

# **ASSET PURCHASE AGREEMENT**

*by and between*

**MPS MEDIA OF PORTLAND LICENSE, LLC**

*and*

**TRIUMPH BROADCASTING, LLC**

*for the Sale and Purchase of*

*Station WPME(DT), Lewiston, Maine, Facility No. 48408*

## **ASSET PURCHASE AGREEMENT**

**THIS ASSET PURCHASE AGREEMENT** (“Agreement”), made and entered into as of this 2<sup>nd</sup> day of March, 2012, by and among **MPS MEDIA OF PORTLAND LICENSE, LLC**, a Delaware limited liability company (“Seller”) and **TRIUMPH MEDIA, LLC**, a limited liability company organized under the laws of the State of Delaware (collectively, “Buyer”).

### **WITNESSETH:**

**WHEREAS**, Seller is licensee of Station WPME(DT), Lewiston, Maine, Facility No. 48408 (the “Station”); and

**WHEREAS**, Seller owns or leases and desires to sell and/or assign, and Buyer desires to be assigned the broadcast license for the Station, and acquire ownership of the remainder of certain of the assets, property, and business used in the operation of the Station; and

**WHEREAS**, the assignment of the license of the Station is subject to the prior approval of the Federal Communications Commission (the “Commission”).

**NOW, THEREFORE**, the parties, intending to be legally bound, agree as follows:

### **SECTION 1 ASSETS TO BE SOLD**

1.1 On the Closing Date, Seller shall sell, assign, transfer, convey, set over, and deliver to Buyer, and Buyer shall purchase and/or accept assignment of the assets more fully described in Paragraphs 1.1.1 through 1.1.5 below, and listed on **Schedule 1.1.1** through **Schedule 1.1.4** hereto (hereinafter collectively the “Assets”), free and clear of any security interests, claims, encumbrances, liens, or liabilities except for Permitted Liens and the “Assumed Obligations” (as defined in Paragraph 5.1). “Permitted Liens” shall consist only of (i) liens for taxes, assessments, water and sewer charges, license fees, and all other fees, special assessments, and charges assessed or imposed by a public body upon the Assets or any part thereof, provided such fees, assessments, or taxes are not yet due and payable or are being contested in good faith in an appropriate proceeding; (ii) zoning laws and ordinances; (iii) rights reserved to any governmental authority to regulate the affected property; (iv) liens that will be released at or prior to Closing; and (v) easements, rights of way, building and use restrictions, and other exceptions that do not in any material respect detract from the value of the property subject thereto or impair the use thereof in the ordinary course of the business of the Station. The Assets are specifically the following:

1.1.1 **Authorizations**. All licenses, permits, and authorizations issued or granted by the Commission for the operation of, or used in connection with the operation of, the Station and all applications filed with the Commission (hereinafter “Commission Authorizations”), included but which are not limited to those listed in **Schedule 1.1.1**. All franchises, licenses, permits, and authorizations issued by any administrative body or licensing

authority or governmental or regulatory agency, other than Commission Authorizations, used in connection with the operation of the Station (hereinafter "Other Authorizations") are listed in **Schedule 1.1.1**.

1.1.2 **Tangible Personal Property**. [Intentionally omitted.]

1.1.3 **Agreements**. All Seller's rights to and in (a) the contracts and agreements to which Seller or the Station is a party and are listed in **Schedule 1.1.3**; (b) all renewals or extensions thereof in the ordinary course of business; and (c) all contracts, agreements, and leases, related exclusively to the Station, which may be entered into or acquired by the Seller between the date hereof and the Closing Date, in accordance with Sections 8.1.4 and 8.2.6 below (hereinafter collectively "Assumed Agreements"). Without limiting the generality of the foregoing, Seller shall also assign and Buyer assume (i) all right, title, and interest of Seller in and to all orders and agreements for the sale of advertising time and for the production of any programming exclusively on the Station for cash, which are listed on **Schedule 1.1.3**; (ii) all trade, barter, and similar agreements for the sale of advertising time and for the production of any programming exclusively on the Station other than for cash, which are listed on **Schedule 1.1.3**; and (iii) all such orders and agreements for advertising time entered into between the date hereof and the Closing Date in the ordinary course of business, to the extent the foregoing have not been performed as of the Closing Date (hereinafter collectively "Advertising Contracts" and, together with the Assumed Agreements, the "Contracts"). Notwithstanding subparagraph (iii) above, the only agreements for advertising time for trade, barter, or similar arrangement that Buyer shall be required to assume are listed on **Schedule 1.1.3**.

1.1.4 **Intangibles**. All right, title, and interest of Seller in and to logos, jingles, marketing plans, copyrights, trademarks, trade names, and other intangible property of Seller set forth on **Schedule 1.1.4**, and in any call sign associated with the Station (hereinafter collectively the "Intangibles"). Only those websites and domain names specifically identified on **Schedule 1.1.4** shall be conveyed or licensed to Buyer at the Closing.

1.1.5 **Business Records**. Copies of engineering, advertising reports, programming studies, consulting reports, computing software, marketing data, and business records other than personnel records, relating solely to the business or operation of the Station or to Assets or Contracts assumed by Buyer (hereinafter collectively "Business Records").

1.2 **Excluded Assets**. The Assets shall not include any assets not explicitly identified or described under Paragraphs 1.1.1 through 1.1.5 and the Schedules thereunder, including by way of example and not limitation the following assets and those assets described on **Schedule 1.2** hereto, along with all rights, title and interest therein, which shall be referred to as the "Excluded Assets":

1.2.1 Any cash, cash equivalents, or similar type investments of Seller, such as certificates of deposit, Treasury bills, and other marketable securities on hand and/or in banks;

1.2.2 Seller's accounts receivable for services performed by Seller in connection with the operation of the Station prior to Closing ("Seller's Accounts Receivable") as provided in Section 1.4 hereof;

1.2.3 Any claims, rights, and interest of Seller to any (i) refunds of taxes or fees of any nature whatsoever or (ii) deposits or utility deposits, which in each case relate solely to the period prior to the Closing Date;

1.2.4 Any contracts of Seller other than sales contracts not specifically assumed by Buyer;

1.2.5 Seller's rights, title or interest in or to any websites or domain names not expressly specified on **Schedule 1.1.4**;

1.2.6 Contracts of insurance, including the cash surrender value thereof, and all insurance proceeds or claims made by Seller with respect to matters arising prior to the Closing Date;

1.2.7 Any pension, profit sharing, or cash or deferred (Section 401(k)) plans and trusts and the assets thereof and any other employee benefit plan or arrangement and the assets thereof, if any, maintained by Seller; and

1.2.8 Seller's rights title and/or interests in any property of any kind relating to the Station or Seller that is not used exclusively in the operation of the Station *and* is used or useful in the operation of any other broadcast station owned, operated or party to a joint sales agreement by Seller, including but not limited to the items listed on **Schedule 1.2.8** (together, the "Shared Assets"), *provided, however*, that none of the items listed in **Schedule 1.1.2** shall be property to be excluded as Shared Assets.

1.3 **Satisfaction of Liens.** No later than ten (10) business days prior to Closing, Seller shall complete a search for liens and encumbrances by a reputable lien search company, current as of thirty (30) days from the anticipated Closing Date, the results of which shall be provided to Buyer. Notwithstanding the definition of "Permitted Liens" in Paragraph 1.1 hereof, Seller shall have no obligation under this Section 1.3 to conduct legal research of zoning laws or ordinances, rights, or powers reserved to government authorities, or other legislation, regulation or judicial or administrative rulings of general applicability which may affect the Assets. Prior to or at Closing (or if closing proceeds are to be used, within a reasonable period following assignment), Seller shall cause all liens on or relating to any of the Assets (other than Permitted Liens), to be released, extinguished, and discharged in full, and shall deliver to Buyer instruments releasing, extinguishing, and discharging all such liens, and all rights and claims of any holder(s) of any of such liens with respect to any of the Assets, all in such form and substance as Buyer shall reasonably require (collectively the "Lien Release Instruments"). The cost of the lien search shall be borne by Seller.

#### 1.4 **Collection of Accounts Receivable.**

1.4.1 On the Closing Date, Seller shall provide Buyer with a listing of all of Seller's accounts receivable as of that date and shall assign to Buyer the Accounts Receivable for purposes of collection only all of Seller's accounts receivable that are less than one hundred and twenty (120) days old (the "Seller's Accounts Receivable"). For a period of ninety (90) days following the Closing Date (the "Collection Period"), Buyer shall, without compensation or commission thereon, use such efforts as are reasonable and in the ordinary course of business to collect the Seller's Accounts Receivable. Buyer shall use the same degree of effort to collect Seller's Accounts Receivable as its own; *provided, however*, that this obligation shall not extend to the institution of litigation, employment of counsel, or any other extraordinary means of collection. If, with respect to any Seller's Account Receivable, Buyer believes any such means of collection are appropriate, or would resort to such means if the particular receivable was owed to Buyer, Buyer shall return such Seller's Account Receivable to Seller.

