

## AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this “**Agreement**”), dated as of January 19, 2017 (the “**Execution Date**”), is entered into by and between STARBOARD MEDIA FOUNDATION, INC., a Wisconsin non-stock, non-profit corporation, doing business as RELEVANT RADIO (“**SMF**”) and IHR EDUCATIONAL BROADCASTING, a California non-profit religious corporation, doing business as IMMACULATE HEART RADIO (“**IHR**”).

### RECITALS

A. The parties intend that IHR be merged with and into SMF, with SMF surviving that merger on the terms and subject to the conditions set forth herein (the “**Merger**”).

B. The board of directors of IHR (the “**IHR Board**”) has (a) determined that this Agreement and the transactions contemplated hereby, including the Merger, are in the best interests of IHR, and (b) approved and declared advisable this Agreement and the transactions contemplated hereby, including the Merger.

C. The board of directors of SMF (the “**SMF Board**”) has (a) determined that this Agreement and the transactions contemplated hereby, including the Merger, are in the best interests of SMF, and (b) declared advisable this Agreement and the transactions contemplated hereby, including the Merger.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreement hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### ARTICLE 1 DEFINITIONS

The following terms have the meanings specified or referred to in this Article 1:

“**Acquisition Proposal**” has the meaning set forth in Section 7.04(a).

“**Action**” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Agreement**” has the meaning set forth in the preamble.

“**Ancillary Documents**” means the Bill of Sale, the Assignment and Assumption Agreement, the IHR Intellectual Property Assignment, the Deeds, and the Assignment and Assumption of Leases.

**“Articles of Merger”** has the meaning set forth in Section 2.04.

**“Assignment and Assumption Agreement”** has the meaning set forth in Section 2.03(a)(x).

**“Assignment and Assumption of IHR FCC Licenses”** has the meaning set forth in Section 2.03(a)(xiv).

**“Assignment and Assumption of Lease”** has the meaning set forth in Section 2.03(a)(xiii).

**“Bill of Sale”** has the meaning set forth in Section 2.03(a)(ix).

**“Business Day”** means any day except Saturday, Sunday or any other day on which commercial banks located in Green Bay, Wisconsin are authorized or required by Law to be closed for business.

**“CERCLA”** means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.

**“Closing”** has the meaning set forth in Section 2.02.

**“Closing Date”** has the meaning set forth in Section 2.02.

**“Closing Indebtedness Certificate”** means a certificate executed by the Chief Financial Officer of IHR certifying on behalf of IHR an itemized list of all outstanding Indebtedness as of the open of business on the Closing Date and the Person to whom such outstanding Indebtedness is owed and an aggregate total of such outstanding Indebtedness.

**“Closing Transaction Expenses Certificate”** means a certificate executed by the Chief Financial Officer of IHR, certifying the amount of Transaction Expenses remaining unpaid as of the open of business on the Closing Date (including an itemized list of each such unpaid Transaction Expense with a description of the nature of such expense and the Person to whom such expense is owed).

**“Code”** means the Internal Revenue Code of 1986, as amended.

**“Communications Laws”** means the Communications Act of 1934, as amended, and the rules and published policies of the FCC promulgated thereunder.

**“Confidential Information”** has the meaning set forth in Section 11.01(a).

**“Contracts”** means all contracts, leases, deeds, mortgages, licenses, instruments, notes, commitments, undertakings, indentures, joint ventures and all other agreements, commitments and legally binding arrangements, whether written or oral.

**“CSOS”** means the California Secretary of State.

**“Deed”** has the meaning set forth in Section 2.03(a)(xii).

**“Disclosing Party”** has the meaning set forth in Section 11.01(a).

**“Disclosure Schedules”** means the Disclosure Schedules delivered by IHR and SMF by January 31, 2017.

**“Dollars or \$”** means the lawful currency of the United States.

**“Effective Time”** has the meaning set forth in Section 2.04.

**“Encumbrance”** means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

**“Environmental Claim”** means any Action, Governmental Order, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence, Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

**“Environmental Law”** means any applicable Law, and any Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials. The term “Environmental Law” includes, without limitation, the following (including their implementing regulations and any state analogs): the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; and the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq.

**“Environmental Notice”** means any written directive, notice of violation or infraction, or notice respecting any Environmental Claim relating to actual or alleged non-compliance with any Environmental Law or any term or condition of any Environmental Permit.

**“Environmental Permit”** means any Permit, letter, clearance, consent, waiver, closure, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to Environmental Law.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

**“Execution Date”** has the meaning set forth in the preamble.

**“FCC”** means the Federal Communications Commission, including all of its Bureaus and Offices.

**“FCC Application”** shall have the meaning set forth in Section 4.02(a).

**“FCC Consent”** shall have the meaning set forth in Section 4.01.

**“FCC Fee”** shall have the meaning set forth in Section 4.02(a).

**“Final Order”** shall have the meaning set forth in Section 2.02.

**“GAAP”** means United States generally accepted accounting principles in effect from time to time.

**“Governmental Authority”** means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

**“Governmental Order”** means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

**“Hazardous Materials”** means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or manmade, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation, and polychlorinated biphenyls.

**“IHR”** has the meaning set forth in the preamble.

**“IHR Audited Financial Statements”** has the meaning set forth in Section 5.07.

**“IHR Balance Sheet”** has the meaning set forth in Section 5.07.

**“IHR Balance Sheet Date”** has the meaning set forth in Section 5.07.

**“IHR” Board”** has the meaning set forth in the recitals.

**“IHR” Charter Documents”** has the meaning set forth in Section 5.03.

**“IHR Contact”** has the meaning set forth in Section 11.02(a).

**“IHR FCC Licenses”** shall have the meaning set forth in Section 4.01.

**“IHR Financial Statements”** has the meaning set forth in Section 5.07.

**“IHR Insurance Policies”** has the meaning set forth in Section 5.1.

**“IHR Intellectual Property”** means all Intellectual Property that is owned or held for use by IHR.

**“IHR Intellectual Property Assignment”** has the meaning set forth in Section 2.03(a)(xi).

**“IHR Interim Balance Sheet”** has the meaning set forth in Section 5.07.

**“IHR Interim Balance Sheet Date”** has the meaning set forth in Section 5.07.

**“IHR Interim Financial Statements”** has the meaning set forth in Section 5.07.

**“IHR IRS Determination Letter”** shall have the meaning set forth in Section 5.15(b).

**“IHR” IP Agreements”** means all licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, permissions and other Contracts (including any right to receive or obligation to pay royalties or any other consideration), whether written or oral, relating to Intellectual Property to which IHR is a party, beneficiary or otherwise bound.

**“IHR IP Registrations”** means all IHR Intellectual Property that is subject to any issuance registration, application or other filing by, to or with any Governmental Authority or authorized private registrar in any jurisdiction, including registered trademarks, domain names and copyrights, issued and reissued patents and pending applications for any of the foregoing.

**“IHR Liabilities”** has the meaning set forth in Section 5.08.

**“IHR Real Property”** means the real property owned, leased or subleased by IHR, together with all buildings, structures and facilities located thereon.

**“IHR Stations”** shall have the meaning set forth in Section 5.06(a).

**“IHR Tangible Personal Property”** means equipment located at the IHR Stations’ studio and tower sites, together with any additions thereto or replacements thereof made between the date hereof and the Closing Date, and less any retirements or dispositions of old or obsolete assets made between the date hereof and the Closing Date.

**“Indebtedness”** means, without duplication and with respect to party, all (a) indebtedness for borrowed money; (b) obligations for the deferred purchase price of property or services, (c) long or short-term obligations evidenced by notes, bonds, debentures or other similar instruments; (d) obligations under any interest rate, currency swap or other hedging agreement or arrangement; (e) capital lease obligations; (f) reimbursement obligations under any letter of credit, banker’s acceptance or similar credit transactions; (g) guarantees made by a party on behalf of any third party in respect of obligations of the kind referred to in the foregoing clauses (a) through (f); and (h) any unpaid interest, prepayment penalties, premiums, costs and fees that would arise or become due as a result of the prepayment of any of the obligations referred to in the foregoing clauses (a) through (g).

**“Intellectual Property”** means all intellectual property and industrial property rights and assets, and all rights, interests and protections that are associated with, similar to, or required for the exercise of, any of the foregoing, however arising, pursuant to the Laws of any jurisdiction throughout the world, whether registered or unregistered, including any and all: (a) trademarks, service marks, trade names, brand names, logos, trade dress, design rights and other similar designations of source, sponsorship, association or origin, together with the goodwill connected with the use of and symbolized by, and all

registrations, applications and renewals for, any of the foregoing; (b) internet domain names, whether or not trademarks, registered in any top-level domain by any authorized private registrar or Governmental Authority, web addresses, web pages, websites and related content, accounts with Twitter, Facebook and other social media companies and the content found thereon and related thereto, and URLs; (c) works of authorship, expressions, designs and design registrations, whether or not copyrightable, including copyrights, author, performer, moral and neighboring rights, and all registrations, applications for registration and renewals of such copyrights; (d) inventions, discoveries, trade secrets, business and technical information and know-how, databases, data collections and other confidential and proprietary information and all rights therein; (e) patents (including all reissues, divisionals, provisionals, continuations and continuations-in-part, re-examinations, renewals, substitutions and extensions thereof), patent applications, and other patent rights and any other Governmental Authority-issued indicia of invention ownership (including inventor's certificates, petty patents and patent utility models); (f) software and firmware, including data files, source code, object code, application programming interfaces, architecture, files, records, schematics, computerized databases and other related specifications and documentation; and (g) semiconductor chips and mask works.

**“Knowledge”** means, when used with respect to a party, the actual or constructive knowledge of any director or officer of the party, after due inquiry.

**“Law”** means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

**“Losses”** means losses, damages, liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers; *provided, however*, that **“Losses”** shall not include punitive damages, except to the extent actually awarded to a Governmental Authority or other third party.

**“Material Adverse Effect”** means any event, occurrence, fact, condition or change that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to (a) the business, results of operations, condition (financial or otherwise) or assets of a party, or (b) the ability of a party to consummate the transactions contemplated hereby on a timely basis.

**“Merger”** has the meaning set forth in the recitals.

**“Permits”** means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

**“Person”** means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

**“Receiving Party”** has the meaning set forth in Section 11.01(a).

**“Release”** means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment (including, without limitation, ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

**“Relevant Radio Guiding Principles”** means the Relevant Radio Guiding Principles attached hereto as Exhibit A.

**“Relevant Radio Mission Statement”** means the Mission Statement attached hereto as Exhibit B.

**“Relevant Radio We Believe/We Exist Statement”** means the We Believe/We Exist Statement attached hereto as Exhibit C.

**“Representative”** means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

**“SMF”** has the meaning set forth in the preamble.

**“SMF Audited Financial Statements”** has the meaning set forth in Section 6.07.

**“SMF Balance Sheet”** has the meaning set forth in Section 6.07.

**“SMF Balance Sheet Date”** has the meaning set forth in Section 6.07.

**“SMF Board”** has the meaning set forth in the recitals.

**“SMF Charter Documents”** has the meaning set forth in Section 6.03.

**“SMF Contact”** has the meaning set forth in Section 11.02(a).

**“SMF FCC Licenses”** shall have the meaning set forth in Section 6.06(b).

**“SMF Financial Statements”** has the meaning set forth in Section 6.07.

**“SMF Insurance Policies”** has the meaning set forth in Section 6.12.

**“SMF Intellectual Property”** means all Intellectual Property that is owned or held for use by SMF.

**“SMF Interim Balance Sheet”** has the meaning set forth in Section 6.07.

**“SMF Interim Balance Sheet Date”** has the meaning set forth in Section 6.07.

**“SMF Interim Financial Statements”** has the meaning set forth in Section 6.07.

**“SMF IRS Determination Letter”** shall have the meaning set forth in Section 6. 15(b).

**“SMF” IP Agreements”** means all licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, permissions and other Contracts (including any right to receive or obligation to pay royalties or any other consideration), whether written or oral, relating to Intellectual Property to which SMF is a party, beneficiary or otherwise bound.

