any contract or agreement by which Buyer is bound.

(c) With the exception of Public Media Company, whose fee shall be paid by Buyer, there is no broker or finder or other person who would have any valid claim against Seller for a commission or brokerage in connection with this Agreement or the transaction contemplated hereby as a result of any agreement, understanding or action by Buyer.

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

8. **Covenants.** Seller covenants with Buyer that, between the date hereof and the Closing Date, Seller shall take all reasonable actions necessary to keep the FCC Authorizations, including all material permits and applications pending before the FCC, valid and in full force and effect. Without limiting the foregoing, Seller agrees that if the Closing does not occur prior to February 1, 2022, it shall timely file a renewal application for the Station and shall diligently prosecute such renewal application.

9. **Conditions Precedent to Obligation to Close.**

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

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

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

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

(iv) Buyer shall have delivered to Seller on the Closing Date, the documents and payments required to be delivered pursuant to Section 10 (b);

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

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

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

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

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

(v) Seller shall have delivered to Buyer, on the Closing Date, the documents required to be delivered pursuant to Section 10(a).

10. **Closing Deliveries.**

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

(i) A Bill of Sale transferring title to the Tangible Personal Property to Buyer;

(ii) An Assignment and Assumption of the FCC Authorizations;

(iii) An Assignment and Assumption of the Lease, along with the written consent of the Lessor thereunder to the assignment of the Lease to Buyer;

(iv) A certificate that the conditions set forth in Section 9(b)(i) and 9(b)(ii) have been satisfied by Seller as of the Closing Date;

(v) Joint Instructions to Escrow Agent; and

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

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

(i) The Purchase Price;

(ii) An Assignment and Assumption of the FCC Authorizations;

(iii) An Assignment and Assumption of the Lease;

(iv) A certificate that the conditions set forth in Section 9(a)(i) and 9(a)(ii) have been satisfied by Buyer as of the Closing Date;

(v) Joint Instructions to Escrow Agent; and

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

11. **Indemnification.** Seller shall defend, indemnify and hold harmless Buyer from and against any and all losses, costs, damages, liabilities and expenses, including reasonable attorneys' fees and expenses incurred by Buyer arising out of or resulting from (a) any breach by Seller of its representations and warranties made under this Agreement; (b) any default by Seller of any covenant or agreement made under this Agreement; or (c) the Retained Liabilities. Buyer shall defend, indemnify and hold harmless Seller from and against any and all losses, costs, damages, liabilities and expenses, including reasonable attorneys' fees and expenses incurred by Seller arising out of or resulting from (x) any breach by Buyer of its representations and warranties made under this Agreement; or (y) any default by Buyer of any covenant or agreement made under this Agreement.

12. **Termination.**

This Agreement may be terminated prior to Closing:

- (a) by mutual written consent of Buyer and Seller;
- (b) by written notice of Seller to Buyer or Buyer to Seller if Closing does not occur by the date twelve (12) months after the date the FCC Application is accepted for filing, provided that the delay has not been caused by the party seeking to terminate;
- (c) by either Buyer or Seller upon written notice if there is a material breach or default under this Agreement by the other party following a fifteen (15) day period for cure by the breaching party following written notice of the breach, provided that the party seeking to terminate is not also then in material default or breach of this Agreement;
- (d) by either Buyer or Seller upon written notice if the FCC denies the Assignment Application or designates it for a trial-type hearing; or
- (e) by either Buyer or Seller upon written notice if there shall be in effect any judgment, final decree or order that would prevent or make unlawful the Closing.

Except as set forth in Section 13 (a) below, the termination of this Agreement shall not relieve any party of any liability for breach of this Agreement prior to the date of termination.

13. **Remedies**

(a) The Seller's exclusive remedy upon a termination of this Agreement by the Seller due to a breach by the Buyer of any of its material obligations under this Agreement shall be the receipt of liquidated damages in the amount of **Fifteen Thousand Dollars (\$15,000.00)**. The Parties acknowledge and agree that the amount of liquidated damages is reasonable in light of the anticipated harm which 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) Seller acknowledges that the Station is a unique asset not readily obtainable on the open market and that, in the event that Seller fails to perform its obligations to consummate the transaction contemplated hereby, money damages alone will not be adequate to compensate Buyer for its injury. Therefore, Seller agrees and acknowledges that in the event of Seller's failure to perform its obligation to consummate the transaction contemplated hereby, Buyer shall be entitled to

specific performances of the terms of this Agreement and of Seller's obligation to consummate the transaction contemplated hereby. If any action is brought by Buyer to enforce this Agreement, Seller shall waive the defense that there is an adequate remedy at law, and Buyer shall be entitled to receive from Seller all court costs, attorney's fees and other out-of-pocket expenses incurred by Buyer in enforcing its rights under this provision.

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

If to Seller, to:

W245BA, Inc.  
12 Wisconsin Court 2<sup>nd</sup> Floor  
Bay Shore, NY 11706  
Attn: Michael Aliffi, President  
Email: maliffi@aliffi.com

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

John C. Trent, Esq.  
Putbrese Hunsaker & Trent, P.C.  
200 South Church Street  
Woodstock, VA 22664  
Email: fccman3@shentel.net

If to Buyer, to:

WNET  
825 Eighth Avenue, 14<sup>th</sup> Floor  
New York, NY 10019  
Attn: Caroline Croen  
Email: croenc@wnet.org

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

WNET  
825 Eighth Avenue, 14<sup>th</sup> Floor  
New York, NY 10019  
Attn: Robert Feinberg, Vice President, Business Development and Chief Legal Officer  
Email: [feinberg@wnet.org](mailto:feinberg@wnet.org)



And

Lerman Senter PLLC  
2001 L Street NW, Suite 400  
Washington, DC 20036  
Attn: Sally A. Buckman  
Email: sbuckman@lermansenter.com

15. **Governing Law; Venue.** This Agreement shall be construed and enforced in accordance with the laws of the State of New York, without giving effect to the choice of law principles thereof. The exclusive forum for the resolution of any disputes arising hereunder shall be the federal and state courts located in New York, New York, and each party irrevocably wives the reference of an inconvenient forum to the maintenance of any such action or proceeding.

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

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

18. **Expenses.** Except as otherwise set forth herein, each party shall be solely responsible for all costs and expenses incurred by it in connection with the negotiation, preparation and performance of and compliance with the terms of this Agreement.

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

20. **Entire Agreement.** This Agreement, and the exhibits attached hereto, supersede all prior agreements and understandings between the parties with respect to the subject matter hereof and may not be changed or terminated orally, and no attempted change, amendment, or waiver of any of the provisions hereof shall be binding unless in writing and signed by parties.

21. **Risk of Loss.** The risk of loss or damage to the Assets prior to the Closing Date shall be upon Seller. Seller shall repair, replace and restore any damaged or lost item of Tangible Personal Property to its prior condition as soon as possible and in no event later than the Closing Date, unless such damage was immaterial or such item was obsolete and unnecessary for the continued operation of the Station consistent with past practice

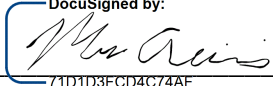
22. **Cooperation.** From time to time after the date of execution hereof, the parties shall take further action and execute such further documents, assurances and certificates as either party reasonably may request of the other to effectuate the purposes of this Agreement.

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



**SELLER:**

**W245BA, INC.**

By:  DocuSigned by:  
71D1D3FCD4C74AF...  
Title: President

**BUYER:**

**WNET**

 DS  
2F By:  DocuSigned by:  
DB9A294A9A65453...  
Title: Treasurer