1.4.2 During the Collection Period, neither Seller nor its agents shall make any solicitation of them for collection purposes or institute litigation for the collection of any amounts due thereunder. All payments received by Buyer during the Collection Period from any person or entity obligated with respect to any of the Seller's Accounts Receivable shall be applied first to Seller's account, and only after full satisfaction of all amounts due to Seller, to Buyer's account for services provided to the same account debtor from and after the Closing Date. If during the Collection Period any account debtor contests in writing the validity of its obligation with respect to any Seller's Account Receivable, then Buyer shall return that Seller's Account Receivable to Seller, after which Seller shall be solely responsible for the collection thereof.

1.4.3 Within ten (10) calendar days after the end of each calendar month during the Collection Period (or if such day is a weekend or holiday, on the next business day), Buyer shall furnish Seller with a list of the funds collected during the prior calendar month with respect to Seller's Accounts Receivable and shall pay to Seller the full amount collected with respect to the Seller's Accounts Receivable during such month, without offset or deduction except as provided below. During the Collection Period, within five (5) business days of receipt by Seller of any payment remitted directly to Seller for any of the Seller's Accounts Receivable, Seller shall notify Buyer in writing, identifying the applicable Seller's Account Receivable and the amount remitted.

1.4.4 Any of the Seller's Accounts Receivable that are not collected during the Collection Period shall be reassigned to Seller at the end of the Collection Period, after which Buyer shall have no further obligation to Seller with respect to the Seller's Accounts Receivable; *provided, however*, that all funds subsequently received by Buyer (without time limitation) that can be specifically identified, whether by accompanying invoice or otherwise, as a payment on any Seller's Accounts Receivable belonging to Seller shall be promptly paid to Seller.

1.4.5 Buyer shall not have the right to discount, compromise, settle, or adjust the amounts of any of the Seller's Accounts Receivable without Seller's prior written consent, or to withhold any proceeds of the Seller's Accounts Receivable (except as provided above) or to

retain any uncollected Seller's Account Receivable after the expiration of the Collection Period for any reason whatsoever. Seller shall at all times be responsible for the payment of all salespersons', agency, and/or representative commissions due with respect to the Seller's Accounts Receivable. In the event any salespersons', agency, and/or representative commissions payment is not paid by Seller within two weeks of Buyer's submission to Seller of a collection of a Seller's Accounts Receivable, Buyer shall be permitted to make such payment on Seller's behalf, and to (i) deduct such payment from Buyer's next payment to Seller of amounts collected from Seller's Accounts Receivable, or (ii) receive reimbursement of such amount pursuant to Section 12.1(d) of this Agreement.

## **SECTION 2** **PURCHASE PRICE**

2.1 **Purchase Price.** In consideration of Seller's performance of this Agreement, the total purchase price (the "Purchase Price") to be paid by Buyer for the assets shall be Seventy-Five Thousand Dollars (\$75,000.00), as adjusted pursuant to Section 3 hereto. The Purchase Price shall be paid as follows:

(a) simultaneous with the execution of this Agreement, Buyer shall place in escrow the sum of Five Thousand Dollars (\$5,000.00) (the "Escrow Deposit") with WashingtonFirst Bank (the "Escrow Agent"), pursuant to the Escrow Agreement attached hereto as **Exhibit One**; and

(b) at Closing, (i) Buyer and Seller shall jointly instruct the Escrow Agent to deliver the Escrow Deposit, but not the interest thereon, to Seller, and (ii) Buyer shall pay to Seller the remainder of the Purchase Price via same day wire transfer or certified check.

2.2 **Allocation of Purchase Price.** Seller and Buyer agree to allocate the Purchase Price among the Assets, which allocation schedule will be determined within sixty (60) days of Closing (the "Allocation Schedule"). Seller and Buyer will each file an IRS Form 8594 consistent with the Allocation Schedule.

## **SECTION 3** **ADJUSTMENTS**

3.1 **Adjustment Time.** The "Adjustment Time" as used herein shall be 12:01 A.M. current local time on the Closing Date.

3.2 **Adjustment Items.**

3.2.1 The following items (the "Adjustment Items") shall be prorated as of the Adjustment Time, assuming a 365-day year or a 28-day, 30-day or 31-day month, as appropriate, and monies shall be paid at Closing in accordance with Section 3.4 herein below:

(a) Rentals or other charges, payable or paid in respect of leasehold interests or tenancies; leased transmitter sites; or leased equipment included in the Assets.

(b) Personal property taxes, assessments (including sewerage assessments and fees), and annual regulatory fees levied or assessed against or otherwise paid or payable with respect to any of the Assets.

(c) Transferable license, permit, and registration fees, and like items.

(d) Charges for utilities (including but not limited to electricity, fuel, water, basic monthly telephone charges, long distance telephone calls, and sanitation and garbage disposal) furnished to or in connection with the Station.

(e) License agreements with ASCAP, BMI and SESAC.

(f) Unpaid or prepaid obligations of Seller with respect to any of the Contracts assumed by Buyer hereunder. There are no security deposits previously paid by Seller for any such obligations in any amounts to which it is entitled.

(g) All other items of revenue (including, without limitation, cash or credit) or expense applicable to the Assets and/or attributable to the operations, advertising, and/or the business of the Station, it being the intention of the parties that all operations and the business of the Station prior to the Adjustment Time shall be for the account of Seller, and all operations and the business of the Station after the Adjustment Time shall be for the account of Buyer, all in accordance with generally accepted accounting principles.

3.2.2 If the amount of any real or personal property tax or other regulatory fee to be prorated is not known on the Closing Date, such tax or fee shall be apportioned on the basis of the most recent tax assessment or based on the fees due in the prior year.

3.3 **Obligations to Seller's Employees.** Buyer shall not be obligated to assume any obligations with respect to Seller's employees. All obligations for unused vacation time, severance fees, or other costs and expenses relating to Seller's employees shall remain solely expenses and obligations of Seller.

3.4 **Adjustments After Closing Date.** Except as provided in Section 3.2.2, if the amount of any Adjustment Item(s) cannot be readily ascertained or agreed upon on the Closing Date, proration of such items shall be determined within sixty (60) days after the Closing Date and payment therefor shall be made to the party entitled thereto within five (5) business days after notice of such determination thereof has been given to Buyer or Seller, as the case may be. In the event of any disputes between the parties as to adjustments, the amounts not in dispute shall nonetheless be paid at the time provided in this Section and such disputes shall be determined by an independent certified public accountant mutually acceptable to the parties. The accountant's resolution of the dispute shall be final and binding on the parties, and a judgment may be entered thereon in any court of competent jurisdiction. The fees and expenses of such accountant shall be paid one-half by Seller and one-half by Buyer.

**SECTION 4**  
**APPLICATION TO AND CONSENT BY COMMISSION**

4.1 **Commission Consent.** Buyer and Seller acknowledge that consummation of the purchase and sale provided for herein and the performance of the obligations of Seller and Buyer under this Agreement is subject to the Commission's consent to the assignment of the Commission Authorizations from Seller to Buyer.

4.2 **Application For Commission Consent.**

(a) Seller and Buyer agree to proceed expeditiously and with due diligence and in good faith and to use their commercially reasonable efforts and to cooperate with each other in seeking the Commission's approval of the transactions contemplated hereunder. Within five (5) business days after the date of this Agreement, each party shall have prepared and uploaded into the Commission's Consolidated Database System ("CDBS") that party's portion of an application on FCC Form 314 to request Commission consent to assign the Commission Authorizations from Seller to Buyer (the "Assignment Application"). The parties shall cooperate to prepare and upload all information, data, exhibits, resolutions, statements, and other materials necessary and proper in connection with such Assignment Application. Each party further agrees expeditiously to diligently prosecute the Assignment Application and expeditiously prepare Assignment Application amendments, respond to oral or written inquiries, and answer pleadings whenever such are required by the Commission or its rules.

(b) Each party shall bear its own expenses incurred for the preparation, filing, and prosecution of the Assignment Application. The parties agree that counsel for Buyer shall file the Assignment Application. All filing fees imposed by the Commission shall be paid one-half by Seller and one-half by Buyer.

(c) Each party agrees to comply with any condition imposed on it by the Commission, except that no party shall be required to comply with a condition that would have a material adverse effect upon it unless the condition was imposed as the result of a circumstance which constitutes a breach by that party of any of its representations, warranties, or covenants in this Agreement. Buyer and Seller shall oppose any efforts for reconsideration or judicial review of the grant by the Commission of the Assignment Application (but nothing in this Section shall limit any party's right to terminate this Agreement in accordance with the terms herewith).

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

## **SECTION 5**

### **ASSUMPTIONS**

5.1 **Liabilities.** The Assets shall be sold and conveyed to Buyer free and clear of Liens of any type or amount created or suffered by Seller prior to the Closing Date, whether existing now or in the future, except for (i) Permitted Liens, and (ii) liabilities being assumed under or in connection with the Assets (the “Assumed Obligations”).