**“SMF IP Registrations”** means all SMF Intellectual Property that is subject to any issuance registration, application or other filing by, to or with any Governmental Authority or authorized private

registrar in any jurisdiction, including registered trademarks, domain names and copyrights, issued and reissued patents and pending applications for any of the foregoing.

“**SMF Liabilities**” has the meaning set forth in Section 6.08.

“**SMF Real Property**” means the real property owned, leased or subleased by SMF, together with all buildings, structures and facilities located thereon.

“**SMF Stations**” shall have the meaning set forth in Section 6.06(a).

“**SMF Tangible Personal Property**” means equipment located at the SMF Stations’ studio and tower sites, together with any additions thereto or replacements thereof made between the date hereof and the Closing Date, and less any retirements or dispositions of old or obsolete assets made between the date hereof and the Closing Date.

“**Surviving Corporation**” has the meaning set forth in Section 2.01.

“**Taxes**” means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

“**Tax Return**” means any return, declaration, report, claim for refund, information return or statement or other document relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“**Transaction Expenses**” means all fees and expenses incurred by IHR at or prior to the Closing in connection with the preparation, negotiation and execution of this Agreement and the Ancillary Documents, and the performance and consummation of the Merger and the other transactions contemplated hereby and thereby, including any unpaid costs of the D&O Tail Policy referenced in Section 7.08(c).

“**Union**” means a labor union, works council or labor organization.

“**WDFI**” means the Wisconsin Department of Financial Institutions.

“**WNCL**” means the Wisconsin Nonstock Corporations Law, Chapter 181 of the Wisconsin Statutes.

## **ARTICLE 2 THE MERGER**

Section 2.01 The Merger. On the terms and subject to the conditions set forth in this Agreement, and in accordance with the WNCL, at the Effective Time, (a) IHR will merge with and into SMF, and (b) the separate corporate existence of IHR will cease and SMF will continue its corporate existence under the WNCL as the surviving corporation in the Merger (sometimes referred to herein as the “**Surviving Corporation**”).



Section 2.02 Closing. Subject to the terms and conditions of this Agreement, the closing of the Merger (the “**Closing**”) shall take place within ten (10) Business Days after the FCC Consent has become a Final Order, provided the conditions to Closing set forth in Article 9 have been satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date), at the offices of One Law Group, S.C., 444 Reid Street, Suite 200, De Pere, Wisconsin, or at such other time or on such other date or at such other place as SMF and IHR may mutually agree upon in writing (the day on which the Closing takes place being the “**Closing Date**”). All actions taken at the Closing will be considered as having been taken simultaneously and no such actions will be considered to be completed until all such actions have been completed. A “**Final Order**” shall be deemed to have occurred on the date upon which the FCC Consent has not been reversed, stayed, enjoined or set aside and with respect to which no timely request for stay, reconsideration, review, rehearing or notice of appeal or determination to reconsider or review is pending, and as to which the time for filing any such request, petition, or notice of appeal or for review by the FCC, and for any reconsideration, stay or setting aside by the FCC on its own motion or initiative has expired.

Section 2.03 Closing Deliverables.

- (a) At or prior to the Closing, IHR shall deliver to SMF the following:
  - (i) resignations of the directors and officers of IHR pursuant to Section 7.06;
  - (ii) a certificate, dated the Closing Date and signed by a duly authorized officer of IHR, that each of the conditions set forth in Section 9.02(a) and Section 9.02(b) have been satisfied;
  - (iii) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of IHR certifying that (A) attached thereto are true and complete copies of all resolutions adopted by the IHR Board authorizing the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, and (B) all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby;
  - (iv) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of IHR certifying the names and signatures of the officers of IHR authorized to sign this Agreement, the Ancillary Documents and the other documents to be delivered hereunder and thereunder;
  - (v) a certificate of approval of agreement of merger dated the Closing Date and signed by the President and Secretary of IHR suitable for filing with the CSOS;
  - (vi) a good standing certificate (or its equivalent) from the secretary of state or similar Governmental Authority of the jurisdiction under the Laws in which IHR is organized;
  - (vii) at least three (3) Business Days prior to the Closing, the Closing Transaction Expenses Certificate;
  - (viii) at least three (3) Business Days prior to the Closing, the Closing Indebtedness Certificate;
  - (ix) a bill of sale in form and substance satisfactory to SMF (the “**Bill of Sale**”) and duly executed by IHR, which will evidence (if necessary) the transfer of title of the IHR Tangible Personal Property into the name of the Surviving Corporation pursuant to the Merger;

(x) an assignment and assumption agreement in form and substance satisfactory to SMF (the “**Assignment and Assumption Agreement**”) and duly executed by IHR, which will evidence (if necessary) the assignment to and assumption by the Surviving Corporation of the assets and liabilities of IHR pursuant to the Merger;

(xi) an assignment in form and substance satisfactory to SMF (the “**IHR Intellectual Property Assignment**”) and duly executed by IHR, which will evidence (if necessary) the assignment of the IHR Intellectual Property to the Surviving Corporation pursuant to the Merger;

(xii) with respect to each parcel of Real Property owned by IHR (if any), a general warranty deed in form and substance satisfactory to SMF (each, a “**Deed**”) and duly executed and acknowledged by IHR, which will evidence (if necessary) the transfer of the Real Property to the Surviving Corporation pursuant to the Merger;

(xiii) with respect to each parcel of Real Property leased or subleased by IHR, an assignment and assumption of lease in form and substance satisfactory to SMF (each, an “**Assignment and Assumption of Lease**”) and duly executed by IHR, which will evidence (if necessary) the assignment to and assumption by the Surviving Corporation of the leases and subleases pursuant to the Merger;

(xiv) an assignment and assumption agreement in form and substance satisfactory to SMF (the “**Assignment and Assumption of IHR FCC Licenses**”) and duly executed by IHR, which will evidence the assignment to and assumption by the Surviving Corporation of the IHR FCC Licenses pursuant to the Merger; and

(xv) such other documents or instruments as SMF reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

(b) At the Closing, SMF shall deliver to IHR (or such other Person as may be specified herein) the following:

(i) payment of third parties by wire transfer of immediately available funds that amount of money due and owing from IHR to such third parties as Transaction Expenses as set forth on the Closing Transaction Expenses Certificate;

(ii) payment to holders of outstanding Indebtedness that require payment as a result of the Merger, if any, by wire transfer of immediately available funds that amount of money due and owing from IHR to such holder of outstanding Indebtedness as set forth on the Closing Indebtedness Certificate;

(iii) a certificate, dated the Closing Date and signed by a duly authorized officer of SMF, that each of the conditions set forth in Section 9.03(a) and Section 9.03(b) have been satisfied;

(iv) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of SMF certifying that attached thereto are true and complete copies of all resolutions adopted by the SMF Board authorizing the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby;

(v) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of SMF certifying the names and signatures of the officers of SMF authorized to sign this Agreement, the Ancillary Documents and the other documents to be delivered hereunder and thereunder;

(vi) a certificate of approval of agreement of merger dated the Closing Date and signed by the Executive Director and Secretary of SMF suitable for filing with the CSOS;

(vii) the Assignment and Assumption Agreement duly executed by SMF;

(viii) with respect to each lease or sublease, an Assignment and Assumption of Lease duly executed by SMF;

(ix) the Assignment and Assumption of IHR FCC Licenses duly executed by SMF;  
and

(x) such other documents or instruments as IHR reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

Section 2.04 Effective Time. Subject to the provisions of this Agreement, at the Closing, SMF and IHR shall cause articles of merger ( “**Articles of Merger**”) to be executed, acknowledged and filed with the WDFI in accordance with the relevant provisions of the WNCL and shall make all other filings or recordings required under the WNCL. The Articles of Merger shall be consistent with the Agreement and in a form reasonably acceptable to the parties. The Merger shall become effective at such time as the Articles of Merger have been duly filed with the WDFI or at such later date or time as may be agreed by SMF and IHR in writing and specified in the Articles of Merger in accordance with the WNCL (the effective time of the Merger being hereinafter referred to as the “**Effective Time**”). An executed counterpart of the Articles of Merger shall also be filed with the CSOS and the Merger shall be effective as to IHR under the California Corporations Code as of the Effective Time upon such filing.

Section 2.05 Effects of the Merger. The Merger shall have the effects set forth herein and in the applicable provisions of the WNCL. Without limiting the generality of the foregoing, and subject thereto, from and after the Effective Time, all property, rights, privileges, immunities, powers, franchises, licenses and authority of IHR and SMF shall vest in the Surviving Corporation, and all debts, liabilities, obligations, restrictions and duties of each of IHR and SMF shall become the debts, liabilities, obligations, restrictions and duties of the Surviving Corporation.

Section 2.06 Consideration. The consideration paid by SMF to IHR at the Closing shall be the assumption by SMF of all of IHR’s debts, liabilities, obligations, restrictions and duties. No cash shall be paid from SMF to IHR at the Closing.

### **ARTICLE 3 SURVIVING CORPORATION**

Section 3.01 Corporate Name. At the Effective Time, the name of the Surviving Corporation shall be IMMACULATE HEART MEDIA, INC.

Section 3.02 Articles of Incorporation. At the Effective Time, the articles of incorporation of SMF in effect immediately prior to the Effective Time shall be the articles of incorporation of the Surviving Corporation until thereafter amended in accordance with the terms thereof or as provided by

applicable Law; provided, however, the Articles of Merger shall provide that Article 1 of SMF's articles of incorporation shall be amended to provide that the name of the Surviving Corporation is IMMACULATE HEART MEDIA, INC.

Section 3.03 By-laws. At the Effective Time, the by-laws of SMF as in effect immediately prior to the Effective Time shall be the by-laws of the Surviving Corporation until thereafter amended in accordance with the terms thereof, the articles of incorporation of the Surviving Corporation or as provided by applicable Law. Prior to the Effective Time, SMF shall amend its bylaws to provide for seventeen (17) directors.

