

ASSET PURCHASE AGREEMENT

This **ASSET PURCHASE AGREEMENT** (this “**Agreement**”) is entered into as of this 20th day of February, 2018, by and among **MERLIN MEDIA, LLC**, a Delaware limited liability company, and **MERLIN MEDIA LICENSE, LLC**, a Delaware limited liability company (collectively, “**Seller**”), and **EDUCATIONAL MEDIA FOUNDATION**, a California non-profit religious corporation (“**Buyer**”).

RECITALS

A. Seller is the licensee of and operates Radio Station WLUP-FM, 97.9 MHz, Chicago, Illinois, FCC Facility ID 73233 (the “**Station**”), pursuant to licenses issued by the Federal Communications Commission (the “**FCC**”).

B. Seller desires to sell and Buyer wishes to buy and acquire the assets which are owned and used by Seller in the operation of the Station as described in this Agreement for the price and on the terms and conditions hereinafter set forth, subject to the prior approval of the FCC.

C. Seller and Buyer are, simultaneously with the execution and delivery of this Agreement, entering into a Network Affiliation Agreement for the Station (the “**Affiliation Agreement**”), pursuant to which, commencing on the Affiliation Commencement Date (as defined below), Buyer shall provide programming on the Station pursuant to the terms and conditions contained therein, pending the Closing (as defined below) of the transactions contemplated by this Agreement.

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

In consideration of the above premises and the covenants and agreements contained herein, Buyer and Seller, intending to be bound legally, agree as follows:

SECTION 1 **SALE AND PURCHASE OF ASSETS**

1.1 **Agreement to Sell and Buy.** Subject to the terms and conditions set forth in this Agreement, Seller shall convey and deliver to Buyer on the Closing Date, all right, title and interest in and to the assets, properties, interests and rights described in this Section 1.1 which are owned or leased (to the extent of Seller’s leasehold interest) by Seller and used in the operation of the Station (collectively, the “**Station Assets**”). The Station Assets shall be transferred to Buyer at Closing (defined below) free and clear of any claims, liabilities, mortgages, liens, pledges, conditions, charges, or encumbrances of any nature whatsoever,

except for those permitted in accordance with this Agreement and as set forth on Schedule 1.1, which shall be satisfied by Closing. The Station Assets to be conveyed, transferred and assigned pursuant to this Agreement shall include the following:

- (a) the licenses and authorizations issued by the FCC for the operation of the Station, including all Antenna Structure Registrations (the “**FCC Licenses**”), and other governmental licenses, permits and authorizations relating to and used in connection with the operation of the Station as listed on Schedule 3.4 hereto;
- (b) the tangible personal property owned and leased (to the extent of Seller’s leasehold interest) by Seller **and** which is listed on Schedule 3.5 hereto (the “**Personal Property**”);
- (c) the lease (“**Real Property Lease**”) for the real property leased by Seller (to the extent of Seller’s leasehold interest) as listed and described on Schedule 3.6 hereto (the “**Leased Real Property**”);
- (d) the contracts and agreements listed on Schedule 3.6 hereto (which shall include the Real Property Lease)(collectively, the “**Assumed Contracts**”);
- (e) all of Seller’s rights, title and interest in and to the intangible property rights of Seller, which are used in connection with the operation of the Station (collectively, the “**Intangible Property**”) and which are described or listed on Schedule 3.7 hereto; and
- (f) the files and records of Seller relating to the operations of the Station or the Station Assets, all applications and filings with the FCC, technical information and engineering data, all files and records required to be maintained in accordance with the FCC public file rules, and complete copies of all written Assumed Contracts, including any renewals or amendments thereto.

1.2 **Excluded Assets.** Notwithstanding the foregoing or any other provision of this Agreement, the Station Assets to be conveyed to Buyer hereunder shall exclude the following:

- (a) Seller’s cash on hand, utility deposits and contributions and pledges from listeners, including contributions received and pledges made after the Closing Date;
- (b) all contracts, leases and agreements relating to the operations of the Station, including programming and employment contracts, other than the Assumed Contracts;
- (c) all tangible personal property owned and leased (to the extent of Seller’s leasehold interest) by Seller other than the Personal Property;

- (d) all pension, health insurance, and other employee benefit plans maintained by Seller for the benefit of the Seller's employees at the Station;
- (e) all accounts receivable existing at the earlier of (A) the date the term of the Affiliation Agreement commences (the "**Affiliation Commencement Date**") or (B) the Closing Date;
- (f) the internal corporate books and records of Seller relating to the operations of the Station, including all information relating to listener donations and pledges; and
- (g) any assets which are described or listed on Schedule 1.2 hereto .

