

## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "Agreement") is dated as of January 28, 2016, by and between, **EDUCATIONAL MEDIA FOUNDATION**, a California 501(c)(3) corporation ("Seller") and **F.T.G. BROADCASTING, INC.**, a Kentucky corporation ("Buyer") (and, collectively, "Parties").

### WITNESSETH:

WHEREAS, Seller is the holder of a construction permit (the "Permit") to build a new FM translator station, W255CO (the "Station"), at Bowling Green, Kentucky (Facility ID # 155331) pursuant to an authorization 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, the Permit; and

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

WHEREAS, Buyer may file and prosecute at Buyer's option and cost FCC an application for the purpose of effectuating a relocation of the Station pursuant to the 250 mile process described by the FCC in *Revitalization of the AM Service*, FCC 15-142, released October 23, 2015 ("AM Revitalization") to be filed pursuant to Section 73.3517(a) of the Commission's rules to modify the facilities of the Station to enable operations from a transmitter site of Buyer's choice (the "Modification Construction Permit Application"), though the filing and/or grant of such application is not a condition precedent to Buyer's obligation to consummate this transaction.

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.** At Closing (as hereinafter defined), Seller agrees to sell, transfer, assign, convey and deliver to Buyer the Permit (the "FCC Authorizations").

2. **FCC Applications.** Seller and Buyer agree to the following with regard to the FCC Authorizations:

(a) The assignment of the FCC Authorizations is subject to the prior consent of the FCC ("FCC Consent"). Within three (3) business days of the mutual execution of this Agreement, Seller and Buyer shall jointly file with the FCC an application for assignment of the FCC Authorization (the "Assignment Application") from Seller to Buyer. Seller and Buyer shall thereafter prosecute the Assignment Application with all reasonable diligence and otherwise use their best efforts to obtain the grant of the Assignment Application as expeditiously as practicable.

(b) On January 29, 2016 or such other date selected by Buyer, Buyer may file the Modification Construction Permit Application. In order to accomplish such filing, Seller will assign

Buyer's FRN to the Permit at least two (2) business days prior to January 29, 2016 and notify Buyer of such FRN assignment so that the Modification Construction Permit Application may be filed by Buyer without Seller's further cooperation. This Section 2(b), for the purposes of Section 73.3517(a) of the Commission's rules, specifically grants Seller's permission for the filing of the Modification Construction Permit Application. Seller makes no representations or warranties that the Modification Construction Permit Application can or will be granted, and the filing or the lack of filing, or the grant or lack of grant, of the Modification Construction Permit Application shall have no effect whatsoever upon the parties obligations hereunder and specifically is not a condition precedent to Buyer's obligation to close on its purchase of the Permit. Buyer shall pay all costs of the engineering and technical studies, and preparation of the FCC Form 349, to be performed by a consultant of Buyer's selection, for the purposes of the Modification Construction Permit Application. The Modification Construction Permit Application will be dismissed should this Agreement be terminated without a Closing.

(c) After filing the Modification Construction Permit Application, Buyer may file any tolling notifications or submissions pursuant to Section 73.3598 of the Commission's rules and footnote 36 of AM Revitalization required to keep the Permit that is an unbuilt construction permit from expiring prior to Buyer's opportunity to construct.

(d) Should the Modification Construction Permit Application be granted prior to the Closing of this transaction, Seller hereby grants permission to Buyer to, at Buyer's option, immediately commence construction at Buyer's expense of the facilities specified by the granted Modification Construction Permit Application with such construction to be supervised by, and under the control of, Seller. Seller shall, upon the full construction of such facilities specified by the Modification Construction Permit Application, file at the FCC an FCC Form 350 license application to cover the constructed facilities. The FCC filing fee any such FCC Form 350 shall be paid by Buyer. Thereafter, Seller shall carry the primary station of Buyer specified the Modification Construction Permit Application on the Translator as modified by the Modification Construction Permit Application until the Closing of this transaction.

3. **Purchase Price.** In consideration of the sale, transfer, assignment, conveyance and delivery of the FCC Authorizations to Buyer, Buyer shall pay to Seller Fifty-Six Thousand Dollars (\$56,000.00) (the "Purchase Price"). Within two business days of execution and delivery of this Agreement, Buyer shall place an earnest money deposit equivalent to the Purchase Price ("Deposit") with WashingtonFirst Bank ("Escrow Agent") pursuant to an Escrow Agreement (the "Escrow Agreement") in a form agreed to by the parties. Moneys held in escrow shall be applied as set forth both in this Agreement and in the Escrow Agreement.