5.2 **Buyer’s Assumed Obligations.** Buyer covenants and agrees to assume at Closing and discharge following the Closing all of the unperformed duties of Seller accruing after the Closing Date under the Assumed Obligations. Buyer shall assume such unperformed duties of Seller only to the extent that such duties accrue on or after Closing based on the operation of the Station after the Closing Date. Except as specifically assumed by Buyer in this Agreement, Buyer is not agreeing to, and shall not, assume any other liability, obligation, undertaking, expense, or agreement of Seller of any kind, absolute or contingent, known or unknown, and the execution and performance of this Agreement shall not render Buyer liable for any such liability, obligation, undertaking, expense, or agreement (“Excluded Obligations”). With respect to each Lease or material Contract (as noted with the symbol “ > ” on Schedules 1.1.3 and 1.1.6) being assumed by Buyer at Closing, Seller shall provide to Buyer an estoppel agreement signed by the other party to each such Lease or material Contract including specifically as follows: (a) if consent is required, agreeing to the assignment of such Lease or material Contract to Buyer, and (b) certifying that Seller is not in breach of such Lease or material Contract, that each such Lease or material Contract is in full force and effect, and that all payments heretofore due under such Lease or material Contract have been paid in full.

5.3 **Seller’s Liability.** Seller shall remain liable for all Excluded Obligations.

## **SECTION 6**

### **REPRESENTATIONS WARRANTIES AND COVENANTS OF SELLER**

Seller represents and warrants as follows:

6.1 **Standing.**

6.1.1 Seller is a limited liability company organized and in good standing under the laws of the State of Delaware, and has the full power to own the assets and to carry on the business of the Station as it is now being conducted and is qualified and in good standing in the States of Delaware and Maine.

6.1.2 Seller has the full power and authority to enter into this Agreement and to execute all of Seller’s Closing Documents that require Seller’s signatures.

6.2 **Binding Effect of Agreement.** This Agreement constitutes a valid and binding obligation of Seller enforceable against Seller in accordance with the terms of this Agreement, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization, or other similar laws affecting or limiting the enforcement of

creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) (collectively, the "Enforceability Exceptions"). At Closing, the Seller's Closing Documents (as hereinafter defined) will constitute valid and binding obligations of Seller enforceable against Seller in accordance with their terms except for the Enforceability Exceptions. The execution, delivery, and performance of this Agreement do not violate, and at Closing the execution, delivery and performance of Seller's Closing Documents will not violate, any provisions of Seller's Articles of Organization, Operating Agreement, or By-Laws, or any contract provision or other commitment to which Seller or the Station is a party or under which it or its property is bound, or any judgment or order of which Seller has received notice. To the best of Seller's knowledge, the execution and delivery of this Agreement or any of Seller's Closing Documents will not result in the creation or imposition of any lien, charge, security interest, or encumbrance of any nature whatsoever upon any of the Assets except for Permitted Liens.

### 6.3 **Tangible Personal Property.**

6.3.1 **Schedule 1.1.2** contains an accurate and complete list of all items of equipment owned or leased by Seller as of the date hereof owned or used exclusively by the Station and that relates to the program, production, generation, or transmission of the Station's television broadcast signal, or has an original acquisition cost of at least \$2,500. Seller has good and marketable title to or a valid leasehold interest in, or otherwise has the right to use, all items of Tangible Personal Property listed in **Schedule 1.1.2**, free and clear of all liens except for Permitted Liens. Except as specified on **Schedule 1.1.2**, all Tangible Personal Property is (i) in good operating condition and repair, subject to normal wear and tear, adequate for its current use, and available for use, in the operation of the Station and the conduct of the business as presently conducted, and (ii) to the extent applicable, maintained in compliance with good engineering practice, industry practices and all applicable Commission rules and policies. Seller represents and warrants that the Tangible Personal Property being conveyed is sufficient to carry out the normal operations of the transmission of the Station's signal.

6.3.2 Seller warrants that the Station's equipment is sufficient to operate the Station at full power, in accordance with its most recent technical license, and that the equipment is operating in material compliance with Commission rules, regulations, and policies except as indicated in **Schedule 1.1.2**. Except for the Excluded Assets and equipment associated with the current studio for the Station, Seller does not have any material assets used, held for use in, or required for, the conduct of the business of the Station as it is presently being conducted which are not set forth in the schedules hereto or otherwise described in Section 1.1 hereof, and the Assets include all of the assets necessary for the business of the Station as it is currently conducted by Seller.

6.4 **Authorizations.** Seller is the authorized legal holder of all licenses, permits, and authorizations necessary to operate the business of the Station as it is now being conducted, including, without limitation, all Commission Authorizations and all other authorizations listed in **Schedule 1.1.1**, none of which is subject to any restrictions or conditions which limit in any respect the operation of the Station as it conducted on the date hereof. All such Commission Authorizations are validly existing authorizations for the operation of the facilities described

therein. Seller is operating the Station substantially in accordance with all material terms of the Commission Authorizations, the underlying construction permits and all rules, regulations, and policies of the Commission. There is no action pending or, to the best of Seller's knowledge, threatened before the Commission or other body (a) to revoke, refuse to renew, suspend, or modify any of the Commission Authorizations or any other authorization necessary for the operation of the Station as presently conducted, or (b) which Seller has reason to believe may result in the denial of any pending applications, the issuance of any cease and desist orders, or the imposition of any administrative sanctions whatsoever with respect to the Station or its operation.

6.5 **Assumed Contracts.** **Schedule 1.1.3** is a list of all Contracts as of the date of this Agreement. Each Contract set forth on **Schedule 1.1.3** is in full force and effect, and is valid, binding, and enforceable against the Seller and, to Seller's knowledge, each other party thereto, in accordance with its terms. Except as set forth on **Schedule 1.1.3**, no Contract requires the consent of any other contracting party to the transactions contemplated by this Agreement. Seller is not (and, to Seller's knowledge, no other party is) in breach or default under any Contract, and to Seller's knowledge no event has occurred and no condition exists which, with the passage of time or the giving of notice or both would constitute such a breach or default by Seller or, to Seller's knowledge, any other party thereto. Except as set forth on **Schedule 1.1.3**, true and complete copies of each Contract (including all related amendments, modifications and waivers) have been delivered to Buyer.

6.6 **Retransmission and Must Carry Rights.** **Schedule 6.6** hereto sets forth, as of the date hereof (i) a list of all multichannel video programming distributors (each, an "MVPD") that to Seller's knowledge, carry the Station's signal, and (ii) a list of all Contracts entered into with any MVPD retransmitting the Station's signal(s). Except as set forth on **Schedule 6.6**, (i) no MVPD has notified Seller of such MVPD's intention to delete the Station from carriage, change the channel position of the Station, or alleging that the Station does not deliver an adequate quality signal, and (ii) to Seller's knowledge there are no pending must carry complaints or petitions for special relief to modify the areas in which the Station is entitled to demand must carry.

6.7 **Personnel Matters.**

(a) **Employees.** **Schedule 6.7** contains an accurate schedule listing all of employees of Seller or its affiliates who are exclusively employed at the Station, except for those employees who have given notice of their intent to terminate their employment as of the date hereof or who are intended to continue to be employed by Seller or one of its affiliates after the Closing (the "Station Employees"). **Schedule 6.7** shows each Station Employee's present position, start date, annual salary or wages, and any other compensation.

(b) **Labor Unions.** Seller is not a party to any collective bargaining agreement. As of the date hereof, to Seller's knowledge, (i) none of the Station Employees is presently a member of any collective bargaining unit related to his or her employment, and (ii) no collective bargaining unit has filed a petition for representation of any of the Station Employees.

6.8 **Claims and Litigation.** Except as set forth on **Schedule 6.8**, there are no actions pending or, to Seller's knowledge, threatened, by or against Seller relating to the Assets, the Station or the transactions contemplated by this Agreement. Except as described on **Schedule 6.8**, to Seller's knowledge, there is no complaint, petition, notice, investigation, or other proceeding pending, threatened, or outstanding before the Commission, alleging a violation of the Communications Act or the Commission's rules or policies by the Seller with respect to the Station, as a result of which the Station may be subject to sanction by the Commission, except where the same would not have a material adverse effect upon the Station or the transactions contemplated by this Agreement.

6.9 **No Interference With Signal.** Except as set forth on **Schedule 6.9**, to Seller's knowledge, there currently exists no interference to the Station's signal from other broadcast stations, or by the Station's signal to other broadcast stations, in each case beyond that permitted by the Commission's rules and, to Seller's knowledge, there are no applications pending at the Commission the grant of which would cause objectionable interference to the Station, other than what might arise as a result of proceedings that generally affect the television broadcast industry.