Section 3.04 Directors. At the Effective Time, the following individuals shall be members of the Board of Directors of the Surviving Corporation until their successors have been duly appointed and qualified in accordance with the by-laws of the Surviving Corporation or until their death, resignation or removal in accordance with articles of incorporation and by-laws of the Surviving Corporation:

| <b>Director</b>             | <b>Class</b> | <b>Initial Term Ends</b> |
|-----------------------------|--------------|--------------------------|
| Bishop David L. Ricken      | 1            | May, 2017                |
| Linda B. Ruf                | 1            | May, 2017                |
| Robert Riordan              | 1            | May, 2017                |
| Errico Auricchio            | 1            | May, 2017                |
| Timothy Wiggins             | 1            | May, 2017                |
| Archbishop Bernard A. Hebda | 2            | May, 2018                |
| Eugene J. Zurlo             | 2            | May, 2018                |
| Thomas R. Vorpahl           | 2            | May, 2018                |
| John P. Cavil               | 2            | May, 2018                |
| Douglas M. Sherman          | 2            | May, 2018                |
| Steve Burke                 | 2            | May, 2018                |
| Archbishop José H. Gomez    | 3            | May, 2019                |
| Patricia Von Dohlen         | 3            | May, 2019                |
| John Feltl                  | 3            | May, 2019                |
| Joseph Cavanagh, Jr.        | 3            | May, 2019                |
| Charles J. Haas             | 3            | May, 2019                |
| Reverend Francis J. Hoffman | 3            | May, 2019                |

Section 3.05 Executive Committee. At the Effective Time, the following individuals shall be members of the Executive Committee of the Surviving Corporation until their successors have been duly appointed and qualified in accordance with the by-laws of the Surviving Corporation or until their death, resignation or removal in accordance with articles of incorporation and by-laws of the Surviving Corporation:

Reverend Francis J. Hoffman  
Thomas R. Vorpahl  
John P. Cavil  
Douglas M. Sherman  
Eugene J. Zurlo  
Charles J. Haas

Section 3.06 Officers. At the Effective Time, the individual listed below shall hold the indicated office in the Surviving Corporation until his or her successor shall have been duly appointed or

until his or her death, resignation or removal in accordance with the articles of incorporation and by-laws of the Surviving Corporation:

| Officer                     | Office                                |
|-----------------------------|---------------------------------------|
| Thomas R. Vorpahl           | Chairperson of the Board of Directors |
| Reverend Francis J. Hoffman | Executive Director and Treasurer      |
| John P. Cavil               | Secretary                             |

Section 3.07    No Members. The Surviving Corporation shall not have members.

Section 3.08    Guiding Principles. At and after the Effective Time, the Surviving Corporation will operate under the Relevant Radio Guiding Principles, the Relevant Radio Mission Statement, and the Relevant Radio We Believe/We Exist Statement. The Surviving Corporation will broadcast only the finest Catholic Talk Radio programming. Such decisions will be based on numerical analysis, balanced by other concerns about diversity and key donor interest. The Surviving Corporation will widely promote devotion to the Immaculate Heart of Mary and the message of Fatima.

Section 3.09    Branding. The Surviving Corporation shall do business under the RELEVANT RADIO® trademark. The radio station identification will remain the same for current Relevant Radio stations, but will be changed to: “*You are listening to Relevant Radio on the Immaculate Heart Media Network*” for the IHR Stations for at least the first twelve (12) months after the Effective Time. Other branding changes to the Surviving Corporation’s radio stations will be prudently assessed in light of past operating experiences.

#### ARTICLE 4 FCC CONSENT

Section 4.01    FCC Consent. The transactions contemplated by this Agreement, including the Merger, are expressly conditioned on and subject to the prior consent and approval of the FCC to the assignment of all licenses, permits and other authorizations, including pending applications with respect thereto, relating to the IHR Stations (the “**IHR FCC Licenses**”) from IHR to the Surviving Corporation (“**FCC Consent**”) without imposition of any conditions on the transfer of control of the IHR FCC Licenses which would reasonably be expected to have a Material Adverse Effect on the results of operations of the Surviving Corporation, the IHR Stations or the SMF Stations. No Closing shall occur prior to the parties’ receipt of FCC Consent.

Section 4.02    FCC Application.

(a)        Within five (5) Business Days after the Execution Date, each party shall prepare, execute and submit its respective portion of an application for FCC Consent to the assignment of the IHR Stations to the Surviving Corporation (the “**FCC Application**”) and all information, data, exhibits, resolutions, statements, and other materials necessary and proper in connection with such FCC Application. Each party further agrees expeditiously to prepare amendments to the FCC Application whenever such amendments are required by the FCC or its rules. Each party shall submit its portion of the FCC Application to the FCC electronically, consistent with the FCC procedures. The parties shall prosecute the FCC Application with all reasonable diligence and otherwise use commercially reasonable efforts to obtain the grant of the FCC Application as expeditiously as reasonably practicable (but no party shall have any obligation to satisfy complainants or the FCC by taking any steps that would have a Material Adverse Effect on the results of operations of a party or any Affiliate, unless failure to take such action would constitute or perpetuate a breach of such party’s representations, warranties or covenants herein). Except as otherwise provided herein, each party will be solely responsible for the expenses in the

preparation, filing and prosecution of its respective portion of the FCC Application, however, the fee to be paid to the FCC in conjunction with the filing of the FCC Application (the “FCC Fee”) will be shared equally by SMF and IHR.

(b) Neither party shall take any intentional action that would, or intentionally fail to take such action the failure of which to take would, reasonably be expected to have the effect of materially delaying the issuance of the FCC Consent. Each party agrees to comply with any condition imposed on it by the FCC; provided, however, that no party shall be required hereunder to comply with any condition that would have a Material Adverse Effect on the results of operations of such party or any Affiliate, unless the absence of such compliance would constitute or perpetuate a breach of such party’s representations, warranties or covenants herein. If reconsideration or judicial review is sought with respect to the FCC Consent, the party affected shall vigorously oppose such efforts for reconsideration or judicial review; provided, however, such party shall not be required to take any action that would have a Material Adverse Effect on the results of operations of such party or any Affiliate.

(c) Either party, at its option, may terminate this Agreement upon five (5) Business Days’ prior written notice to the other party, and without liability to the other party, if (i) the FCC has not granted the FCC Application by the twelve (12) month anniversary of the Execution Date; or (ii) the FCC, by Final Order, dismisses, denies or designates a hearing regarding the FCC Application or the Merger; provided in the case of either (i) or (ii) that the action or inaction of the party seeking to exercise such termination right, including but not limited to the breach of any representation, warranty or covenant contained herein, shall not have been a cause of the failure to obtain the FCC Consent or for the FCC to have issued such dismissal, denial or designation for hearing. In the event of termination pursuant to this Section 4.02(c), each party shall bear its own expenses.

(d) Nothing in this Section 4.02 shall be construed to limit a party’s right to termination this Agreement pursuant to Article 10 hereof.

## **ARTICLE 5**

### **REPRESENTATIONS AND WARRANTIES OF IHR**

Except as set forth in the correspondingly numbered Section of the Disclosure Schedules, IHR represents and warrants to SMF that the statements contained in this Article 5 are true and correct as of the date hereof.

Section 5.01 Organization and Qualification of IHR. IHR is a non-profit religious corporation duly organized, validly existing and in good standing under the Laws of the state of California and has full corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as it has been and is currently conducted. Section 5.01 of the Disclosure Schedules sets forth each jurisdiction in which IHR is licensed or qualified to do business, and IHR is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business as currently conducted makes such licensing or qualification necessary.

Section 5.02 Authority of IHR. IHR has full corporate power and authority to enter into and perform its obligations under this Agreement and the Ancillary Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by IHR of this Agreement and any Ancillary Document to which it is a party and the consummation by IHR of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of IHR and no other corporate proceedings on the part of IHR are necessary to authorize the execution, delivery and performance of this Agreement or to consummate the Merger and

the other transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by IHR, and (assuming due authorization, execution and delivery by each other party hereto) this Agreement constitutes a legal, valid and binding obligation of IHR enforceable against IHR in accordance with its terms. When each Ancillary Document to which IHR is or will be a party has been duly executed and delivered by IHR (assuming due authorization, execution and delivery by each other party thereto), such Ancillary Document will constitute a legal and binding obligation of IHR enforceable against it in accordance with its terms.

Section 5.03 No Conflicts; Consents. The execution, delivery and performance by IHR of this Agreement and the Ancillary Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, including the Merger, do not and will not: (i) conflict with or result in a violation or breach of, or default under, any provision of the articles of incorporation, by-laws or other organizational documents of IHR (“**IHR Charter Documents**”); (ii) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to IHR; (iii) except as set forth in Section 5.03 of the Disclosure Schedules, require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any Contract to which IHR is a party or by which IHR is bound or to which any of their respective properties and assets are subject or any Permit affecting the properties, assets or business of IHR; or (iv) result in the creation or imposition of any Encumbrance on any properties or assets of IHR. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to IHR in connection with the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, except for the (i) the FCC Application, (ii) the FCC Consent, and (iii) the filing of the Articles of Merger with the WDFI and the CSOS.

Section 5.04 Members. IHR has no members.

Section 5.05 No Subsidiaries. IHR does not own, or have any interest in any shares or have an ownership interest in any other Person.

Section 5.06 FCC Licenses.

(a) Section 5.06(a) of the Disclosure Schedules contains a true and complete list of the radio stations (including call letters and facility identification numbers) owned and operated by IHR pursuant to the IHR FCC Licenses (the “**IHR Stations**” or the “**IHR FCC Licenses**,” as applicable). Section 5.06(a) of the Disclosure Schedules shall be updated as of the Closing Date, and the following representations of this Section 5.06 shall then apply to all such IHR FCC Licenses. IHR is the authorized legal holder of the IHR FCC Licenses. The IHR FCC Licenses are in full force and effect, unimpaired by any action or omission of IHR. The IHR FCC Licenses are all of the licenses, permits or other authorizations issued by the FCC necessary to operate the IHR Stations in the manner as such operation currently are conducted and there are no conditions upon the IHR FCC Licenses except those conditions stated thereon or generally applicable to broadcast stations comparable to the IHR Stations. No proceedings with respect to the IHR Stations are pending, or to IHR’s Knowledge, threatened (other than proceedings applicable to the radio industry as a whole) nor, to IHR’s Knowledge, do any facts exist which may reasonably result in the revocation, materially adverse modifications, non-renewal or suspension of any of the IHR FCC Licenses, the denial of any pending material applications related to the IHR FCC Licenses, or, in any material respect, the issuance of any cease and desist order related to the IHR FCC Licenses or which as of the Closing Date may affect the Surviving Corporation’s ability to operate the IHR Stations in accordance with the Communications Laws. To IHR’s Knowledge, no facts, event or circumstances exist

or have occurred with respect to IHR or the IHR Stations that would reasonably be likely to cause the FCC not to renew the IHR FCC Licenses in the ordinary course and without undue delay, adverse condition or modification.

(b) Except as disclosed on Section 5.06(b) of the Disclosure Schedules, the IHR Stations are operating in material compliance with the IHR FCC Licenses and the Communications Laws. IHR has filed with the FCC all material reports or applications with respect to the IHR FCC Licenses and the IHR Stations. All materials items required by the FCC to be placed in the local public inspection files of the IHR Stations have been placed in such files and are in the possession or control of IHR, and all such items are true, correct, and complete in all material respects.

Section 5.07 Financial Statements. Complete copies of IHR's audited financial statements consisting of the statement of financial position (assets, liabilities and net assets) of IHR as at December 31<sup>st</sup> in each of the years 2013, 2014 and 2015 and the related statements of support and revenues, expenses, and other changes in net assets and statement of cash flows for the years then ended (the "**IHR Audited Financial Statements**"), and unaudited financial statements consisting of the statement of financial position (assets, liabilities and net assets) of IHR as at October 31, 2016 and the related statements of support and revenues, expenses, and other changes in net assets and statement of cash flows for the ten-month period then ended (the "**IHR Interim Financial Statements**" and together with the Audited Financial Statements, the "**IHR Financial Statements**") are included in the Disclosure Schedules. The IHR Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the period involved, subject, in the case of the IHR Interim Financial Statements, to normal and recurring year-end adjustments (the effect of which will not be materially adverse) and the absence of notes (that, if presented, would not differ materially from those presented in the IHR Audited Financial Statements). IHR The Financial Statements are based on the books and records of IHR, and fairly present in all material respects the financial condition of IHR as of the respective dates they were prepared and the results of the operations of IHR for the periods indicated. The statement of financial position (assets, liabilities and net assets) of IHR as of December 31, 2015 is referred to herein as the "**IHR Balance Sheet**" and the date thereof as the "**IHR Balance Sheet Date**" and the statement of financial position (assets, liabilities and net assets) IHR as of October 31, 2016 is referred to herein as the "**IHR Interim Balance Sheet**" and the date thereof as the "**IHR Interim Balance Sheet Date.**" IHR maintains a standard system of accounting established and administered in accordance with GAAP.