4. **Closing and Closing Date.** Consummation of the transaction contemplated by this Agreement (the "Closing") shall occur on a date (the "Closing Date") mutually agreed upon by Buyer and Seller not more than ten (10) days following the date on which the FCC gives its Consent and upon satisfaction of the conditions specified in Section 8, or on such other date as the parties mutually agree, *provided, however*, that Buyer may elect to delay the Closing until the FCC Consent becomes a Final Order upon written notice to Seller (as that term is herein defined) if there is filed with the FCC any petition to deny or informal objection to the grant of the Assignment Application. For purposes of this Agreement, the term "Final Order" means action by the FCC consenting to the assignment application which is not reversed, stayed, enjoined, set aside, annulled or suspended, and with respect to which action no timely request for stay, petition for rehearing or

appeal is pending, and as to which the time for filing any such request, petition or appeal or reconsideration by the FCC on its own motion has expired.

5. **Seller's Representations, Warranties and Other Obligations.** Seller represents and warrants that:

(a) The execution and performance of this Agreement does not constitute a violation, breach, or default under any law, regulation, agreement or other obligation to which Seller is or will become subject.

(b) Seller is the authorized legal holder of the FCC Authorizations.

(c) The FCC Authorizations are in full force and effect and have not been modified, revoked, canceled or rescinded.

(d) Seller has not retained any brokers who are entitled to any commission or finder's fee in connection with the transactions contemplated by this Agreement.

6. **Buyer's Representations and Warranties.** Buyer represents and warrants that:

(a) Buyer has the right, power and authority, and has taken all necessary action, to enter into this Agreement and to fully perform all of its obligations under this Agreement.

(b) The execution and performance of this Agreement does not constitute a violation, breach, or default under any law, regulation, agreement or other obligation to which Buyer is or will become subject.

(c) Buyer is legally, financially and otherwise qualified under the Communications Act of 1934, as amended, and the rules, regulations and policies of the FCC, to hold the FCC Authorizations and to become the licensee of the Station and to consummate the transactions contemplated herein. There are no proceedings, complaints, notices of forfeiture, claims, and investigations pending or, to the knowledge of Buyer, threatened against any or in respect of any of the broadcast authorizations licensed to Buyer or its affiliates that would materially impair the qualifications of Buyer to hold the FCC Authorizations or to become the licensee of the Station.

(d) With the exception of Henson Media, Inc. whose commission shall be the sole responsibility of Buyer, Buyer has not retained any brokers who are entitled to any commission or finder's fee in connection with the transactions contemplated by this Agreement.

7. **Further Assurances.**

(a) Each party shall, from time to time at the request of, and without further cost or expense to the other, execute and deliver such other instruments and take such other actions as may reasonably be requested in order to more effectively consummate the transactions contemplated hereby.

(b) Seller recognizes that Buyer plans to use this Station to rebroadcast an AM station owned by Buyer, and that Buyer intends to file the Modification Construction Permit Application for such purpose. Buyer's obligations hereunder to purchase the Station is not contingent on the filing of an application pursuant to AM Revitalization, nor on the grant of any application filed during any application filing window opened pursuant to the AM Revitalization order provided that Buyer abides by its obligations specified in Section 2(b) in this Agreement. Seller shall validly assign to Buyer the consent now held by Seller to continue to specify as primary station the station now specified by Seller as primary station for the Station until such time as Buyer is able to effectuate its move of the Station under the Modification Construction Permit Application.

(c) Seller shall not:

- (i) Create, assume or permit to exist any mortgage, pledge, lien or other charge or encumbrance or rights affecting any of the FCC Authorizations;
- (ii) Sell, assign, lease or otherwise transfer or dispose of any of the FCC Authorizations except as provided herein;
- (iii) Waive any material right relating to the Station or the FCC Authorizations;
- (iv) Take any other action inconsistent with its obligations under this Agreement or which could hinder or delay the consummation of the transactions contemplated by this Agreement;
- (v) Agree to or participate in any minor modification or other filing with the FCC with respect to the Permit except as otherwise provided for in this Agreement; or
- (vi) Either itself or through any of its officers, directors, shareholders, employees, agents or any other person or entity acting on Seller's behalf, directly or indirectly, solicit or initiate any offer from, or conduct any negotiations with, any person or entity other than Buyer or its assignee(s) concerning the direct or indirect acquisition of the FCC Authorizations.

8. **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:

(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 shall have been issued without any condition that would have a material adverse effect upon Seller.

(iv) Buyer shall have delivered to Seller on the Closing Date its written consent to the release of the Deposit to Seller as provided for herein.