6.11 **Litigation and Insurance.**

6.11.1 **Litigation; Compliance With Law.** The Station is in compliance in all material respects with all applicable federal, state and local laws, ordinances, and regulations, including compliance with the Communications Act and all rules and regulations issued thereunder. Except for proceedings affecting segments of the broadcasting industry in general, there is no complaint, claim, litigation or judicial, administrative, or other proceeding of any nature, pending or to the best of Seller's knowledge threatened (or to the best of Seller's knowledge, any investigation threatened) against the Station, Seller, or any of the Assets being sold or transferred to Buyer, which may (a) materially adversely affect the Assets or the Commission Authorizations to be assigned hereunder, or the operation of the Station in substantially the same manner as it is currently operated, (b) restrain or enjoin the Closing or the consummation of the transactions contemplated hereby, or (c) result in the revocation, material adverse modification, or suspension of the Commission Authorizations, or the issuance or imposition of any administrative sanction that would materially adversely affect the Assets or the Commission Authorizations, or the operation of the Station. Seller will give Buyer prompt notice of its discovery of any such basis or the institution or the threat of any such litigation, investigation, or proceeding. To Seller's knowledge, Seller is not in default in respect to any judgment, order, writ, injunction, decree, rule, or regulation of any applicable court or governmental body, which default could have a materially adverse effect on the Assets or the Station.

6.11.2 **Insurance.** All of the Tangible Personal Property, including the Tangible Personal Property listed in **Schedule 1.1.2** is insured, and such insurance includes public liability insurance for the Station, and such policies are in full force and effect.

6.12 **Taxes and Other Matters.**

6.12.1 **Payment of Taxes.** All returns and reports concerning franchise taxes, unemployment insurance, withholding and payroll taxes, sales taxes, personal property taxes, license taxes, social security taxes, and all other reports required to have been filed by the Seller relating to the Assets, the Station, and/or its operation pursuant to any law or regulation which, if not filed, would adversely affect Buyer's full enjoyment and/or benefit of the Assets, have been duly filed or timely protested in an appropriate proceeding. All taxes, interest, assessments, and penalties which are due to any taxing authority, federal, state, or local, with respect to any tax period ending on or prior to the making of this warranty which, if not paid, would adversely affect Buyer's full enjoyment and/or benefit of the Assets, have been duly paid or timely protested in an appropriate proceeding.

6.12.2 **Bankruptcy.** No (i) voluntary or, to Seller's knowledge, involuntary petition in bankruptcy, receivership, insolvency, (ii) petition for reorganization of Seller, or (iii) petition to appoint a receiver or trustee of Seller's property has, to Seller's knowledge, been filed against Seller. Seller has not made any assignment for the benefit of its creditors, and has not permitted any judgment, execution, attachment, or levy against it or against the Assets to remain outstanding or unsatisfied for more than thirty (30) days.

6.12.3 **OSHA Matters.** To Seller's knowledge, there is no liability that will attach to Buyer due to any violation by Seller of the Occupational Safety and Health Act ("OSHA"). To the best of Seller's knowledge, Seller is in compliance with the requirements of the OSHA and the regulations promulgated thereunder and any similar laws or regulations of any state or local jurisdiction. Seller has not received any citation from the OSHA or any comparable administration of any state or local jurisdiction (an "Administration") or any Administration inspector setting forth any respect in which the facilities or operation of Seller is not in compliance with the OSHA, or the regulations under such act, which non-compliance has not been corrected or remedied to the satisfaction of such Administration or inspector. Seller has heretofore furnished to Buyer copies of any citations heretofore issued to Seller and relating to the Station under the OSHA and copies of any correspondence from and to such Administration and any Administration inspectors during the past three (3) years.

6.13 **No Untrue Statements or Omission.** No representation or warranty made by Seller in this Agreement or any Schedule, exhibit, statement, certificate, or other document heretofore or hereafter furnished by Seller, or on its behalf, to Buyer and pursuant to this Agreement or in connection with the transactions contemplated hereby contains or will contain any knowingly untrue statement or knowingly omits to state a material fact necessary to make the statements contained therein not misleading. All representations and warranties of Seller set forth in this Agreement shall be true, complete, and accurate in all material respects as of the Closing Date as if made on that date, except as otherwise qualified herein.

**SECTION 7**  
**WARRANTIES, REPRESENTATIONS, AND COVENANTS OF BUYER**

Buyer covenants, represents, and warrants as follows:

7.1 **Organization and Standing.** Buyer is a limited liability company organized and in good standing under the laws of the State of Delaware, and has the full power to own the assets and to carry on the business of the Station after Closing and is qualified and in good standing in the States of Delaware and Maine.

7.2 **Authorization and Binding Obligation.** Buyer has all necessary power and authority to enter into this Agreement and all of Buyer's Closing Documents that require Buyer's signature. The execution, delivery, and performance of this Agreement (as of the date of execution of this Agreement and on the Closing Date) and the Buyer's Closing Documents (on the Closing Date) are or will be authorized by all necessary actions of Buyer. This Agreement constitutes a valid and binding obligation of Buyer enforceable against Buyer in accordance with the terms of this Agreement, except as such enforceability may be limited by the Enforceability Exceptions. Upon execution, the Buyer's Closing Documents will constitute valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms.

7.3 **No Contravention.** The execution, delivery, and performance of this Agreement or any of the Buyer's Closing Documents do not violate Buyer's Articles of Incorporation or By-Laws or any contract provision or other commitment to which Buyer is a party or under which it or its property is bound, or any judgment or order except as contemplated herein.

7.4 **Litigation.** Except for administrative rule making or other proceedings of general applicability to the broadcast industry, there is no litigation, proceeding, judgment, claim, action, investigation, or complaint threatened against or affecting it which would affect Buyer's authority or ability to carry out this Agreement.

7.5 **Buyer's Qualifications.** Buyer is legally, financially, and otherwise qualified to be the licensee of, acquire, own, and operate the Station under the Communications Act and the rules, regulations, and policies of the Commission and assume the Assumed Agreements and the Lease Agreement under the terms of the agreements thereof. There are no facts that would, under existing law and the existing rules, regulations, policies, and procedures of the Commission, disqualify Buyer as an assignee of the Commission Authorizations or as the owner and operator of the Station. No waiver of or exemption from any Commission rule or policy is necessary for the Commission's consent to the Assignment Application to be obtained. There are no matters which might reasonably be expected to result in the Commission's denial or delay of approval of the Assignment Application. Buyer has the financial ability to pay the Purchase Price.

7.6 **Bankruptcy.** No (i) voluntary or, to Buyer's knowledge, involuntary petition in bankruptcy, receivership, insolvency, (ii) reorganization with respect to Buyer, or (iii) petition to appoint a receiver or trustee of Buyer's property has, to Seller's knowledge, been filed against Buyer. Buyer has not made any assignment for the benefit of its creditors, and has not permitted

any judgment, execution, attachment, or levy against it or against any of its properties to remain outstanding or unsatisfied for more than thirty (30) days.

7.7 **No Untrue Statements or Omission.** No representation or warranty made by Buyer in this Agreement or any Schedule, exhibit, statement, certificate, or other document heretofore or hereafter furnished to Seller and pursuant to this Agreement or in connection with the transaction contemplated hereby contains or will contain any knowingly untrue statement or knowingly omits to state a material fact necessary to make the statement contained therein not misleading. All representations and warranties of Buyer set forth in this Agreement shall be true, complete, and accurate in all material respects as of the Closing Date as if made on that date, except as otherwise qualified herein.

## **SECTION 8**

### **SELLER'S CONDUCT OF BUSINESS PRIOR TO CLOSING AND BUYER'S ACCESS TO INFORMATION**

8.1 **Affirmative Covenants of Seller.** From the date of this Agreement until the Closing Date, Seller shall have complete control and supervision of and sole responsibility for the Station or its operation, and during such period, Seller shall:

8.1.1 Operate the Station in accordance in all material respects with the rules and regulations of the Commission and the Commission Authorizations and file all Commission ownership reports, Commission employment reports, and other documents required to be filed with the Commission during such period and maintain copies of the Station's required filings in the ordinary course of business.

8.1.2 Maintain all of the Tangible Personal Property, as specified in **Schedule 1.1.2**, so that when the same are delivered to Buyer they shall satisfy all the warranties in all material respects on the part of Seller set forth herein, subject to reasonable wear and tear.

8.1.3 Maintain substantially the same inventory levels of the Station (including spare parts, tubes, equipment, and the like) as exist on the date hereof, and shall replace inventory items expended, depleted, or worn out to the extent necessary to maintain substantially the same inventory levels.

8.1.4 Operate the Station in the ordinary course of business and substantially in the same manner as heretofore operated, including entering into such agreements as are consistent with Seller's past practice. Specifically, Seller shall (A) maintain its books of account and records relating to the Business in the ordinary course of business, (B) continue to collect accounts receivable and pay accounts payable relating to the Station in the ordinary course of business, (C) comply with all obligations under the Contracts or relating to the Station and ownership of the Assets, (D) use commercially reasonable efforts to preserve its present business operations, organization (including, without limitation, management and the sales force), and goodwill of Seller relating to the Station, and (E) use commercially reasonable efforts to preserve the present relationships with persons having business dealings with Seller relating to the Station (including without limitation customers and suppliers). Notwithstanding the foregoing, Seller

makes no representation or warranty as to the future acts or omissions of any employee, customer, vendor, advertiser, or any other third party, nor does Seller make any agreement or covenant to engage in efforts or actions which are not commercially reasonable or which are outside the ordinary course of business as presently conducted by Seller.