Section 5.08 Undisclosed Liabilities. IHR has no liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise ("**IHR Liabilities**"), except (a) those which are adequately reflected or reserved against in the IHR Balance Sheet as of the IHR Balance Sheet Date, and (b) those which have been incurred in the ordinary course of business consistent with past practice since the IHR Balance Sheet Date and which are not, individually or in the aggregate, material in amount.

Section 5.09 Absence of Certain Changes, Events and Conditions. Since the IHR Balance Sheet Date, and other than in the ordinary course of business consistent with past practice, there has not been, with respect to IHR, any (a) entry into any Contract outside of IHR's approved budget; or (b) incurrence, assumption or guarantee of any indebtedness for borrowed money except unsecured current obligations and Liabilities incurred in the ordinary course of business consistent with past practice.

Section 5.10 Accounts Receivable. The accounts receivable reflected on the Interim Balance Sheet and the accounts receivable arising after the date thereof (a) have arisen from bona fide transactions entered into by IHR involving the advertising time on the IHR Stations or the rendering of services in the ordinary course of business consistent with past practice; (b) constitute only valid, undisputed claims of IHR not subject to claims of set-off or other defenses or counterclaims other than normal cash discounts



accrued in the ordinary course of business consistent with past practice; and (c) subject to a reserve for bad debts shown on the Interim Balance Sheet or, with respect to accounts receivable arising after the Interim Balance Sheet Date, on the accounting records of IHR, are collectible in full within 90 days after billing. The reserve for bad debts shown on the Interim Balance Sheet or, with respect to accounts receivable arising after the Interim Balance Sheet Date, on the accounting records of IHR have been determined in accordance with GAAP, consistently applied, subject to normal year-end adjustments and the absence of disclosures normally made in footnotes.

Section 5.11 Title to Assets. IHR has good and valid (and, in the case of owned Real Property, good and marketable fee simple) title to, or a valid leasehold interest in, all Real Property and personal property and other assets reflected in the IHR Audited Financial Statements or acquired after the IHR Balance Sheet Date, other than properties and assets sold or otherwise disposed of in the ordinary course of business consistent with past practice since the IHR Balance Sheet Date. All such properties and assets (including leasehold interests) are free and clear of Encumbrances except for those items set forth in Section 5.11 of the Disclosure Schedules.

Section 5.12 Insurance. Section 5.12 of the Disclosure Schedules sets forth a true and complete list of all current policies or binders of fire, liability, product liability, umbrella liability, real and personal property, workers' compensation, vehicular, directors' and officers' liability, fiduciary liability and other casualty and property insurance maintained by IHR and relating to the assets, business, operations, employees, officers and directors of IHR (collectively, the "**IHR Insurance Policies**") and true and complete copies of such IHR Insurance Policies have been made available to SMF. Such IHR Insurance Policies are in full force and effect and shall remain in full force and effect following the consummation of the transactions contemplated by this Agreement. IHR has not received any written notice of cancellation of, premium increase with respect to, or alteration of coverage under, any of such IHR Insurance Policies. All premiums due on such IHR Insurance Policies have either been paid or, if due and payable prior to Closing, will be paid prior to Closing in accordance with the payment terms of each IHR Insurance Policy. IHR The Insurance Policies do not provide for any retrospective premium adjustment or other experience-based liability on the part of IHR. All such IHR Insurance Policies (a) are valid and binding in accordance with their terms; (b) are provided by carriers who are financially solvent; and (c) have not been subject to any lapse in coverage. Except as set forth on Section 5.12 of the Disclosure Schedules, there are no claims related to the business of IHR pending under any such IHR Insurance Policies as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights. IHR is not in default under, and has not otherwise failed to comply with, in any material respect, any provision contained in any such IHR Insurance Policy. The IHR Insurance Policies are of the type and in the amounts customarily carried by Persons conducting a business similar to IHR and are sufficient for compliance with all applicable Laws and Contracts to which IHR is a party or by which it is bound.

Section 5.13 Legal Proceedings; Governmental Orders.

(a) Except as set forth in Section 5.13(a) of the Disclosure Schedules, there are no Actions pending or, to IHR's Knowledge, threatened (a) against or by IHR affecting any of its properties or assets; or (b) against or by IHR that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

(b) Except as set forth in Section 5.13(b) of the Disclosure Schedules, there are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against or affecting IHR or any of its properties or assets. IHR is in compliance with the terms of each Governmental Order set forth in Section 5.13(b) of the Disclosure Schedules. No event has occurred or circumstances exist that

may constitute or result in (with or without notice or lapse of time) a violation of any such Governmental Order.

Section 5.14 Compliance With Laws; Permits.

(a) Except as set forth in Section 5.14(a) of the Disclosure Schedules, IHR has complied, and is now complying, with all Laws applicable to it or its business, properties or assets.

(b) All Permits required for IHR to conduct its business have been obtained by it and are valid and in full force and effect. All fees and charges with respect to such Permits as of the date hereof have been paid in full. Section 5.14(b) of the Disclosure Schedules lists all current Permits issued to IHR, including the names of the Permits and their respective dates of issuance and expiration. No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any Permit set forth in Section 5.14(b) of the Disclosure Schedules.

Section 5.15 Tax Status.

(a) IHR is an organization exempt from federal income taxation under Section 501(c)(3) of the Code by virtue of being described in Section 501(c)(3) of the Code.

(b) The purposes, character, activities and methods of operation of IHR have not changed materially since its organization and are not materially different from the purposes, character, activities and methods of operation at the time of its receipt of a determination by the Internal Revenue Service that it was organization described in Section 501(c)(3) of the Code (the “**IHR IRS Determination Letter**”). Section 5.15(b) of the Disclosure Schedules contains a true and correct copy of the IHR IRS Determination Letter.

(c) IHR has not diverted a substantial part of its assets for a purpose or purposes other than the purpose or purposes for which it is organized or operated and disclosed to the Internal Revenue Service in connection with its IHR IRS Determination Letter.

(d) IHR has not operated since its organization in a manner that would result in it being classified as an “action” organization within the meaning of Section 1.501(c)(3)-(1)(c)(3) of the regulations under the Code, including, but not limited to, promoting or attempting to influence legislation by propaganda or otherwise as a substantial part of its activities.

(e) With the exception of the payment of compensation (and payment or reimbursement of expenses) which is not excessive and is for personal services which are reasonable and necessary to carrying out the purposes of IHR, no individual having a personal or private interest in the activities of IHR, nor any individual controlled by any such individual or individuals, has acquired or received, directly or indirectly, any income or assets, regardless of form, of IHR during the current fiscal year, other than as reported (or that will timely be reported) to the Internal Revenue Service by IHR.

(f) IHR is not a “private foundation” within the meaning of Section 590(a) of the Code.

(g) IHR has not received any indication or notice whatsoever to the effect that its exemption under Section 501(c)(3) of the Code has been revoked or modified, or that the Internal Revenue Service is considering revoking or modifying such exemption, or such exemption is not still in full force and effect.

(h) IHR has filed with the Internal Revenue Service all requests for determination, reports and returns required to be filed by it and such requests for determination, reports and returns have not intentionally omitted or misstated any material fact and IHR has notified the Internal Revenue Service of any changes in its organization and operation since the date of the application for the IHR IRS Determination Letter.

Section 5.16 Taxes. Except as set forth in Section 5.16 of the Disclosure Schedules:

(a) All Tax Returns required to be filed on or before the Closing Date by IHR have been, or will be, timely filed. Such Tax Returns are, or will be, true, complete and correct in all respects. All Taxes due and owing by IHR (whether or not shown on any Tax Return) have been, or will be, timely paid.

(b) IHR has withheld and paid each Tax required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, customer, or other party, and complied with all information reporting and backup withholding provisions of applicable Law.

(c) No claim has been made by any taxing authority in any jurisdiction where IHR does not file Tax Returns that it is, or may be, subject to Tax by that jurisdiction.

(d) No extensions or waivers of statutes of limitations have been given or requested with respect to any Taxes of IHR.

(e) All deficiencies asserted, or assessments made, against IHR as a result of any examinations by any taxing authority have been fully paid.

(f) IHR is not a party to any Action by any taxing authority. There are no pending or threatened Actions by any taxing authority.

(g) IHR has delivered to SMF copies of all correspondence, examination reports, assessment notices, and statements of deficiencies received by IHR from federal, state, local or foreign tax authorities claiming any deficiencies in any Tax Return or Tax obligation for all Tax periods ending after December 31, 2013.

(h) There are no Encumbrances for Taxes (other than for current Taxes not yet due and payable) upon the assets of IHR.

Section 5.17 Books and Records. The minute books of IHR, all of which have been made available to SMF, are complete and correct and have been maintained in accordance with sound business practices. The minute books of IHR contain accurate and complete records of all meetings, and actions taken by written consent of, the IHR Board and any committees of the IHR Board, and no meeting, or action taken by written consent, of any such IHR Board or committee has been held for which minutes have not been prepared and are not contained in such minute books. At the Closing, all of those books and records will be in the possession of IHR.

Section 5.18 Related Party Transactions. Except as set forth in Section 5.18 of the Disclosure Schedules, no executive officer or director of IHR (or any of such person's immediate family members or Affiliates or associates) is a party to any Contract with or binding upon IHR or any of its assets, rights or properties or has any interest in any property owned by IHR or has engaged in any transaction with any of the foregoing within the last twelve (12) months.

Section 5.19 Full Disclosure. No representation or warranty by IHR in this Agreement and no statement contained in the Disclosure Schedules to this Agreement or any certificate or other document furnished or to be furnished to SMF or any of its Representatives pursuant to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading.

## **ARTICLE 6**

### **REPRESENTATIONS AND WARRANTIES OF SMF**

Except as set forth in the correspondingly numbered Section of the Disclosure Schedules, SMF represents and warrants to IHR that the statements contained in this Article 6 are true and correct as of the date hereof.

Section 6.01 Organization and Qualification of SMF. SMF is a non-profit corporation duly organized, validly existing and in good standing under the Laws of the state of Wisconsin and has full corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as it has been and is currently conducted. Section 6.01 of the Disclosure Schedules sets forth each jurisdiction in which SMF is licensed or qualified to do business, and SMF is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business as currently conducted makes such licensing or qualification necessary.

Section 6.02 Authority of SMF. SMF has full corporate power and authority to enter into and perform its obligations under this Agreement and the Ancillary Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. Except for approval by the SMF Board, the execution, delivery and performance by SMF of this Agreement and any Ancillary Document to which it is a party and the consummation by SMF of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of SMF and no other corporate proceedings on the part of SMF are necessary to authorize the execution, delivery and performance of this Agreement or to consummate the Merger and the other transactions contemplated hereby and thereby. Approval by the SMF Board is the only other action required in order to authorize SMF to consummate the transactions contemplated by this Agreement. This Agreement has been duly executed and delivered by SMF, and (assuming due authorization, execution and delivery by each other party hereto) this Agreement, upon SMF Board approval, will constitute a legal, valid and binding obligation of SMF enforceable against SMF in accordance with its terms. When each Ancillary Document to which SMF is or will be a party has been duly executed and delivered by SMF (assuming due authorization, execution and delivery by each other party thereto), such Ancillary Document will constitute a legal and binding obligation of SMF enforceable against it in accordance with its terms.