(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 shall have been issued without any condition that would have a material adverse effect upon Buyer. The filing or approval of any application filed pursuant to AM Revitalization shall not be a condition precedent to Buyer's obligations to consummate the transactions proposed hereunder.

9. **Closing Deliveries.**

(a) At the Closing, Seller shall deliver to Buyer such documents, instruments and agreements as Buyer shall request and as shall be reasonably necessary to consummate the transactions contemplated by this Agreement, each in form and substance reasonably satisfactory to counsel for Buyer, including, but not necessarily limited to an Assignment and Assumption of FCC Authorizations.

(b) At the Closing, Buyer shall deliver to Seller such documents, instruments and agreements as Seller shall request and as shall be reasonably necessary to consummate the transactions contemplated by this Agreement, each in form and substance reasonably satisfactory to counsel for Seller.

10. **Termination and Non-Action.** This Agreement may be terminated prior to Closing (i) by mutual written consent of Buyer and Seller; (ii) in the event either party is in default of this Agreement, by the non-defaulting party; or (iii) if the Assignment Application is dismissed or denied by the FCC, or if the Assignment Application is designated for evidentiary hearing (by any party who did not cause such dismissal, denial or designation for hearing).

(a) In the event of a default or breach of the terms and conditions herein by Seller, the Deposit shall be returned to Buyer upon written demand.

(b) In the event of a default or breach of the terms and conditions herein by Buyer or in the event the FCC finds Buyer not qualified to become a licensee of the Station, Seller may terminate this Agreement. In such event, Buyer and Seller shall jointly instruct the Escrow Agent to deliver the Deposit to Seller (as liquidated damages and not as a penalty) and Seller shall have no further obligation to sell the FCC Authorizations to Buyer.

(c) In the event the Assignment Application is not approved by the FCC within twelve (12) months of the date hereof for whatever reason, either party may terminate this Agreement and the parties shall cause the Deposit to be returned to Buyer provided Buyer is not the cause of such non-approval. If Buyer's actions, inactions or qualifications, directly or indirectly, cause the delay in FCC approval and this Agreement is terminated, Buyer and Seller shall jointly instruct the Escrow Agent to deliver the Deposit to Seller (as liquidated damages and not as a penalty) and Seller shall have no further obligation to sell the FCC Authorizations to Buyer.

11. **Notices.** All notices and other communications permitted or required under this Agreement shall be in writing and shall be sent for next business day delivery by USPS Express Mail, Federal Express or similar nationally-recognized overnight courier service with all charges prepaid, and shall be deemed to have been duly delivered and received on the next business day after being sent, addressed as follows (or at such other address for a party as shall be specified by like notice):

If to Seller to:

Educational Media Foundation  
5700 West Oaks Blvd.  
Rocklin, CA 95765  
Attn: Mike Novak, President  
916.251.1600

If to Buyer to:

F.T.G. Broadcasting, Inc.  
200 South Kentucky Street  
Corbin, KY 40701  
Attn: Michael S. Tarter  
(606) 678-8151

*With a copy that shall not constitute notice delivered to:*

John F. Garziglia, Esq.  
Womble Carlyle Sandridge & Rice, LLP  
1200 19<sup>th</sup> Street, N.W. Suite 500  
Washington, DC 20036  
(202) 857-4455

## 12. Mutual Right of Indemnification

(a) Seller shall indemnify, defend and hold harmless Buyer with respect to any and all demands, claims, actions, suits, proceedings, assessments, judgments, costs, losses, damages, liabilities and expenses (including, without limitation, interest, penalties, court costs and reasonable attorneys' fees) ("Damages") asserted against, resulting from, imposed upon or incurred by Buyer directly or indirectly relating to or arising out of: (i) the breach by Seller of any of its representations or warranties that survive the Closing, or failure by Seller to perform any of its covenants, conditions or agreements set forth in this Agreement that survive the closing; and (ii) any and all claims, liabilities and obligations of any nature, absolute or contingent, relating to the ownership and operation of the FCC Authorizations prior to the Closing.

(b) Buyer shall indemnify, defend and hold Seller harmless with respect to any and all Damages asserted against, resulting from, imposed upon or incurred by Buyer directly or indirectly relating to or arising out of: (i) the breach by Buyer of any of its representations, warranties, or failure by Buyer to perform any of its covenants, conditions or agreements set forth in the Agreement; and (ii) any and all claims, liabilities and obligations of any nature, absolute or contingent, relating to the ownership and operation of the FCC Authorizations as conducted by Buyer subsequent to the Closing and/or with respect to any contingent applications pertaining to the FCC Authorizations proposed, prepared, filed and/or prosecuted by Buyer or on Buyer's behalf prior to the Closing.