8.1.5 Exercise commercially reasonable efforts to maintain carriage, if any, of the Station's signals on (a) all cable systems located within the Station's DMAs, as applicable, and as to which the Station's signals are currently being carried and (b) other MVPDs to which the Station's signals are currently being carried, and use commercially reasonable efforts to oppose all applications, proposals, or proceedings, if any, that could materially adversely affect the Station and its service area.

8.1.6 Use its best efforts to keep the Station and its Assets and properties substantially intact, including its present operations and physical facilities.

8.1.7 Deliver to Buyer copies of any and all reports, applications, and/or responses relating to the Station which are filed with the Commission on or prior to the Closing Date, including a copy of any Commission inquiries to which the filing is responsive (in the event of an oral Commission inquiry, Seller will furnish a written summary thereof) within ten (10) business days of the filing thereof, and promptly provide Buyer with any other material communications between Seller and the Commission related to the Station or the transactions contemplated by this Agreement.

8.1.8 Give prompt notice to Buyer of any occurrence that comes to Seller's attention that may constitute a misrepresentation, breach of warranty, or nonfulfillment of any covenant or condition on the part of the Seller or Buyer contained in this Agreement.

8.1.9 From the date hereof to the Closing Date, afford to Buyer and the officers, employees and agents of Buyer complete access (on-site or otherwise), upon reasonable notice and at reasonable times, to Seller's officers, employees, and agents engaged in operating the Station, and the properties, books, records, and contracts relating solely to the Station and the Assets to be acquired by Buyer hereunder. From the date hereof to the Closing Date, Seller shall furnish Buyer all financial, operating, and other data and information relating solely to the Station and/or the Assets and not previously provided, as Buyer may reasonably request. Any investigation and examination shall be conducted during regular business hours, with reasonable advance notice and under reasonable circumstances, and Seller shall cooperate fully therein. Any costs associated with such investigation or examination shall be borne by Buyer. No investigation by Buyer prior to or after the date of this Agreement shall diminish or obviate any of the representations, warranties, covenants, or agreements of Seller contained in this Agreement.

8.1.10 Promptly provide Buyer with copies of any and all material correspondence and other documents exchanged with cable systems and satellite carriers after the date hereof, relating to the Station's must carry status, retransmission consent agreements, or other material matters related to the Station or arising under the Cable Act or the Satellite Home

Viewer Improvement Act of 1999, as amended, and keep Buyer reasonably advised of the status of any material negotiations with cable systems or satellite carriers concerning such matters.

8.2 **Negative Covenants of Seller.** Between the date hereof and the Closing Date, Seller shall not, with respect to the Assets, the Station, or the operation thereof, without the consent of Buyer, which consent shall not be unreasonably withheld or delayed:

8.2.1 By any act or omission surrender, modify materially adversely, forfeit, or fail to renew under regular terms the Commission Authorizations or give the Commission grounds to institute any proceeding for the revocation, suspension, or modification of any such Commission Authorization, or fail to prosecute with due diligence any pending applications with respect to such Commission Authorizations.

8.2.2 Other than in the usual and ordinary course of business, sell or dispose of any of the Assets; *provided, however*, that Seller shall replace any material Assets thus disposed of in the usual and ordinary course of business with assets having utility at least equal to the utility of the Assets sold or otherwise disposed of.

8.2.3 Create or suffer or permit the creation of any lien on the assets other than Permitted Liens.

8.2.4 Fail to repair or maintain any of the Tangible Personal Property used or usable in the operations of the Station in accordance with Seller's normal standards of maintenance.

8.2.5 With respect to any of Station Employee, (A) materially increase the annual level of compensation of any Station Employee or materially increase the annual level of compensation payable or to become payable by Seller to any of their respective executive officers who are Station Employees, or (B) materially increase the coverage or benefits available under any employee benefit plan or create any new employee benefit plan. Notwithstanding the foregoing, Seller may pay any retention bonus determined in its sole discretion to retain any Station Employee pending Closing.

8.2.6 Introduce any material change with respect to the operation of the Station.

8.2.7 Enter into any new contract or materially modify any existing Contract relating to the Station (other than contracts for the sale of broadcast time) which by reason of its size or otherwise provides for payments or receipts in excess of \$25,000 in the aggregate, or is otherwise not in the ordinary course of business.

8.2.8 Enter into any Contract, understanding, or commitment that restrains, restricts, limits, or impedes the ability of the Station or Buyer to compete with or conduct any business or line of business in any geographic area.

8.2.9 Terminate or waive any rights under any material Contract or Lease.

8.3 **Failure of Broadcast Transmissions.** Seller thereafter shall give prompt written notice to Buyer if any of the following (a “Specified Event”) shall occur and continue for a period in excess of seventy-two hours: (i) the transmission of the regular broadcast programming of the Station in the normal and usual manner is interrupted or discontinued; or (ii) is operated at less than ninety percent (90%) of its licensed power. If prior to Closing the Station is off the air or operating at a power level that results in a material reduction in coverage (a “Broadcast Interruption”), then Seller shall use commercially reasonable efforts to return the Station to the air and restore prior coverage as promptly as possible in the ordinary course of business. Notwithstanding anything herein to the contrary, if prior to Closing there is a Broadcast Interruption in excess of 24 hours, then Buyer may postpone Closing until the date five (5) business days after the Station returns to the air and prior coverage is restored in all material respects; *provided, however*, that nothing in the foregoing is intended to affect either party’s termination rights under Paragraph 16.

8.4 **Employment Offers and Transfer of Employees to Buyer.** Effective as of the Closing Date, Seller will terminate the employment of all Station Employees who remain employed by Seller or an affiliate of Seller as of that time. Seller shall be solely responsible for the payment of any severance due to any Station Employee, complying with COBRA, and any other obligations or liabilities arising from such Station Employees’ termination or employment at the Station prior to the Closing Date. Seller makes no representation, warranty, or covenant with respect to the availability or willingness of any Station Employee to accept an offer of employment from Buyer. From and after the execution of this Agreement, Seller will not (a) take any action to preclude or discourage any Station Employee(s) from accepting any such offer of employment extended by the Buyer, or (b) make any representation or other statement to any Station Employee(s) indicating or implying that any such an offer of employment will be forthcoming from the Buyer.

8.5 **Restrictions on Buyer.** Nothing contained in this Agreement shall give Buyer any right to control the programming or operations of the Station prior to the Closing Date, and Seller shall have complete control of the programming and operation of the Station between the date hereof and the Closing Date, subject only to Seller’s compliance with applicable law and its obligations hereunder.

8.6 **Buyer’s Covenants.** From the date of this Agreement until the Closing Date, Buyer covenants that it will:

- (a) Take no action, or fail to take any action, that would disqualify it from becoming the licensee of the Station or delay the grant of the Assignment Application by the Commission.
- (b) Take no action which would jeopardize its current financial position and ability to pay the balance of the Purchase Price.
- (c) Give prompt notice to Seller of any occurrence that comes to Buyer’s attention that may constitute a misrepresentation, breach of warranty, or nonfulfillment of any covenant or condition on the part of Buyer or Seller contained in this Agreement.

(d) Deliver to Seller copies of any and all reports, applications, and/or responses relating to the Station or this transaction which are filed with the Commission by Buyer on or prior to the Closing Date, including a copy of any Commission inquiries to which the filing is responsive (in the event of an oral Commission inquiry, Buyer will furnish a written summary thereof), within ten (10) business days of the filing thereof, and promptly provide Seller with any other material communications between Buyer and the Commission related to the Station or the transactions contemplated by this Agreement.

## **SECTION 9**

### **CONDITIONS FOR CLOSING**

9.1 **Closing.** The Closing of the transactions contemplated by this Agreement (the “Closing”) shall take place on a date after the Assignment Application has been granted by the Commission’s staff under delegated authority which is mutually agreeable to the parties, which date shall not in any event be more than ten (10) business days after the date of the Commission action without any material adverse conditions (the "Order") granting the Assignment Application and such action has become a Final Order, *provided, however*, that the parties shall not be obligated to proceed to Closing if the conditions precedent to Closing have not been satisfied or waived. For purposes of this Agreement, the term “Final Order” shall mean an order of the Commission (including action duly taken by the Commission’s staff, pursuant to delegated authority) which is not 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 Commission, and for any reconsideration, stay or setting aside by the Commission on its own motion or initiative, has expired. The Closing shall be accomplished on the Closing Date by exchanging the closing documents required by this Agreement and such other closing documents as the parties may reasonably require in person, by mail, e-mail, or air courier and by Buyer’s delivery by wire transfer or physical delivery of a certified or cashier’s check for the balance of the Purchase Price.

9.2 **Conditions Precedent to Obligations of Buyer.** The performance of the obligation of Buyer to consummate the Closing under this Agreement is subject to the satisfaction of each of the following express conditions precedent, *provided, however*, that Buyer may, at its election, waive any of such conditions at Closing, *except* the condition specified in Section 9.2.11 hereof, notwithstanding that such condition is not fulfilled on the Closing Date:

9.2.1 Seller shall have delivered to Buyer the Seller’s Closing Documents as described in Section 10.1 below.

9.2.2 Each of the Seller’s representations and warranties contained in this Agreement shall be true and correct in all material respects at and as of the Closing Date with the same force and effect as if each such representation or warranty were made at and as of such time, except in respect of such changes as are contemplated or permitted by this Agreement.