1.3 **Assumption of Liabilities and Obligations.** Unless otherwise required pursuant to the Affiliation Agreement, as of the Closing Date, Buyer shall assume, pay, discharge and perform (i) all obligations and liabilities arising out of Buyer's ownership of the Station Assets and its operation of the Station on or after the Closing Date, (ii) all obligations and liabilities of Seller under the Assumed Contracts, including the Real Property Lease, insofar as they relate to the time period on and after the Closing Date; and (iii) all obligations and liabilities of Seller under the FCC Licenses and all other governmental licenses, franchises and authorizations transferred to Buyer insofar as they relate to the time period on or after the Closing Date. All of the foregoing liabilities and obligations assumed by Buyer under this Agreement shall be referred to herein collectively as the "**Assumed Liabilities.**"

1.4 **Retained Liabilities.** Notwithstanding anything to the contrary in this Agreement, Buyer does not assume or agree to pay, satisfy, discharge or perform any liabilities, obligations or commitments of Seller of any nature whatsoever other than the Assumed Liabilities. All such liabilities, obligations and commitments of Seller described in this Section 1.4 shall be referred to herein collectively as the "**Retained Liabilities.**"

SECTION 2

PURCHASE PRICE AND TERMS

2.1 **Purchase Price.** As consideration for the assignment and transfer of the Station Assets, Buyer shall deliver to Seller on the Closing Date the sum of Twenty-One Million Five Hundred Thousand Dollars (\$21,500,000.00) (the "**Purchase Price**") by wire transfer of immediately available Federal funds to account(s) designated by Seller.

2.2 **Escrow Deposit.** Buyer and Seller have executed an Escrow Agreement in the form of Exhibit A attached hereto dated as of the date of this Agreement, whereby Buyer has deposited Five Percent (5%) of the Purchase Price, such amount shall be One Million Seventy-Five Thousand Dollars (\$1,075,000.00) (the "**Escrow Deposit**") with WashingtonFirst Bank, N.A., (hereafter defined) as escrow agent (the "**Escrow Agent**") as security for Buyer's performance under this Agreement and which shall be credited towards the Purchase Price at the Closing. The Escrow Deposit and all earnings thereon shall be held by the Escrow Agent and distributed pursuant to the terms of the Escrow Agreement.

2.3 **Allocation of Purchase Price.** The Purchase Price for the Station Assets shall be allocated to the Station Assets in a manner set forth by Seller and provided to Buyer within sixty (60) days following the Closing. Such allocation shall be (i) prepared consistent with Internal Revenue Code of 1986, as amended, and the regulations thereunder and (ii) used by Buyer and Seller in all respective filings with federal, state and local taxing authorities.

2.4 **Proration of Income and Expenses.** Except as otherwise provided herein or as provided in the Affiliation Agreement, all deposits, reserves and prepaid and deferred income and expenses relating to the Station Assets or the Assumed Liabilities and arising from the conduct of the business and operations of the Station shall be prorated between Buyer and Seller in accordance with generally accepted accounting principles as of 11:59 p.m., central time, on the date immediately preceding the Closing Date. Such proration shall include, without limitation, all ad valorem, real estate and other property taxes (but excluding taxes arising by reason of the transfer of the Station Assets as contemplated hereby which shall be paid as set forth in Section 6.2), business and license fees, utility expenses, rents, lease payments and similar prepaid and deferred items. The prorations and adjustments shall be made on the Closing Date to the extent practicable, with a final adjustment and proration to be made within ninety (90) days of the Closing Date.

2.5 **Effect of Affiliation Agreement.** Simultaneously with the execution of this Agreement, Seller and Buyer are executing and delivering the Affiliation Agreement. The parties hereto acknowledge that the Station is currently being operated under a local marketing agreement with another programmer and not by Seller. To the extent that Assumed Liabilities are assumed by Buyer under the Affiliation Agreement, the obligations with respect to the assumption of such liabilities under this Agreement shall be deemed to have been met by Seller's performance under the Affiliation Agreement, unless explicitly stated otherwise in the Affiliation Agreement or in this Agreement. Any proration of liabilities under the Affiliation Agreement shall satisfy the proration obligations under this Agreement in respect of such liabilities. Notwithstanding anything contained herein to the contrary, Seller shall not be deemed to have breached any of its representations, warranties, covenants or agreements contained herein or to have failed to satisfy any condition precedent to Buyer's obligation to perform under this Agreement (nor shall Seller have any liability or responsibility to Buyer in respect of any such representations, warranties, covenants, agreements or conditions precedent), in each case, to the extent that the inaccuracy of any such representations, the breach of any such warranty, covenant or agreement or the inability to satisfy any such condition precedent arises out of or otherwise relates to (a) any actions taken by, or under the authorization of, Buyer or its affiliates (or any of their respective officers, directors, employees, agents or representatives) in connection with Buyer's performance of its obligations under the Affiliation Agreement or otherwise, or (b) the failure of Buyer to perform any of its obligations under the Affiliation Agreement. Buyer's actions or failures as provided for in (a) and (b) of this Section 2.5 shall hereinafter be referred to as "**Buyer LMA Actions.**" Buyer acknowledges and agrees that Seller shall not be deemed responsible for or have authorized or consented to any action or failure to act on the part of Buyer (or any of its respective officers, directors, employees, agents or representatives) in connection with the Affiliation Agreement solely by reason of the fact that prior to Closing, Seller shall have the legal right to control, manage, and supervise the operation of the Station and the conduct of the business.