(c) If either party hereto (the "Indemnitee") receives notice or otherwise obtains knowledge of any matter with respect to which another party hereto (the "Indemnifying Party") may be obligated to indemnify the Indemnitee under this Section, then the Indemnitee shall promptly deliver to the Indemnifying Party written notice describing such matter in reasonable detail and specifying the estimated amount of the Damages or liability that may be incurred by the Indemnitee in connection therewith. The Indemnifying Party shall have the right, at its option, to assume the complete defense of such matter at its own expense and with its own counsel, provided that such counsel is reasonably satisfactory to the Indemnitee. If the Indemnifying Party elects to assume the defense of such matter, then (i) notwithstanding anything to the contrary herein contained, the Indemnifying Party shall not be required to pay or otherwise indemnify the Indemnitee against any such matter following the Indemnifying Party's election to assume the defense of such matter, (ii) the Indemnitee shall fully cooperate as reasonably requested by the Indemnifying Party in the defense or settlement of such matter, (iii) the Indemnifying Party shall keep the Indemnitee informed of all material developments and events relating to such matter, and (iv) the Indemnitee shall have the right to participate, at its own expense, in the defense of such matter. In no event shall the Indemnifying Party be liable for any settlement or admission of liability with respect to such matter without its prior written consent.

(d) The right to indemnification hereunder shall not be the exclusive remedy of either party in connection with any breach by the other party of its representations, warranties or covenants, nor shall such indemnification be deemed to prejudice or operate as a waiver of any remedy to which either party may otherwise be entitled as a result of any such breach by the other party. Notwithstanding the foregoing, the maximum indemnification liability for either Party shall not exceed the Purchase Price.

13. **Specific Performance.** In the event of a default by Seller under this Agreement, Buyer shall be entitled to seek specific performance without providing or posting any bond to compel Seller to correct or satisfy its default or material breach and to comply with the terms and conditions of this Agreement. In the event Buyer elects specific performance as a remedy, Seller agrees that specific performance is an appropriate remedy due to the unique nature of the FCC Authorizations, and agrees that it will not contest any such action on the ground that an adequate remedy at law exists. In the event that Buyer elects to pursue specific performance, that shall be Buyer's sole and exclusive remedy.

14. **Miscellaneous.**

(a) This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their heirs, successors, executors, legal representatives and assigns, provided however that neither party hereto may voluntarily assign this Agreement without the express written consent of the other party.

(b) Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or entity other than the parties hereto and their successors or permitted assigns, any rights or remedies under or by reason of this Agreement.

(c) The construction and performance of this Agreement shall be governed by the laws of the State of Kentucky, without regard for that state's choice of law rules.

(d) Any cause of action arising out of this Agreement must be brought in the State or Federal courts of competent jurisdiction. Each party hereby agrees to submit to the jurisdiction of such courts. Any action brought to enforce a judgment or order of such court shall not be so limited.

(e) This Agreement embodies the entire agreement and understanding of the parties hereto relating to the matter provided for herein, and supersedes any and all prior agreements, arrangements and understandings relating to the matters provided for herein.

(f) No amendment, waiver of compliance with any provision or condition hereof or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by the Parties.

(g) Except as otherwise provided for in this Agreement, 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. All fees and charges applicable to any requests for the FCC Consent and to the Escrow Agent shall be shared equally by both parties.

(h) This Agreement has been negotiated in good faith and prepared jointly by Seller and Buyer. Each party has had the opportunity to obtain the advice of counsel with respect to the drafting and implementation of this Agreement. No provision herein shall be construed against either party on the grounds that it was drafted by that party.



(i) In the event of any legal action brought to enforce the rights and obligations of the parties hereunder, the party which substantially prevails in such legal action shall be entitled to, in addition to any other relief to which it may be entitled, to recover reasonable attorney's fees.

(j) 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.


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SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

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

**SELLER:**

**EDUCATIONAL MEDIA FOUNDATION**

By:   
Name: N. David Atkinson  
Title: Vice President of Financial Analysis and Treasury

By:   
Name: Joseph C. Miller  
Title: Vice President of Signal Development

**BUYER:**

**F.T.G. BROADCASTING, INC.**

By: \_\_\_\_\_  
Name: Michael S. Tarter  
Title: President

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**SELLER:**

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

Name: N. David Atkinson

Title: Vice President of Financial Analysis and Treasury

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

Name: Joseph C. Miller

Title: Vice President of Signal Development

**BUYER:**

**F.T.G. BROADCASTING, INC.**

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

Name: Michael S. Tarter

Title: President