9.2.3 Seller shall have performed and complied in all material respects with all covenants, agreements and obligations required by this Agreement to be performed or complied with by it prior to the Closing Date.

9.2.4 Seller shall be the holder of the Commission Authorizations listed in **Schedule 1.1.1**.

9.2.5 Seller shall have taken all internal and other actions necessary to consummate this transaction.

9.2.6 There shall be no material changes between **Schedule 1.1.2** and the inventory of Tangible Personal Property in existence as of the Closing Date other than changes permitted or contemplated herein or that have been agreed to and accepted by Buyer, in its reasonable discretion, and that there are no regulatory, legal, engineering, or other impediments to Buyer's operation of the Station in accordance with its license.

9.2.7 If consent is required under the terms of any Assumed Agreement, any parties to any such contract shall have consented to the assignment of Seller's rights on terms substantially similar to the terms enjoyed by Seller at the time of execution of this Agreement.

9.2.8 The Commission shall have granted its consent to the Assignment Application, and such consent shall have become a Final Order.

9.2.9 Seller shall have supplied Buyer with the lien search required in Section 1.3 of this Agreement.

9.2.10 Seller shall have supplied Buyer with the estoppel agreements required in Section 5.2 of this Agreement.

9.2.11 The assignment of license of WPXT(DT) by New Age Media of Maine License, LLC ("New Age") has been approved by the Commission and shall close simultaneously with the Closing hereunder.

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

9.3 **Conditions Precedent to Obligations of Seller**. The performance of the obligation of Seller to consummate the Closing under this Agreement is subject to the satisfaction of each of the following express conditions precedent, *provided, however*, that Seller may, at its election, waive any of such conditions at Closing, *except* the condition specified in Section 9.3.7 hereof, notwithstanding that such condition is not fulfilled on the Closing Date:

9.3.1 Buyer shall have delivered to Seller Buyer's Closing Documents as described in Section 10.2.

9.3.2 Each of the Buyer's representations and warranties contained in this Agreement shall be true in all material respects at and as of Closing Date, with the same force and effect as if each such representation or warranty was made at and as of such time, except in respect of such changes as are contemplated or permitted by this Agreement.

9.3.3 Buyer shall have performed and complied in all material respects with all covenants, agreements, and obligations required by this Agreement to be performed or complied with by it prior to the Closing Date.

9.3.4 Buyer shall have agreed in form reasonably acceptable to Seller to assume all obligations under the Agreements assigned to Buyer arising on or after Closing.

9.3.5 The Commission shall have granted its consent to the Assignment Application, and such consent shall have become a Final Order.

9.3.6 Buyer shall have taken all internal and other actions necessary to consummate this transaction.

9.3.7 The assignment of license of WPXT(DT) by New Age Media of Maine License, LLC ("New Age") has been approved by the Commission and shall close simultaneously with the Closing hereunder.

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

9.3.9 Buyer shall have provided all documentation reasonably requested by any party to an agreement listed **Schedule 1.1.3** hereof in connection with that party's consent to assignment of its agreement to Buyer.

9.4 **Failure of Conditions Precedent to Obligations of Buyer.** In case of the failure of any of the conditions precedent described in Section 9.2 hereof, and if Seller, after application of the provisions of Section 16.2 hereof, has failed to cure same, Buyer shall have the right to terminate this Agreement without liability. In addition, if the failure of such condition precedent constitutes a material default by Seller, Buyer shall have the right, at its option, to exercise any or all of its rights or remedies for default provided in Section 16 hereof. Buyer shall not be deemed to have waived any failure by Seller to fulfill any of the conditions precedent described in Section 9.2 if Buyer does not have actual knowledge of such failure at the time of Closing.

9.5 **Failure of Conditions Precedent to Obligations of Seller.** In case of the failure of any of the conditions precedent described in Section 9.3 hereof, and if Buyer, after application of the provisions of Section 16.2 hereof, has failed to cure the same, Seller shall have the right to terminate this Agreement without liability. In addition, if the failure of such condition precedent results from a material default by Buyer, Seller shall have the right, at its option, to exercise any or all of its rights or remedies for default provided in Section 16 hereof. Seller shall not be

deemed to have waived any failure by Buyer to fulfill any of the conditions precedent described in Section 9.3 if Seller does not have actual knowledge of such failure at the time of Closing.

## **SECTION 10** **OBLIGATIONS AT CLOSING**

10.1 **Closing Documents to be Delivered by Seller.** At the Closing, Seller shall deliver to Buyer the following (“Seller’s Closing Documents”):

10.1.1 An executed Bill of Sale in form and substance reasonably satisfactory to Buyer transferring to Buyer all Tangible Personal Property including those items identified on **Schedule 1.1.2** which is to be transferred hereunder, except as otherwise provided herein.

10.1.2 An executed Assignment/Assumption Agreement in form and substance reasonably satisfactory to Buyer assigning to Buyer the Contracts identified on **Schedule 1.1.3** and Intangibles identified on **Schedule 1.1.4** to be assigned hereunder.

10.1.3 An executed Assignment of Licenses in form and substance reasonably satisfactory to counsel for Buyer, assigning the Commission Authorizations to Buyer.

10.1.4 A certificate executed by Seller stating that (a) all of the representations and warranties of Seller set forth in this Agreement are in all material respects true, correct, and accurate as of the Closing Date, and (b) all covenants set forth in this Agreement to be performed by Seller on or prior to the Closing Date have been performed in all material respects, except where an inaccuracy in any representations and warranties and/or a failure to perform any covenant would not, individually or in the aggregate, have a material adverse effect on the Station or the Assets, or on Seller’s ability to consummate the transactions hereunder.

10.1.5 A good standing certificate issued by the Secretary of State of Seller’s jurisdiction of formation.

10.1.6 A certificate executed by Seller certifying the due authorization of this Agreement, together with copies of Seller’s authorizing resolutions.

10.1.7 Copies of all material Business Records as described in Section 1.1.5 hereof, but excluding those related to Shared Assets, as described in Section 1.2.5 hereof.

10.1.8 Any other instruments of conveyance, assignment, and transfer that may be reasonably necessary to convey, transfer, and assign the Assets from Seller to Buyer, free and clear of liens, except for Permitted Liens.

10.2 **Closing Documents to be Delivered by Buyer.** At the Closing, in addition to that portion of the Purchase Price required to be paid at Closing, Buyer shall deliver to Seller the following (“Buyer’s Closing Documents”):

10.2.1 A certificate executed by Buyer stating that: (a) all of the representations and warranties of Buyer set forth in this Agreement are in all material respects true, correct, and accurate as of the Closing Date, and (b) all covenants set forth in this Agreement to be performed by Buyer on or prior to the Closing Date have been performed in all material respects, except where an inaccuracy in any representations and warranties and/or a failure to perform any covenant would not, individually or in the aggregate, have a material adverse effect on the Station or the Assets, or on Buyer's ability to consummate the transactions hereunder.

10.2.2 An Assignment/Assumption Agreement executed by Buyer, in form and substance reasonably satisfactory to Seller assuming the Contracts identified on **Schedule 1.1.3** and Intangibles identified on **Schedule 1.1.4** to be assigned hereunder.

10.2.3 An executed Assignment of Licenses in form and substance reasonably satisfactory to counsel for Seller, accepting the assignment of the Commission Authorizations by Tyche Broadcasting, Inc.

10.2.4 A good standing certificate issued by the Secretary of State of Buyer's jurisdiction of formation.

10.2.5 A certificate executed by Buyer certifying the due authorization of this Agreement, together with copies of Buyer's authorizing resolutions.

10.2.6 Such other documents and instruments of assumption that may be necessary to assume the Assumed Obligations.

## **SECTION 11** **BROKERAGE**

Seller and Buyer each represent and warrant to the other that other than Michael J. Bergner of Bergner & Co., each knows of no broker, finder, or intermediary who has been involved in the transactions provided for in this Agreement or who might be entitled to a fee or commission upon the consummation of such transactions. All brokerage obligations due to Michael J. Bergner of Bergner & Co. shall be the sole and exclusive obligation of Buyer. Buyer and Seller hereby agree to indemnify each other from and against any claim of any such obligation or liability by any other person or entity, and any expense incurred in defending against any such claim, including reasonable attorneys' fees, that shall have resulted from any conduct, activity, or action taken, or allegedly taken, by the indemnifying party.