SECTION 3

REPRESENTATIONS AND WARRANTIES OF SELLER

As an inducement to Buyer to enter into this Agreement, Seller makes the following representations and warranties to Buyer, each of which is true and correct on the date hereof and on the Closing Date, and shall survive the Closing for the period set forth herein:

3.1 **Organization, Standing and Authority.** Each Seller is a limited liability company validly existing and in good standing under the laws of the State of Delaware and (to the extent required by applicable law) is qualified to transact business the State of Illinois. Seller has all requisite power and authority (i) to own, lease, and use the Station Assets as presently owned, leased, and used, (ii) to conduct the business or operations of the Station as presently conducted, (iii) to execute and deliver this Agreement, related agreements and documents contemplated hereby, and (iv) to perform and comply with all of the terms, covenants and conditions to be performed and complied with by Seller hereunder and thereunder.

3.2 **Authorization and Binding Obligation.** The execution, delivery, and performance of this Agreement and all related agreements by Seller have been duly authorized by all necessary corporate action. This Agreement and all related agreements have been duly executed and delivered by Seller and constitute the legal, valid, and binding obligations of Seller, enforceable against it in accordance with their terms.

3.3 **Absence of Conflicting Agreements and Required Consents.** Except as set forth on Schedule 3.3 and subject to obtaining the FCC Consent (as defined below) and other third party consents that may be required to assign any of the Assumed Contracts, including the Real Property Lease, the execution, delivery, and performance of this Agreement, related agreements and documents contemplated hereby (with or without the giving of notice, the lapse of time, or both) (i) do not conflict with any provision of the organizing documents of Seller; (ii) do not conflict with, result in a breach of, or constitute a default under, any applicable law, judgment, order, rule or regulation of any court or governmental unit to which Seller is a party or by which Seller is bound; (iii) do not conflict with, constitute grounds for termination of, result in a breach of or constitute a default under any agreement, instrument, license or permit to which Seller is a party or by which Seller may be bound; and (iv) do not create any claim, liability, mortgage, lien, pledge, condition, charge, or encumbrance of any nature whatsoever upon the Station Assets.

3.4 **Governmental Licenses.** Schedule 3.4 is a true and complete list of all current FCC Licenses and other governmental licenses, permits, approvals and authorizations issued by any governmental entity to be transferred to Buyer hereunder. Merlin Media License, LLC (“**Licensee**”) is the authorized legal holder of such licenses which are in full force and effect for the remainder of their terms as described on Schedule 3.4, and are unimpaired by any act of Licensee. None of such licenses is subject to any restriction or condition which would limit the operation of the Station as presently operated. The Station is operating in compliance in all material respects with all terms and conditions of the FCC Licenses, the rules and regulations of the FCC, and all other governmental entities with jurisdiction over the operations of the Station. The Station is licensed as a commercial station and is currently operated accordingly.

Except as set forth on Schedule 3.4, there are no applications, complaints, petitions or proceedings pending or, to Licensee's knowledge, threatened before the FCC or any other governmental or regulatory authority relating to the business or operations of the Station. All material reports, forms, applications and statements required to be filed by Licensee with the FCC with respect to the Station since Seller has been the licensee of the Station have been filed and are substantially complete and accurate. The operations of the Station and the Station Assets are in compliance in all material respects with all applicable engineering standards required to be met under applicable FCC rules, and all other applicable federal, state and local rules, regulations, requirements and policies.

3.5 **Title to and Condition of Personal Property.** Schedule 3.5 is a true and complete list of Personal Property to be transferred to Buyer hereunder. Seller has good title to all items of Personal Property that shall be transferred to Buyer pursuant to this Agreement. Except as noted on Schedule 3.5, none of the Personal Property is subject to any security interest, mortgage, pledge, lease or licensing agreement, conditional sales agreement, or other lien or encumbrance, except for liens for current taxes, to the extent applicable and other governmental charges not yet due and payable.