Section 6.03 No Conflicts; Consents. The execution, delivery and performance by SMF of this Agreement and the Ancillary Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, including the Merger, do not and will not: (i) conflict with or result in a violation or breach of, or default under, any provision of the articles of incorporation, by-laws or other organizational documents of SMF ("**SMF Charter Documents**"); (ii) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to SMF; (iii) except as set forth in Section 6.03 of the Disclosure Schedules, require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any Contract to which SMF is a party or by which SMF is bound or to which any of their respective properties and assets are subject or any Permit

affecting the properties, assets or business of SMF; or (iv) result in the creation or imposition of any Encumbrance on any properties or assets of SMF. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to SMF in connection with the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, except for the (i) the FCC Application, (ii) the FCC Consent, and (iii) the filing of the Articles of Merger with the WDFI and the CSOS.

Section 6.04    Members. SMF has no members.

Section 6.05    No Subsidiaries. SMF does not own, or have any interest in any shares or have an ownership interest in any other Person.

Section 6.06    SMF FCC Licenses.

(a)    Section 6.06(a) of the Disclosure contains a true and correct list of the radio stations (including call letters and facility identification numbers) owned and operated by SMF pursuant to the SMF FCC Licenses (the “**SMF Stations**” or the “**SMF FCC Licenses**” as applicable). Section 6.06(a) of the Disclosure Schedules shall be updated as of the Closing Date, and the following representations of this Section 6.06 shall then apply to all such SMF FCC Licenses). SMF is the authorized legal holder of the SMF FCC Licenses. The SMF FCC Licenses are in full force and effect, unimpaired by any action of omission of SMF. To SMF’s Knowledge: (i) the SMF FCC Licenses are all of the licenses, permits or other authorizations issued by the FCC necessary to operate the SMF Stations in the manner as such operation currently are conducted; and (ii) there are no conditions upon the SMF FCC Licenses except those conditions stated thereon or generally applicable to broadcast stations comparable to the SMF Stations. To SMF’s Knowledge, no proceedings are pending or threatened with respect to the SMF Stations, other than proceedings applicable to the radio industry as a whole nor, , to SMF’s Knowledge, , do any facts exist which may reasonably result in the revocation, materially adverse modifications, non-renewal or suspension of any of the SMF FCC Licenses, the denial of any pending material applications related to the SMF FCC Licenses, or, in any material respect, the issuance of any cease and desist order related to the SMF FCC Licenses or which as of the Closing Date may affect the Surviving Corporation’s ability to operate the SMF Stations in accordance with the Communications Laws. To SMF’s Knowledge, no facts, event or circumstances exist or have occurred with respect to SMF or the SMF Stations that would reasonably be likely to cause the FCC not to renew the SMF FCC Licenses in the ordinary course and without undue delay, adverse condition or modification.

(b)    To SMF’s Knowledge, except as disclosed on Section 6.06(b) of the Disclosure Schedules, the SMF Stations are operating in material compliance with the SMF FCC Licenses and the Communications Laws. To SMF’s Knowledge, SMF has filed with the FCC all material reports or applications with respect to the SMF Licenses and the SMF Stations. To SMF’s Knowledge: (i) all materials items required by the FCC to be placed in the local public inspection files of the SMF Stations have been placed in such files and are in the possession or control of SMF, and (ii) all such items are true, correct, and complete in all material respects.

Section 6.07    Financial Statements. Complete copies of SMF’s audited financial statements consisting of the statement of financial position (assets, liabilities and net assets) of SMF as at December 31<sup>st</sup> in each of the years 2013, 2014 and 2015 and the related statements of support and revenues, expenses, and other changes in net assets and statement of cash flows for the years then ended (the “**SMF Audited Financial Statements**”), and unaudited financial statements consisting of the statement of financial position (assets, liabilities and net assets) of SMF as at October 31, 2016 and the related statements of support and revenues, expenses, and other changes in net assets and statement of cash flows

for the ten-month period then ended (the “**SMF Interim Financial Statements**” and together with the Audited Financial Statements, the “**SMF Financial Statements**”) are included in the Disclosure Schedules. The Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the period involved, subject, in the case of the Interim Financial Statements, to normal and recurring year-end adjustments (the effect of which will not be materially adverse) and the absence of notes (that, if presented, would not differ materially from those presented in the Audited Financial Statements). The Financial Statements are based on the books and records of SMF, and fairly present in all material respects the financial condition of SMF as of the respective dates they were prepared and the results of the operations of SMF for the periods indicated. The statement of financial position (assets, liabilities and net assets) of SMF as of December 31, 2015 is referred to herein as the “**SMF Balance Sheet**” and the date thereof as the “**SMF Balance Sheet Date**” and the statement of financial position (assets, liabilities and net assets) SMF as of October 31, 2016 is referred to herein as the “**SMF Interim Balance Sheet**” and the date thereof as the “**SMF Interim Balance Sheet Date.**” SMF maintains a standard system of accounting established and administered in accordance with GAAP.

Section 6.08 Undisclosed Liabilities. SMF has no liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise (“**SMF Liabilities**”), except (a) those which are adequately reflected or reserved against in the SMF Balance Sheet as of the SMF Balance Sheet Date, and (b) those which have been incurred in the ordinary course of business consistent with past practice since the SMF Balance Sheet Date and which are not, individually or in the aggregate, material in amount.

Section 6.09 Absence of Certain Changes, Events and Conditions. Since the SMF Balance Sheet Date, and other than in the ordinary course of business consistent with past practice, there has not been, with respect to SMF, any (a) entry into any Contract outside of SMF’s approved budget; or (b) incurrence, assumption or guarantee of any indebtedness for borrowed money except unsecured current obligations and Liabilities incurred in the ordinary course of business consistent with past practice.

Section 6.10 Accounts Receivable. The accounts receivable reflected on the SMF Interim Balance Sheet and the accounts receivable arising after the date thereof (a) have arisen from bona fide transactions entered into by SMF involving the sale of advertising time on the SMF Stations or the rendering of services in the ordinary course of business consistent with past practice; (b) constitute only valid, undisputed claims of SMF not subject to claims of set-off or other defenses or counterclaims other than normal cash discounts accrued in the ordinary course of business consistent with past practice; and (c) subject to a reserve for bad debts shown on the SMF Interim Balance Sheet or, with respect to accounts receivable arising after the SMF Interim Balance Sheet Date, on the accounting records of SMF, are collectible in full within 90 days after billing. The reserve for bad debts shown on the SMF Interim Balance Sheet or, with respect to accounts receivable arising after the SMF Interim Balance Sheet Date, on the accounting records of SMF have been determined in accordance with GAAP, consistently applied, subject to normal year-end adjustments and the absence of disclosures normally made in footnotes.

Section 6.11 Title to Assets; Real Property. SMF has good and valid (and, in the case of owned Real Property, good and marketable fee simple) title to, or a valid leasehold interest in, all Real Property and personal property and other assets reflected in the SMF Audited Financial Statements or acquired after the SMF Balance Sheet Date, other than properties and assets sold or otherwise disposed of in the ordinary course of business consistent with past practice since the SMF Balance Sheet Date. All such properties and assets (including leasehold interests) are free and clear of Encumbrances except for those items set forth in Section 6.11 of the Disclosure Schedules.

Section 6.12 Insurance. Section 6.12 of the Disclosure Schedules sets forth a true and complete list of all current policies or binders of fire, liability, product liability, umbrella liability, real and

personal property, workers' compensation, vehicular, directors' and officers' liability, fiduciary liability and other casualty and property insurance maintained by SMF and relating to the assets, business, operations, employees, officers and directors of SMF (collectively, the "**SMF Insurance Policies**") and true and complete copies of such SMF Insurance Policies have been made available to IHR. Such SMF Insurance Policies are in full force and effect and shall remain in full force and effect following the consummation of the transactions contemplated by this Agreement. SMF has not received any written notice of cancellation of, premium increase with respect to, or alteration of coverage under, any of such SMF Insurance Policies. All premiums due on such SMF Insurance Policies have either been paid or, if due and payable prior to Closing, will be paid prior to Closing in accordance with the payment terms of each SMF Insurance Policy. The SMF Insurance Policies do not provide for any retrospective premium adjustment or other experience-based liability on the part of SMF. All such SMF Insurance Policies (a) are valid and binding in accordance with their terms; (b) are provided by carriers who are financially solvent; and (c) have not been subject to any lapse in coverage. Except as set forth on Section 6.12 of the Disclosure Schedules, there are no claims related to the business of SMF pending under any such SMF Insurance Policies as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights. SMF is not in default under, and has not otherwise failed to comply with, in any material respect, any provision contained in any such SMF Insurance Policy. The SMF Insurance Policies are of the type and in the amounts customarily carried by Persons conducting a business similar to SMF and are sufficient for compliance with all applicable Laws and Contracts to which SMF is a party or by which it is bound.

Section 6.13    Legal Proceedings; Governmental Orders.

(a)      Except as set forth in Section 6.13(a) of the Disclosure Schedules, there are no Actions pending or, to SMF's Knowledge, threatened (a) against or by SMF affecting any of its properties or assets; or (b) against or by SMF that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

(b)      Except as set forth in Section 6.13(b) of the Disclosure Schedules, there are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against or affecting SMF or any of its properties or assets. SMF is in compliance with the terms of each Governmental Order set forth in Section 6.13(b) of the Disclosure Schedules. No event has occurred or circumstances exist that may constitute or result in (with or without notice or lapse of time) a violation of any such Governmental Order.

Section 6.14    Compliance With Laws; Permits.

(a)      Except as set forth in Section 6.14(a) of the Disclosure Schedules, SMF has complied, and is now complying, with all Laws applicable to it or its business, properties or assets.

(b)      All Permits required for SMF to conduct its business have been obtained by it and are valid and in full force and effect. All fees and charges with respect to such Permits as of the date hereof have been paid in full. Section 6.14(b) of the Disclosure Schedules lists all current Permits issued to SMF, including the names of the Permits and their respective dates of issuance and expiration. No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any Permit set forth in Section 6.14(b) of the Disclosure Schedules.

Section 6.15    Tax Status.

(a) SMF is an organization exempt from federal income taxation under Section 501(c)(3) of the Code by virtue of being described in Section 501(c)(3) of the Code.

(b) The purposes, character, activities and methods of operation of SMF have not changed materially since its organization and are not materially different from the purposes, character, activities and methods of operation at the time of its receipt of a determination by the Internal Revenue Service that it was organization described in Section 501(c)(3) of the Code (the “**SMF IRS Determination Letter**”). Section 6.15(b) of the Disclosure Schedules contains a true and correct copy of the SMF IRS Determination Letter.

(c) SMF has not diverted a substantial part of its assets for a purpose or purposes other than the purpose or purposes for which it is organized or operated and disclosed to the Internal Revenue Service in connection with its SMF IRS Determination Letter.

(d) SMF has not operated since its organization in a manner that would result in it being classified as an “action” organization within the meaning of Section 1.501(c)(3)-(1)(c)(3) of the regulations under the Code, including, but not limited to, promoting or attempting to influence legislation by propaganda or otherwise as a substantial part of its activities.

(e) With the exception of the payment of compensation (and payment or reimbursement of expenses) which is not excessive and is for personal services which are reasonable and necessary to carrying out the purposes of SMF, no individual having a personal or private interest in the activities of SMF, nor any individual controlled by any such individual or individuals, has acquired or received, directly or indirectly, any income or assets, regardless of form, of SMF during the current fiscal year, other than as reported (or that will timely be reported) to the Internal Revenue Service by SMF.