## **SECTION 12** **INDEMNIFICATIONS**

12.1 **Breach of Seller's Agreements, Representations, and Warranties.** For a period of one (1) year following the Closing, Seller shall reimburse Buyer for, and indemnify and hold harmless Buyer from and against, any loss, damage, liability, obligation, deficiency, claim, suit, cause of action, demand, judgment, or expense (including without limitation, payments, fines, penalties, interest, taxes, assessments, and reasonable attorneys' fees and accounting fees), contingent or otherwise, whether incurred or asserted prior to or after the

Closing Date, arising out of or sustained by Buyer (except for a failure to discharge an Excluded Obligation, for which Buyer will be fully indemnified) by reason of:

(a) any breach of any warranty, representation, or agreement of Seller contained under this Agreement or in any certificate or other instrument furnished to Buyer pursuant to this Agreement or in connection with any of the transactions contemplated hereby;

(b) except for Assumed Obligations, the operation of the Station or the ownership of the Assets prior to Closing (including, but not limited to, any and all claims, liabilities, and obligations arising or required to be performed by Seller under any lease, contract, or agreement (other than the Agreements on or after Closing) or under the Agreements prior to Closing);

(c) except for Assumed Obligations, any transaction entered into by Seller or arising in connection with the Station or the operation of the business thereof or any of the Assets prior to the Closing;

(d) any and all actions, suits, or proceedings, incident to any of the foregoing;

(e) any payments by Buyer of unpaid salespersons', agency, and/or representative commissions due with respect to the Seller's Accounts Receivable pursuant to Section 1.4.5; or

(f) the Excluded Obligations.

12.2 **Breach of Buyer's Agreements, Representations and Warranties.** Buyer shall reimburse Seller for, and indemnify and hold harmless Seller from and against, any loss, damage, liability, obligation, deficiency, claim, suit, cause of action, demand, judgment, or expense (including without being limited to, payments, fines, penalties, interest, taxes, assessments, reasonable attorneys' fees, and accounting fees of any kind or nature), contingent or otherwise, arising out of or sustained by reason of:

(a) for a period of one (1) year after the Closing, any breach of any warranty, representation, or agreement of Buyer contained under this Agreement or in any certificate or other instrument furnished to Seller pursuant to this Agreement or in connection with any of the transactions contemplated hereby;

(b) the operation of the Station or ownership of the Assets subsequent to Closing;

(c) any transaction entered into by Buyer or arising in connection with the Station or the operation of the Station subsequent to the Closing; or

(d) the Assumed Obligations.

### 12.3 **Notice of Claim.**

(a) The indemnified party shall give prompt written notice to the indemnifying party of any demand, suit, claim or assertion of liability by third parties that is subject to indemnification hereunder (a “Claim”), but a failure to give such notice or delaying such notice shall not affect the indemnified party’s rights or the indemnifying party’s obligations except to the extent the indemnifying party’s ability to remedy, contest, defend, or settle with respect to such Claim is thereby prejudiced and provided, with respect to the indemnifications under Paragraph 12.1(a) or Paragraph 12.2(a), that such notice is given within the time period described in therein.

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

(c) The indemnifying party shall have the primary responsibility and right to undertake defense of or opposition to any Claim and/or the settlement thereof; *provided, however,* that the indemnifying party shall not, without the indemnified party’s prior written consent, enter into any settlement or compromise of such Claim or consent to the entry of any judgment that does not include a release of the indemnified party from liability in respect of such Claim. The indemnified party, by counsel or other representative of its own choosing and at its sole cost and expense, shall have the right to consult with the indemnifying party and its counsel concerning such Claim, and the indemnifying party and the indemnified party and their respective counsel shall cooperate in good faith with respect to such Claim. In the event that the indemnifying party fails to assume the defense of any Claim, the indemnified party may, through counsel of its own choosing, defend, oppose, compromise or settle such Claim; *provided, however,* that the indemnified party shall not agree to any compromise or settlement which admits fault on the part of or imposes future obligations or liability upon the indemnifying party without the indemnifying party’s written consent.

12.4 **Damages.** Notwithstanding any provision of this Paragraph 12, other than indemnification of third party Claims, neither party shall have any liability to the other under any circumstances for special, indirect, consequential, punitive, or exemplary damages or lost profits or similar damages of any kind, whether or not foreseeable.

12.5 **Sole Remedy.** Except as provided to the contrary in this Agreement, the right to indemnification pursuant to this Section shall be the sole and exclusive remedy of each party following the Closing in connection with any breach or other violation by the other party of its representations, warranties, or covenants contained in this Agreement.

**SECTION 13**  
**RISK OF LOSS**

The risk of any loss or damage to the Assets by fire, theft, breakage, explosion, earthquake, accident, flood, rain, storm, riot, act-of-God, or public enemy, or any other casualty or cause, reasonable wear and tear excepted, which impairs the ability of the Station to broadcast is assumed and shall be borne by the Seller at all times before the Closing of this Agreement. If any such loss or damage occurs prior to Closing, Seller shall give prompt written notice of the loss or damage to Buyer and shall promptly take all steps to rebuild, replace, restore or repair any such damaged property at its own cost and expense. In the event that Seller does not fully replace or restore any such lost or damaged Asset or Assets having an aggregate replacement value of at least One Thousand Dollars (\$1,000) or which have a material adverse impact upon the operation of the Station by the time the Closing otherwise would be held, and the cost of such replacements, restoration or repairs is in the aggregate Five Thousand Dollars (\$5,000) or less, the Closing shall occur as scheduled and the amount necessary to replace, restore, or repair the damaged or lost property shall be credited against the Purchase Price to be paid to Seller. If the cost of such uncompleted replacement, restoration or repairs exceeds Five Thousand Dollars (\$5,000) in the aggregate, Buyer may, at its option, upon written notice to Seller, either (i) terminate this Agreement, or (ii) elect to close without restoration, in which event Seller will deliver all insurance proceeds paid or payable by reason of the loss or damage to Buyer. If Buyer terminates this Agreement under this Section, each party shall bear its own expenses.

**SECTION 14**  
**FEES AND EXPENSES**

Except as expressly agreed herein, each party shall pay its own attorneys' fees and expenses which it initiates, creates, or incurs in connection with the negotiation, preparation and execution of this Agreement. Buyer and Seller shall split equally the Commission filing fee associated with the Assignment Application. All other expenses incurred in connection with this transaction shall be borne by the party incurring same.

**SECTION 15**  
**BULK SALES LAW**

The parties do not believe that any bulk sales or fraudulent conveyance statute applies to the transactions contemplated by this Agreement. Buyer therefore waives compliance by Seller with the requirements of any such statutes, and Seller agree to indemnify and hold Buyer harmless against any claim made against Buyer by any creditor of Seller as a result of a failure to comply with any such statute.

**SECTION 16**  
**DEFAULT AND TERMINATION**

16.1 **Termination**. This Agreement may be terminated prior to the Closing by either Buyer or Seller as the case may be, if the party seeking to terminate is not in material default or breach of this Agreement, upon written notice to the other promptly upon the occurrence of any

of the following:

(a) by written notice of Buyer to Seller if Seller breaches its representations or warranties or defaults in the performance of its covenants contained in this Agreement and such breach or default is material in the context of the transactions contemplated hereby and is not cured within the Cure Period as provided in Section 16.2, below;

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

(c) by Seller or Buyer if the Commission denies the Assignment Application or designates it for a trial-type hearing;

(d) by either party, if by nine months from the date of execution of this Agreement the Closing has not been consummated by the parties to this Agreement; or

(e) on the Closing Date, Seller or Buyer, as the case may be, have failed to comply with its obligations under Section 9.2 or 9.3 of this Agreement, and does not cure such failure within the Cure Period.

16.2 A party shall be in “default” under this Agreement if it makes any material misrepresentation to the other party in connection with this Agreement, or materially breaches or fails to perform any of its representations, warranties, or covenants contained in this Agreement. Non-material breaches or failures shall not be grounds for declaring a party to be in default, postponing the Closing, or terminating this Agreement. If either party believes the other to be in default hereunder, the former party shall provide the other with written notice specifying in reasonable detail the nature of such default. If the default is not curable or has not been cured within fifteen (15) calendar days after delivery of that notice (or such additional reasonable time as the circumstances may warrant provided the party in default undertakes diligent, good faith efforts to cure the default within such fifteen (15) calendar day period and continues such efforts thereafter) (the “Cure Period”), then the party giving such notice may terminate this Agreement and/or exercise the remedies available to such party pursuant to this Agreement, subject to the right of the other party to contest such action through appropriate proceedings. Notwithstanding the foregoing, in the event of monetary default, time shall be of the essence, no notice shall be required or cure period afforded, and this Agreement may be terminated immediately.

16.3 Seller agrees that the Assets include unique property that cannot be readily obtained on the open market and that Buyer will be irreparably injured if this Agreement is not specifically enforced. Therefore, Buyer shall have the right specifically to enforce Seller’s performance under this Agreement as its sole remedy, and Seller agrees to waive the defense in any such suit that Buyer has an adequate remedy at law and to interpose no opposition, legal or otherwise, as to the propriety of specific performance as a remedy.

16.4 Buyer agrees that in the event Seller validly exercised its right to terminate this Agreement pursuant to Section 16.1(b), Seller shall be entitled to a release of the Escrow Deposit within ten (10) business days of such termination as liquidated damages as its sole and exclusive remedy. Seller agrees that in the event Buyer is not in default of this Agreement and this Agreement is validly terminated by Buyer, Buyer shall be entitled to the return of the Escrow Deposit within ten (10) business days of such termination.