(f) SMF is not a “private foundation” within the meaning of Section 590(a) of the Code.

(g) SMF has not received any indication or notice whatsoever to the effect that its exemption under Section 501(c)(3) of the Code has been revoked or modified, or that the Internal Revenue Service is considering revoking or modifying such exemption, or such exemption is not still in full force and effect.

(h) SMF has filed with the Internal Revenue Service all requests for determination, reports and returns required to be filed by it and such requests for determination, reports and returns have not intentionally omitted or misstated any material fact and SMF has notified the Internal Revenue Service of any changes in its organization and operation since the date of the application for the SMF IRS Determination Letter.

Section 6.16 Taxes. Except as set forth in Section 6.16 of the Disclosure Schedules:

(a) All Tax Returns required to be filed on or before the Closing Date by SMF have been, or will be, timely filed. Such Tax Returns are, or will be, true, complete and correct in all respects. All Taxes due and owing by SMF (whether or not shown on any Tax Return) have been, or will be, timely paid.

(b) SMF has withheld and paid each Tax required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, customer, or other party, and complied with all information reporting and backup withholding provisions of applicable Law.

(c) No claim has been made by any taxing authority in any jurisdiction where SMF does not file Tax Returns that it is, or may be, subject to Tax by that jurisdiction.



(d) No extensions or waivers of statutes of limitations have been given or requested with respect to any Taxes of SMF.

(e) All deficiencies asserted, or assessments made, against SMF as a result of any examinations by any taxing authority have been fully paid.

(f) SMF is not a party to any Action by any taxing authority. There are no pending or threatened Actions by any taxing authority.

(g) SMF has delivered to IHR copies of all correspondence, examination reports, assessment notices, and statements of deficiencies received by SMF from federal, state, local or foreign tax authorities claiming any deficiencies in any Tax Return or Tax obligation for all Tax periods ending after December 31, 2013.

(h) There are no Encumbrances for Taxes (other than for current Taxes not yet due and payable) upon the assets of SMF.

Section 6.17 Books and Records. The minute books of SMF, all of which have been made available to IHR, are complete and correct and have been maintained in accordance with sound business practices. The minute books of SMF contain accurate and complete records of all meetings, and actions taken by written consent of, the SMF Board and any committees of the SMF Board, and no meeting, or action taken by written consent, of any such SMF Board or committee has been held for which minutes have not been prepared and are not contained in such minute books. At the Closing, all of those books and records will be in the possession of SMF.

Section 6.18 Related Party Transactions. Except as set forth in Section 6.18 of the Disclosure Schedules, no executive officer or director of SMF (or any of such person's immediate family members or Affiliates or associates) is a party to any Contract with or binding upon SMF or any of its assets, rights or properties or has any interest in any property owned by SMF or has engaged in any transaction with any of the foregoing within the last twelve (12) months.

Section 6.19 Full Disclosure. No representation or warranty by SMF in this Agreement and no statement contained in the Disclosure Schedules to this Agreement or any certificate or other document furnished or to be furnished to IHR or any of its Representatives pursuant to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading.

## **ARTICLE 7 COVENANTS**

Section 7.01 Conduct of IHR Business Prior to the Closing. From the date hereof until the Closing, except as otherwise provided in this Agreement or consented to in writing by SMF (which consent shall not be unreasonably withheld or delayed), IHR shall (x) conduct the business of IHR in the ordinary course of business consistent with past practice; and (y) use reasonable best efforts to maintain and preserve intact the current organization, business and franchise of IHR and to preserve the rights, franchises, goodwill and relationships of its employees, customers, lenders, suppliers, regulators and others having business relationships with IHR. Without limiting the foregoing, from the date hereof until the Closing Date, IHR shall:

- (a) operate the IHR Stations in all material respects in the ordinary course of business and in accordance with the Communications Laws and all other Laws;
- (b) not adversely modify, and in all material respects maintain in full force and effect, the IHR FCC Licenses and take any action necessary before the FCC or any other Governmental Authority to preserve the IHR FCC Licenses in full force and effect without material adverse changes;
- (c) preserve and maintain all of its Permits;
- (d) pay its debts, Taxes and other obligations when due;
- (e) maintain the properties and assets owned, operated or used by it in the same condition as they were on the date of this Agreement, subject to reasonable wear and tear;
- (f) continue in full force and effect without modification all IHR Insurance Policies, except as required by applicable Law;
- (g) defend and protect its properties and assets from infringement or usurpation;
- (h) perform all of its obligations under all Contracts relating to or affecting its properties, assets or business;
- (i) maintain its books and records in accordance with past practice;
- (j) comply in all material respects with all applicable Laws;
- (k) not take or permit any action that would cause any of the changes, events or conditions described in Section 5.09 to occur; and
- (l) maintain and preserve its status as an organization exempt from taxation under Section 501(c)(3) of the Code and its status as a public charity under Section 509(a) of the Code.

**Notwithstanding the foregoing, until the Effective Time, the personnel, programming and finances of each IHR Station shall be controlled solely by IHR.**

Section 7.02 Conduct of SMF Business Prior to the Closing. From the date hereof until the Closing, except as otherwise provided in this Agreement or consented to in writing by IHR (which consent shall not be unreasonably withheld or delayed), SMF shall (x) conduct the business of SMF in the ordinary course of business consistent with past practice; and (y) use reasonable best efforts to maintain and preserve intact the current organization, business and franchise of SMF and to preserve the rights, franchises, goodwill and relationships of its employees, customers, lenders, suppliers, regulators and others having business relationships with SMF. Without limiting the foregoing, from the date hereof until the Closing Date, SMF shall:

- (a) operate the SMF Stations in all material respects in the ordinary course of business and in accordance with the Communications Laws and all other Laws;
- (b) not adversely modify, and in all material respects maintain in full force and effect, the SMF FCC Licenses and take any action necessary before the FCC or any other Governmental Authority to preserve the SMF FCC Licenses in full force and effect without material adverse changes;

- (c) preserve and maintain all of its Permits;
- (d) pay its debts, Taxes and other obligations when due;
- (e) maintain the properties and assets owned, operated or used by it in the same condition as they were on the date of this Agreement, subject to reasonable wear and tear;
- (f) continue in full force and effect without modification all SMF Insurance Policies, except as required by applicable Law;
- (g) defend and protect its properties and assets from infringement or usurpation;
- (h) perform all of its obligations under all Contracts relating to or affecting its properties, assets or business;
- (i) maintain its books and records in accordance with past practice;
- (j) comply in all material respects with all applicable Laws;
- (k) not take or permit any action that would cause any of the changes, events or conditions described in Section 6.09 to occur; and
- (l) maintain and preserve its status as an organization exempt from taxation under Section 501(c)(3) of the Code and its status as a public charity under Section 509(a) of the Code.

**Notwithstanding the foregoing, until the Effective Time, the personnel, programming and finances of each SMF Station shall be controlled solely by SMF.**

Section 7.03 Access to Information. From the date hereof until the Closing, each party and its Representatives shall (a) afford the other party and its Representatives full and free access to and the right to inspect all of the Real Property, properties, assets, premises, books and records, Contracts, the IHR Stations, the SMF Stations, and other documents and data related to the party; (b) furnish the requesting party with such financial, operating and other data and information related to the party as the requesting party may reasonably request; and (c) instruct its Representatives to cooperate with the requesting party in its investigation of the party. Without limiting the foregoing, each party shall permit the other party and its Representatives to conduct environmental due diligence of the party and the party's Real Property, including the collecting and analysis of samples of indoor or outdoor air, surface water, groundwater or surface or subsurface land on, at, in, under or from the party and the party's Real Property. Any investigation pursuant to this Section 7.03 shall be conducted in such manner as not to interfere unreasonably with the conduct of the business of the other party. No investigation by a party or other information received by a party shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by the party in this Agreement.

Section 7.04 No Solicitation of Other Bids.

(a) Each party shall not, and shall not authorize or permit any of its Affiliates or any of its or their Representatives to, directly or indirectly, (i) encourage, solicit, initiate, facilitate or continue inquiries regarding an Acquisition Proposal; (ii) enter into discussions or negotiations with, or provide any information to, any Person concerning a possible Acquisition Proposal; or (iii) enter into any agreements or other instruments (whether or not binding) regarding an Acquisition Proposal. Each party shall immediately cease and cause to be terminated, and shall cause its Affiliates and all of its and their

Representatives to immediately cease and cause to be terminated, all existing discussions or negotiations with any Persons conducted heretofore with respect to, or that could lead to, an Acquisition Proposal. For purposes hereof, “**Acquisition Proposal**” shall mean any inquiry, proposal or offer from any Person (other than a party hereto or any of its Affiliates) concerning (i) a merger, consolidation, liquidation, recapitalization, or other business combination transaction involving the party; or (ii) the sale, lease, exchange or other disposition of any significant portion of the party’s properties or assets.

(b) In addition to the other obligations under this Section 7.04, a party shall promptly (and in any event within three (3) Business Days after receipt thereof by the party or its Representatives) advise the other party orally and in writing of any Acquisition Proposal, any request for information with respect to any Acquisition Proposal, or any inquiry with respect to or which could reasonably be expected to result in an Acquisition Proposal, the material terms and conditions of such request, Acquisition Proposal or inquiry, and the identity of the Person making the same.

(c) Each party agrees that the rights and remedies for noncompliance with this Section 7.04 shall include having such provision specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach shall cause irreparable injury to the party and that money damages would not provide an adequate remedy to the party.

#### Section 7.05 Notice of Certain Events.

(a) From the date hereof until the Closing, IHR shall promptly notify SMF and SMF shall promptly notify IHR of any oral or written communication from the FCC concerning the FCC Application.

(b) From the date hereof until the Closing, each party shall promptly notify the other party in writing of:

(i) any fact, circumstance, event or action the existence, occurrence or taking of which (A) has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (B) has resulted in, or could reasonably be expected to result in, any representation or warranty made by the party hereunder not being true and correct or (C) has resulted in, or could reasonably be expected to result in, the failure of any of the conditions set forth in Article 9 to be satisfied;

(ii) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;

(iii) any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement; and

(iv) any Actions commenced or, to the party’s Knowledge, threatened against, relating to or involving or otherwise affecting the party that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Article 5 or Article 6 or that relates to the consummation of the transactions contemplated by this Agreement.

(c) A party’s receipt of information pursuant to this Section 7.05 shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by the other party in this Agreement and shall not be deemed to amend or supplement the Disclosure Schedules.

Section 7.06 Resignations. IHR shall deliver to SMF written resignations, effective as of the Closing Date, of the officers and directors of IHR set forth on Section 7.06 of the Disclosure Schedules at least five (5) Business Days prior to the Closing.

Section 7.07 Governmental Approvals and Consents.

(a) Each party hereto shall, as promptly as possible, (i) make, or cause or be made, the FCC Application and all other filings and submissions required under any Law applicable to such party or any of its Affiliates; and (ii) use reasonable best efforts to obtain, or cause to be obtained, the FCC Consent and all other consents, authorizations, orders and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement and the Ancillary Documents. Each party shall cooperate fully with the other party and its Affiliates in promptly seeking to obtain all such consents, authorizations, orders and approvals. The parties hereto shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of the FCC Consent or any other required consents, authorizations, orders and approvals.

(b) IHR and SMF shall use reasonable best efforts to give all notices to, and obtain all consents from, all third parties that are described in Section 5.03 and Section 6.03 of the Disclosure Schedules.

(c) Without limiting the generality of the parties' undertakings pursuant to subsections (a) and (b) above, each of the parties hereto shall use all reasonable best efforts to:

(i) respond to any inquiries by any Governmental Authority regarding antitrust or other matters with respect to the transactions contemplated by this Agreement or any Ancillary Document;

(ii) avoid the imposition of any order or the taking of any action that would restrain, alter or enjoin the transactions contemplated by this Agreement or any Ancillary Document; and

(iii) in the event any Governmental Order adversely affecting the ability of the parties to consummate the transactions contemplated by this Agreement or any Ancillary Document has been issued, to have such Governmental Order vacated or lifted.

(d) All analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals made by or on behalf of either party before any Governmental Authority or the staff or regulators of any Governmental Authority, in connection with the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between IHR or SMF and Governmental Authorities in the ordinary course of business, any disclosure which is not permitted by Law or any disclosure containing confidential information) shall be disclosed to the other party hereunder in advance of any filing, submission or attendance, it being the intent that the parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals. Each party shall give notice to the other party with respect to any meeting, discussion, appearance or contact with any Governmental Authority or the staff or regulators of any Governmental Authority, with such notice being sufficient to provide the other party with the opportunity to attend and participate in such meeting, discussion, appearance or contact.

(e) Notwithstanding the foregoing, nothing in this Section 7.07 shall require, or be construed to require, SMF or any of its Affiliates to agree to (i) sell, hold, divest, discontinue or limit, before or after the Closing Date, any assets, businesses or interests of SMF, IHR or any of their respective Affiliates; (ii) any conditions relating to, or changes or restrictions in, the operations of any such assets, businesses or interests which, in either case, could reasonably be expected to result in a Material Adverse Effect or materially and adversely impact the economic or business benefits to SMF of the transactions contemplated by this Agreement; or (iii) any material modification or waiver of the terms and conditions of this Agreement.

Section 7.08 Directors' and Officers' Indemnification and Insurance.

(a) SMF agree that all rights to indemnification, advancement of expenses and exculpation by IHR now existing in favor of each Person who is now, or has been at any time prior to the date hereof or who becomes prior to the Effective Time an officer or director of IHR (each an “**D&O Indemnified Party**”) as provided in the IHR Charter Documents, in each case as in effect on the date of this Agreement, or pursuant to any other Contracts in effect on the date hereof and disclosed in Section 7.08 of the Disclosure Schedules, shall be assumed by the Surviving Corporation in the Merger, without further action, at the Effective Time and shall survive the Merger and shall remain in full force and effect in accordance with their terms, and, in the event that any proceeding is pending or asserted or any claim made during such period, until the final disposition of such proceeding or claim.

(b) For six (6) years after the Effective Time, to the fullest extent permitted under applicable Law, the Surviving Corporation (the “**D&O Indemnifying Party**”) shall indemnify, defend and hold harmless each D&O Indemnified Party against all losses, claims, damages, liabilities, fees, expenses, judgments and fines arising in whole or in part out of actions or omissions in their capacity as such occurring at or prior to the Effective Time (including in connection with the transactions contemplated by this Agreement), and shall reimburse each D&O Indemnified Party for any legal or other expenses reasonably incurred by such D&O Indemnified Party in connection with investigating or defending any such losses, claims, damages, liabilities, fees, expenses, judgments and fines as such expenses are incurred, subject to the Surviving Corporation's receipt of an undertaking by such D&O Indemnified Party to repay such legal and other fees and expenses paid in advance if it is ultimately determined in a final and non-appealable judgment of a court of competent jurisdiction that such D&O Indemnified Party is not entitled to be indemnified under applicable Law; provided, however, that the Surviving Corporation will not be liable for any settlement effected without the Surviving Corporation's prior written consent (which consent shall not be unreasonably withheld or delayed).

(c) Prior to the Closing, IHR shall obtain and fully pay for “tail” insurance policies with a claims period of at least six (6) years from the Effective Time with at least the same coverage and amount and containing terms and conditions that are not less advantageous to the directors and officers of IHR as IHR's existing policies with respect to claims arising out of or relating to events which occurred before or at the Effective Time (including in connection with the transactions contemplated by this Agreement) (the “**D&O Tail Policy**”). IHR shall bear the cost of the D&O Tail Policy, and such costs, to the extent not paid prior to the Closing, shall be included in the determination of Transaction Expenses. During the term of the D&O Tail Policy, the Surviving Corporation shall not take any action following the Closing to cause the D&O Tail Policy to be cancelled or any provision therein to be amended or waived; provided, that the Surviving Corporation or any Affiliate thereof shall be obligated to pay any premiums or other amounts in respect of such D&O Tail Policy.

(d) The obligations of the Surviving Corporation under this Section 7.08 shall survive the consummation of the Merger and shall not be terminated or modified in such a manner as to adversely affect any D&O Indemnified Party to whom this Section 7.08 applies without the consent of such affected

D&O Indemnified Party (it being expressly agreed that the D&O Indemnified Parties to whom this Section 7.08 applies shall be third-party beneficiaries of this Section 7.08, each of whom may enforce the provisions of this Section 7.08).

(e) In the event the Surviving Corporation or any of its successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity in such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any Person, then, and in either such case, proper provision shall be made so that the successors and assigns of the Surviving Corporation, as the case may be, shall assume all of the obligations set forth in this Section 7.08. The agreements and covenants contained herein shall not be deemed to be exclusive of any other rights to which any Indemnified Party is entitled, whether pursuant to Law, Contract or otherwise. Nothing in this Agreement is intended to, shall be construed to or shall release, waive or impair any rights to directors' and officers' insurance claims under any policy that is or has been in existence with respect to IHR or its officers, directors and employees, it being understood and agreed that the indemnification provided for in this Section 7.08 is not prior to, or in substitution for, any such claims under any such policies.

Section 7.09 Closing Conditions. From the date hereof until the Closing, each party hereto shall use reasonable best efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in Article 9 hereof.

Section 7.10 Public Announcements. Unless otherwise required by applicable Law (based upon the reasonable advice of counsel), no party to this Agreement shall make any public announcements in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the prior written consent of the other party (which consent shall not be unreasonably withheld or delayed), and the parties shall cooperate as to the timing and contents of any such announcement.

Section 7.11 Further Assurances. At and after the Effective Time, the officers and directors of the Surviving Corporation shall be authorized to execute and deliver, in the name and behalf of IHR or SMF, any deeds, bills of sale, assignments or assurances and to take and do, in the name and on behalf of IHR or SMF, any other actions and things to vest, perfect or confirm of record or otherwise in the Surviving Corporation any and all right, title and interest in, to and under any of the rights, properties or assets of IHR acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger.

Section 7.12 Control of IHR Stations. Between the date of this Agreement and the Closing Date, SMF shall not control, manage or supervise the operations of the IHR Stations or conduct of IHR's business, all of which shall remain the sole responsibility and under the control of IHR.

Section 7.13 Control of SMF Stations. Between the date of this Agreement and the Closing Date, IHR shall not control, manage or supervise the operations of the SMF Stations or conduct of SMF's business, all of which shall remain the sole responsibility and under the control of SMF.

## **ARTICLE 8 TAX MATTERS**

Section 8.01 Tax Covenants. Without the prior written consent of the other party, which consent will not be unreasonably withheld, prior to the Closing, each party agrees that it shall not make, change or rescind any Tax election or amend any Tax Return.

Section 8.02 Tax Returns.

(a) Each party shall prepare and timely file, or cause to be prepared and timely filed, all Tax Returns required to be filed by it that are due on or before the Closing Date (taking into account any extensions), and shall timely pay all Taxes that are due and payable on or before the Closing Date (taking into account any extensions), and shall timely pay all Taxes that are due and payable on or before the Closing Date. Any such Tax Return shall be prepared in a manner consistent with past practice (unless otherwise required by Law).

(b) The Surviving Corporation shall prepare and timely file, or cause to be prepared and timely filed, all Tax Returns required to be filed by IHR and SMF after the Closing Date. Any such Tax Return shall be prepared in a manner consistent with past practice (unless otherwise required by Law)

**ARTICLE 9**  
**CONDITIONS TO CLOSING**

Section 9.01 Conditions to Obligations of All Parties. The obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions:

(a) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Governmental Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.

(b) IHR shall have received all consents, authorizations, orders and approvals from the Governmental Authorities referred to in Section 5.03 and SMF shall have received all consents, authorizations, orders and approvals from the Governmental Authorities referred to in Section 6.03, in each case, in form and substance reasonably satisfactory to SMF and IHR, and no such consent, authorization, order and approval shall have been revoked.

(c) The FCC Consent shall have been issued by the FCC and shall have become a Final Order.

(d) The parties shall have raised a minimum of \$30,000,000.00 pursuant to their joint capital campaign.

(e) The parties have determined that IHR's insurance policies will continue to provide coverage for all pending claims and on-going law suits.

Section 9.02 Conditions to Obligations of SMF. The obligations of SMF to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or SMF's waiver, at or prior to the Closing, of each of the following conditions:

(a) Other than the representations and warranties of IHR contained in Section 5.01, Section 5.02 and Section 5.07 the representations and warranties of IHR contained in this Agreement, the Ancillary Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties



that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of IHR contained in Section 5.01, Section 5.02 and Section 5.07 shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).

(b) IHR shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the Ancillary Documents to be performed or complied with by it prior to or on the Closing Date; provided, that, with respect to agreements, covenants and conditions that are qualified by materiality, IHR shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(c) No Action shall have been commenced against SMF or IHR, which would prevent the Closing. No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any transaction contemplated hereby.

(d) All approvals, consents and waivers that are listed on Section 5.03 of the Disclosure Schedules shall have been received, and executed counterparts thereof shall have been delivered to SMF at or prior to the Closing.

(e) From the date of this Agreement, there shall not have occurred any Material Adverse Effect regarding IHR, nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, could reasonably be expected to result in a Material Adverse Effect regarding IHR.

(f) IHR shall have delivered each of the closing deliverables set forth in Section 2.03(a).

(g) The FCC Consent shall have been issued by the FCC and shall have become a Final Order without any condition materially adverse to SMF.

(h) On or before February 28, 2017, the SMF Board shall have passed resolutions approving this Agreement.

(i) On or before January 31, 2017, IHR has delivered all Disclosure Schedules referenced in this Agreement to be completed by IHR to SMF for review.

(j) On or before February 28, 2017, SMF has reviewed and approved, in its sole discretion, all Disclosure Schedules delivered by IHR.

Section 9.03 Conditions to Obligations of IHR. The obligations of IHR to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or IHR's waiver, at or prior to the Closing, of each of the following conditions:

(a) Other than the representations and warranties of SMF contained in Section 6.01, Section 6.02 and Section 6.07, the representations and warranties of SMF contained in this Agreement, the Ancillary Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties

that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of SMF contained in Section 6.01, 6.02 and Section 6.07 shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).

(b) SMF shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the Ancillary Documents to be performed or complied with by them prior to or on the Closing Date; provided, that, with respect to agreements, covenants and conditions that are qualified by materiality, SMF shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(c) No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any material transaction contemplated hereby.

(d) All approvals, consents and waivers that are listed on Section 6.03 of the Disclosure Schedules shall have been received, and executed counterparts thereof shall have been delivered to IHR at or prior to the Closing.

(e) From the date of this Agreement, there shall not have occurred any Material Adverse Effect regarding SMF, nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, could reasonably be expected to result in a Material Adverse Effect regarding SMF.

(f) SMF shall have delivered each of the closing deliverables set forth in Section 2.03(b).

(g) The FCC Consent shall have been issued by the FCC and shall have become a Final Order without any condition materially adverse to IHR.