## **SECTION 17** **SURVIVAL OF WARRANTIES**

17.1 All representations and warranties made in this Agreement shall be deemed made for the purpose of inducing the other to enter into this Agreement, and shall survive the Closing and remain operative and in full force and effect, for a period of one (1) year following Closing. Any claim by one party against the other alleging the breach of a covenant or agreement hereunder shall be made within eighteen (18) months of the Closing Date. In either case, if within the applicable period, a party gives the other party written notice of a claim for breach of any representation, warranty, covenant, or agreement hereunder, describing in reasonable detail the nature and basis of such claim, then such claim shall survive until the earlier of resolution of such claim or expiration of the applicable statute of limitations.

17.2 Except as set forth in this Agreement, neither the acceptance nor the delivery of property hereunder shall constitute a waiver of any covenant, representation, warranty, agreement, obligation, undertaking, or indemnification of Seller or Buyer contained in this Agreement, all of which shall, unless otherwise specifically provided, survive the Closing hereunder in accordance with the terms of this Agreement and shall be binding upon and inure to the benefit of all of the parties hereto, their heirs, legal representatives, successors, and assigns.

## **SECTION 18** **NOTICES**

18.1 Any notice, demand, or request required or permitted to be given under the provisions of the Agreement shall be in writing and shall be deemed to have been duly delivered on the date of personal delivery or, on the date of confirmed facsimile transmission or confirmed delivery on the date of confirmed facsimile transmission or confirmed delivery by a nationally recognized overnight courier service, or on the date of receipt if mailed by registered or certified mail, postage prepaid and return receipt requested, and shall be deemed to have been received if sent to the following addresses:

If to Seller:

Mr. Eugene J. Brown  
MPS Media Of Portland License, LLC  
1181 Highway 315  
Wilkes Barre, PA 18702

With Copy, with shall not constitute notice, to:

Jacqueline M. James, Esq.  
Law Offices of Jacqueline M. James  
49 Mohican Park Drive  
Dobbs Ferry, NY 10522

If to Buyer:

Triumph Broadcasting, LLC  
24 Preble St., #300  
Portland, ME 04101

With Copy, with shall not constitute notice, to:

Mark J. Prak, Esq.  
Brooks, Pierce, McLendon, Humphrey & Leonard LLP  
1600 Wells Fargo Capitol Center  
150 Fayetteville Street  
Raleigh, NC 27601

Any party may change its address for notices by written notice to the other given pursuant to this Section. Any notice purportedly given by a means other than as provided in this Section shall be invalid and shall have no force or effect.

## **SECTION 19** **MISCELLANEOUS**

19.1 **Headings.** The headings of the Sections of this Agreement are for convenience of reference only, and do not form a part thereof, and do not in any way modify, interpret, or construe the meaning of the sections themselves or the intentions of the parties.

19.2 **Entire Agreement.** This Agreement and any other agreements entered into contemporaneously herewith set forth the entire agreement of the parties and are intended to supersede all prior negotiations, understandings, and agreements. This Agreement cannot be altered, amended, changed, or modified in any respect or particular unless each such alteration, amendment, change, or modification shall have been agreed to by each of the parties hereto and reduced to writing in its entirety and signed and delivered by each party. No waiver of provision, condition, or covenant of this Agreement shall be effective unless contained a written instrument signed by the party to be charged with such waiver and delivered to the other.

19.3 **Binding Effect and Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns. Except as otherwise provided herein, neither party may assign its rights or obligations under this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld, conditioned or delayed. Buyer may assign this Agreement to an entity under common control of Buyer upon written notice to Seller; *provided, however*, no such

assignment shall relieve Buyer of any of its obligations, covenants, representations, or warranties hereunder unless and until Buyer's assignee (a) agrees in a written instrument, reasonably acceptable to Seller, to assume all such obligations, covenants, representations, and warranties as fully as if made by such assignee; and (b) provides Seller with such further assurances, reasonably acceptable to Seller, that the assignee can perform all obligations of Buyer hereunder. Should Buyer assign its rights to acquire the Station and such assignment is accepted by Seller in accordance with this Paragraph, Buyer's assignee shall be entitled to (i) rely on all of the representations, warranties, and covenants of Seller hereunder, and (ii) the benefit of all indemnifications provided by Seller hereunder. Seller will cooperate with Buyer and execute any documents reasonably necessary to effectuate such assignment, provided that Buyer or its assignee shall bear all costs and expenses arising out of or related to such assignment.

19.4 **Additional Documents.** The parties hereto agree to execute, acknowledge, and deliver, at or after the Closing Date, such other and further instruments and documents as may be reasonably necessary to implement, consummate, and effectuate the terms of this Agreement, the effective vesting in Buyer of title to the Assets. Further, for a period of three (3) years from the date of Closing, Seller agrees to provide the historical financial data and tax returns for the Station from January 1, 2009 through Closing upon request.

19.5 **Counterparts.** This Agreement may be executed in one or more counterparts, all of which together shall comprise one and the same instrument. Counterparts of this Agreement may be exchanged by facsimile or electronic mail.

19.6 **Legal Actions.** If, notwithstanding the provisions of Section 14, either Seller or Buyer initiates any legal action or lawsuit against the other involving this Agreement, the prevailing party in such action or suit shall be entitled to receive reimbursement from the other party for all reasonable attorneys' fees and other direct costs and expenses incurred by the prevailing party in respect of that litigation, including any appeal, and such reimbursement may be included in the judgment or final order issued in such proceeding.

19.7 **Governing Law.** The parties agree that this Agreement and the transaction herein contemplated shall be interpreted, construed, and enforced under and according to the laws of the State of Maine without regard to the conflicts of laws provisions hereof, and according to federal law applicable to the Commission Authorizations.

19.8 **Counsel.** Each party has been represented by its own counsel in connection with the negotiation and preparation of this Agreement and, consequently, each party hereby waives the application of any rule of law to the effect that any provision of this Agreement shall be interpreted or construed against the party whose counsel drafted that provision.

19.9 **Time is of the Essence.** Time shall be of the essence in this Agreement and the performance of each and every provision hereof.

19.10 **Severability.** If any term or provision of this Agreement or its application shall, to any extent, be declared to be invalid or unenforceable, so long as no party is deprived of the benefits of the Agreement in any material respect, the remaining terms and provisions shall not

be affected and shall remain in full force and effect and to such extent are severable; *provided, however*, that nothing in this provision shall impair a party's rights pursuant to Sections 12 or 16 hereof.

19.11 **Publicity**. Seller and Buyer agree that, except as may be required by applicable law, all public announcements relating to this Agreement or the transactions contemplated hereby, including announcements to Buyer's employees, will be made only as may be agreed upon in writing by the parties, which consent shall not be unreasonably withheld.

19.12 **Choice of Forum**. The parties agree that the only and exclusive forum for any action brought to resolve any dispute arising out of this Agreement shall be the federal or state courts having jurisdiction over Cumberland County, Maine. No party shall oppose or assert a defense against such litigation in said courts on the grounds that the court lacks personal jurisdiction.

19.13 **Confidentiality**. Buyer and Seller, and their respective employees, agents and representatives, shall each keep confidential all non-public information obtained with respect to the other in connection with the negotiation and performance of this Agreement, except where such information is known or available through other lawful sources or where its disclosure is required in accordance with applicable law. If the transactions contemplated hereby are not consummated for any reason. Buyer and Seller, and their respective employees, agents, and representatives, shall return to the other, without retaining a copy thereof, any written information, including all financial information, obtained from the other in connection with this Agreement and the transactions contemplated hereby, and shall forever preserve the confidentiality of such information. The parties recognize that a breach of this covenant of confidentiality may cause substantial, irreparable harm to the other's business and therefore agree that injunctive relief would be appropriate to enforce any breach of this covenant.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be signed and executed by their proper individuals or officers thereunto duly authorized as of the day and year first above written.

**SELLER:**

**MPS MEDIA OF PORTLAND  
LICENSE, LLC**

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

  
Eugene J. Brown  
Member

**BUYER:**

**TRIUMPH BROADCASTING, LLC**

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

Member

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and executed by their proper individuals or officers thereunto duly authorized as of the day and year first above written.

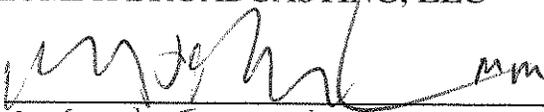
SELLER:

MPS MEDIA OF PORTLAND  
LICENSE, LLC

By: \_\_\_\_\_  
Eugene J. Brown  
Member

BUYER:

TRIUMPH BROADCASTING, LLC

By:  \_\_\_\_\_  
Robert J. McCulloch  
Member

## LIST OF SCHEDULES

Schedule 1.1.1	Commission Authorizations
Schedule 1.1.2	List of Tangible Personal Property
Schedule 1.1.3	Contracts and Agreements
Schedule 1.1.4	Intangible Assets
Schedule 1.2	Excluded Assets
Schedule 1.2.8	Shared Assets
Schedule 6.6	Retransmission and Must Carry
Schedule 6.7	Employees and Personnel Matters
Schedule 6.8	Claims and Litigation
Schedule 6.9	Interference with Signal
Exhibit One	Escrow Agreement