(i) On or before January 31, 2017, SMF has delivered all Disclosure Schedules referenced in this Agreement to be completed by SMF to IHR for review.

(j) On or before February 28, 2017, IHR has reviewed and approved, in its sole discretion, all Disclosure Schedules delivered by SMF.

## **ARTICLE 10 TERMINATION**

Section 10.01 Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written consent of IHR and SMF;

(b) by SMF by written notice to IHR if:

(i) SMF is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by IHR pursuant to this Agreement that would give rise to the failure of any of the conditions specified in Article 9 and such breach, inaccuracy or failure has not been cured by IHR within ten (10) days of IHR's receipt of written notice of such breach from SMF; or

(ii) any of the conditions set forth in Section 9.01 or Section 9.02 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by June 30, 2017, unless such failure shall be due to the failure of SMF to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing;

(c) by IHR by written notice to SMF if:

(i) IHR is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by SMF pursuant to this Agreement that would give rise to the failure of any of the conditions specified in Article 9 and such breach, inaccuracy or failure has not been cured by SMF within ten (10) days of SMF's receipt of written notice of such breach from IHR; or

(ii) any of the conditions set forth in Section 9.01 or Section 9.03 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by June 30, 2017, unless such failure shall be due to the failure of IHR to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing; or

(d) by SMF or IHR as specifically provided in Section 4.02(c); or

(e) by SMF or IHR if there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited or any Governmental Authority shall have issued a Governmental Order restraining or enjoining the transactions contemplated by this Agreement, and such Governmental Order shall have become final and non-appealable.

Section 10.02 Effect of Termination. In the event of the termination of this Agreement in accordance with this Article, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto except:

(a) as set forth in this Article 10, Article 11 and Article 12 hereof; and

(b) that nothing herein shall relieve any party hereto from liability for any willful breach of any provision hereof.

## **ARTICLE 11 CONFIDENTIALITY**

Section 11.01 Definition of Confidential Information.

(a) As used in this Article 11, the term "**Confidential Information**" includes any and all of the following information of SMF or IHR that has been or may hereafter be disclosed in any form, whether in writing, orally, electronically or otherwise, or otherwise made available by observation, inspection or otherwise by either party or its Representatives (collectively, a "**Disclosing Party**") to the other party or its Representatives (collectively, a "**Receiving Party**");

(i) all information that is a trade secret under applicable trade secret or other law;

(ii) all information concerning product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current and planned research and development, current and planned

manufacturing or distribution methods and processes, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, computer hardware, software and computer software and database technologies, systems, structures and architectures;

(iii) all information concerning the business and affairs of the Disclosing Party (which includes historical and current financial statements, financial projections and budgets, tax returns and accountants' materials, historical, current and projected sales, capital spending budgets and plans, business plans, strategic plans, marketing and advertising plans, publications, client and customer lists and files, contracts, the names and backgrounds of key personnel and personnel training techniques and materials, however documented), and all information obtained from review of the Disclosing Party's documents or property or discussions with the Disclosing Party regardless of the form of the communication; and

(iv) all notes, analyses, compilations, studies, summaries and other material prepared by the Receiving Party to the extent containing or based, in whole or in part, upon any information included in the foregoing.

(b) Any trade secrets of a Disclosing Party shall also be entitled to all of the protections and benefits under applicable trade secret Law and any other applicable Law. If any information that a Disclosing Party deems to be a trade secret is found by a court of competent jurisdiction not to be a trade secret for purposes of this Article 11, such information shall still be considered Confidential Information of that Disclosing Party for purposes of this Article 11 to the extent included within the definition. In the case of trade secrets, each of SMF and IHR hereby waives any requirement that the other party submit proof of the economic value of any trade secret or post a bond or other security.

#### Section 11.02 Restricted Use of Confidential Information.

(a) Each Receiving Party acknowledges the confidential and proprietary nature of the Confidential Information of the Disclosing Party and agrees that such Confidential Information (i) shall be kept confidential by the Receiving Party; (ii) shall not be used for any reason or purpose other than to evaluate and consummate the Merger; and (iii) without limiting the foregoing, shall not be disclosed by the Receiving Party to any Person, except in each case as otherwise expressly permitted by the terms of this Agreement or with the prior written consent of an authorized representative of IHR with respect to Confidential Information of IHR (each, a “**IHR Contact**”) or an authorized representative of SMF with respect to Confidential Information of SMF (each, a “**SMF Contact**”). Each of IHR and SMF shall disclose the Confidential Information of the other party only to its Representatives who require such material for the purpose of evaluating the Merger and are informed by IHR or SMF, as the case may be, of the obligations of this Article 11 with respect to such information. Each of SMF and IHR shall (iv) enforce the terms of this Article 11 as to its respective Representatives; (v) take such action to the extent necessary to cause its Representatives to comply with the terms and conditions of this Article 11; and (vi) be responsible and liable for any breach of the provisions of this Article 11 by it or its Representatives.

(b) From and after the Closing, the provisions of Section 11.02(a) above shall not apply to or restrict in any manner the Surviving Corporation's use of any Confidential Information of IHR.

Section 11.03 Exceptions. Section 11.02(a) does not apply to that part of the Confidential Information of a Disclosing Party that a Receiving Party demonstrates (a) was, is or becomes generally available to the public other than as a result of a breach of this Article 11 by the Receiving Party or its Representatives; (b) was or is developed by the Receiving Party independently of and without reference to any Confidential Information of the Disclosing Party; or (c) was, is or becomes available to the

Receiving Party on a nonconfidential basis from a third party not bound by a confidentiality agreement or any legal, fiduciary or other obligation restricting disclosure.

Section 11.04 Legal Proceedings. If a Receiving Party becomes legally compelled (by oral questions, interrogatories, requests for information or documents, subpoena, civil or criminal investigative demand or similar process) to make any disclosure that is prohibited or otherwise constrained by this Article 11, Receiving Party shall provide Disclosing Party with prompt notice of such legal proceedings so that it may seek an appropriate protective order or other appropriate remedy or waive compliance with the provisions of this Article 11. In the absence of a protective order or Receiving Party receiving such a waiver from Disclosing Party, Receiving Party may disclose that portion (and only that portion) of the Confidential Information of Disclosing Party that, based upon advice of Receiving Party's counsel, Receiving Party is legally compelled to disclose, provided, however, that Receiving Party shall use reasonable efforts to obtain reliable assurance that confidential treatment will be accorded by any Person to whom any Confidential Information is so disclosed. The provisions of this Section 11.04 do not apply to any proceedings between the parties to this Agreement.

## **ARTICLE 12 MISCELLANEOUS**

Section 12.01 Expenses. Except as otherwise expressly provided herein, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred; provided, however, SMF and IHR shall be equally responsible for the FCC Fee and all other filing and other similar fees payable in connection with the FCC Application.

Section 12.02 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 12.02):

If to IHR:  
IHR EDUCATIONAL BROADCASTING  
3256 Penryn Road, Suite 100  
Loomis, CA 95659  
Facsimile: (866) 334-0239  
E-mail: dsherman@ihradio.org  
Attention: President

with a copy to:  
James F. Sweeney  
Attorney at Law  
P.O. Box 320130  
1543 Sloat Boulevard  
San Francisco, CA 94132  
Facsimile: (415) 592-9477

E-mail: jfs@sweeney.legal

If to SMF:  
STARBOARD MEDIA FOUNDATION, INC.  
1496 Bellevue Street, Suite 202  
P.O. Box 10707  
Green Bay, WI 54307-0707  
Facsimile: (920) 465-9986  
E-mail: avanden@relevantradio.com  
Attention: Chief Financial Officer

with a copy to:  
One Law Group, S.C.  
444 Reid Street, Suite 200  
P.O. Box 5637  
De Pere, WI 54115-5637  
Facsimile: (920) 336-5769  
E-mail: mbartels@onelawgroupsc.com  
Attention: Mark A. Bartels

Section 12.03 Interpretation. For purposes of this Agreement, (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Disclosure Schedules and Exhibits mean the Articles and Sections of, and Disclosure Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Disclosure Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

Section 12.04 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 12.05 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 12.06 Entire Agreement. This Agreement and the Ancillary Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the Ancillary Documents, the Exhibits and

Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

Section 12.07 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder.

Section 12.08 No Third-party Beneficiaries. Except as provided in Section 7.08, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 12.09 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by SMF and IHR at any time prior to the Effective Time. Any failure of SMF or IHR to comply with any obligation, covenant, agreement or condition herein may be waived by IHR (with respect to any failure by SMF) or by SMF (with respect to any failure by IHR), respectively, only by a written instrument signed by the party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

Section 12.10 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of Wisconsin without giving effect to any choice or conflict of law provision or rule (whether of the State of Wisconsin or any other jurisdiction).

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE ANCILLARY DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF WISCONSIN IN EACH CASE LOCATED IN THE CITY OF GREEN BAY AND COUNTY OF BROWN, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE ANCILLARY DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE ANCILLARY DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS

REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 12.10(c).

Section 12.11 Specific Performance. The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

Section 12.12 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

**[BALANCE OF PAGE LEFT BLANK. SIGNATURES ON NEXT PAGE.]**



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

**SMF:**

**STARBOARD MEDIA FOUNDATION, INC.**

By: Rev. Francis J. Hoffman  
Reverend Francis J. Hoffman, Executive Director

Attest: \_\_\_\_\_  
John P. Cavil, Secretary

**IHR:**

**IHR EDUCATIONAL BROADCASTING**

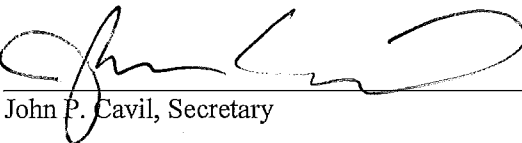
By: \_\_\_\_\_  
Douglas M. Sherman, President

Attest: \_\_\_\_\_  
Eugene J. Zurlo, Secretary

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

**SMF:**  
**STARBOARD MEDIA FOUNDATION, INC.**

By: \_\_\_\_\_  
Reverend Francis J. Hoffman, Executive Director

Attest:  \_\_\_\_\_  
John P. Cavil, Secretary

**IHR:**  
**IHR EDUCATIONAL BROADCASTING**

By: \_\_\_\_\_  
Douglas M. Sherman, President

Attest: \_\_\_\_\_  
Eugene J. Zurlo, Secretary


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**SMF:**  
**STARBOARD MEDIA FOUNDATION, INC.**

By: \_\_\_\_\_  
Reverend Francis J. Hoffman, Executive Director

Attest: \_\_\_\_\_  
John P. Cavil, Secretary

**IHR:**  
**IHR EDUCATIONAL BROADCASTING**

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Douglas M. Sherman, President

Attest: \_\_\_\_\_  
Eugene J. Zurlo, Secretary

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By: Rev. Francis J. Hoffman  
Reverend Francis J. Hoffman, Executive Director

Attest: \_\_\_\_\_  
John P. Cavil, Secretary

**IHR:**  
**IHR EDUCATIONAL BROADCASTING**

By: \_\_\_\_\_  
Douglas M. Sherman, President

Attest: Eugene J. Zurlo  
Eugene J. Zurlo, Secretary

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

**SMF:**  
**STARBOARD MEDIA FOUNDATION, INC.**

By: \_\_\_\_\_  
Reverend Francis J. Hoffman, Executive Director

Attest: \_\_\_\_\_  
John P. Cavi, Secretary

**IHR:**  
**IHR EDUCATIONAL BROADCASTING**

By: \_\_\_\_\_  
Douglas M. Sherman, President

Attest: \_\_\_\_\_  
Eugene J. Zurlo, Secretary