3.6 **Assumed Contracts.** Schedule 3.6 lists all of the Assumed Contracts. All Assumed Contracts are in full force and effect, and are valid, binding and enforceable in accordance with their terms. There is not any material default by any party thereto or event which, after notice or lapse of time, or both, would constitute such a default such that either party would have the right to terminate such Assumed Contract. Except for any third party consents that may be required, Seller has full legal power and authority to assign its rights under the Assumed Contracts to Buyer in accordance with this Agreement, and such assignment will not affect the validity, enforceability and continuation of any of the Assumed Contracts.

3.7 **Intangible Property.** Schedule 3.7 is a true and complete list of all copyrights, trademarks, trade names, licenses, patents, permits, privileges, computer software and other similar intangible property rights and interests (exclusive of the licenses listed on Schedule 3.4) applied for, issued to or owned by Seller, or under which Seller is licensed or franchised, which are used in the conduct of the business or operation of the Station and which are to be assigned to Buyer in accordance with this Agreement. All such intangible interests are valid and uncontested, and will be transferred to Buyer at the Closing free and clear of any liens, encumbrances, and security interests of any nature whatsoever, except to the extent that such rights and interests are subject to compliance with any outstanding third party agreements. To Seller's knowledge, Seller is not infringing upon any trademarks, trade names, copyrights or similar intellectual property rights owned by any other person or persons, and there is no claim or action pending or, to Seller's knowledge, threatened, with respect thereto.

3.8 **Compliance with Laws.** Seller has complied in all material respects with all laws, regulations, rules, writs, injunctions, ordinances, franchises, decrees or orders of any governmental authority that are applicable to Seller's operation of the Station and ownership of the Station Assets. Seller has not received any notice asserting any material noncompliance with any law or order relating to the Station Assets or in connection with the operation of the Station. There is no pending or, to Seller's knowledge, threatened, investigation, audit, review

or other examination of the Station, and Seller is not subject to any order, agreement, memorandum of understanding or other regulatory enforcement action or proceeding with or by the FCC or any other governmental authority

3.9 **Taxes.** Seller has, in respect of the Station's business, filed all material tax returns required to have been filed by it under applicable law and has paid all taxes which have become due pursuant to such tax returns or pursuant to any assessments which have become payable.

3.10 **Leased Real Property.** Seller has, and will convey to Buyer at the Closing, a valid leasehold interest in the Real Property Lease. To Seller's knowledge, there is full legal and practical access to the Leased Real Property and all utilities necessary for Buyer's use of the Leased Real Property as a radio tower facility are installed and are in good working order, and are subject to valid easements, where necessary.

3.11 **Disclosure.** No representation or warranty made by Seller herein or in any Exhibit or Schedule hereto or any certificate or other document delivered or to be delivered by or on behalf of Seller pursuant to this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make any such statement contained herein or therein not misleading.

SECTION 4 **REPRESENTATIONS AND WARRANTIES OF BUYER**

As an inducement to Seller to enter into this Agreement, Buyer makes the following representations and warranties to Seller, each of which is true and correct on the date hereof and on the Closing Date, and shall survive the Closing for the period set forth herein:

4.1 **Existence and Power.** Buyer is a non-profit religious corporation duly organized, validly existing and in good standing under the laws of the State of California with all requisite power under its articles of incorporation and by-laws to enter into and perform this Agreement and the transactions contemplated hereby and to carry on its business as now conducted and as intended to be conducted after the Closing, including its ownership of the Station Assets and operation of the Station. Buyer is, and on the Closing Date will be qualified to do business and in good standing in the State of Illinois.

4.2 **Eligibility of Buyer.** Buyer is legally, financially and technically qualified to be the assignee of the FCC Licenses and the owner and operator of the Station under the Communications Act of 1934, as amended (the "**Communications Act**") and the rules, regulations and policies of the FCC without the need to request or obtain a waiver of or exception to any FCC rule, regulation or policy.

4.3 **Authorization and Binding Obligation.** This Agreement has been duly executed by Buyer and is a legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with its terms. The execution, delivery, and performance of this Agreement, and all related agreements and documents contemplated hereby by Buyer have been duly authorized by all necessary corporate actions.

4.4 **Absence of Conflicting Agreements.** Subject to obtaining the FCC Consent and any required third party consents to the Assumed Contracts, the execution, delivery, and performance of this Agreement, and all related agreements and documents contemplated hereby by Buyer (with or without the giving of notice, the lapse of time, or both) (i) do not require the further consent of any third party; (ii) will not conflict with, result in a breach of, or constitute a default under, any applicable law, judgment, order, rule or regulation of any court or governmental instrumentality; and (iii) will not conflict with, constitute grounds for termination of, result in a breach of, constitute a default under, or accelerate or permit the acceleration of any performance required by the terms of, any agreement, instrument, license, or permit to which Buyer is a party or by which Buyer may be bound, such that Buyer could not acquire the Station Assets and be the licensee of the Station.

4.5 **Litigation.** There is no outstanding judgment, award, decree, writ or litigation, action, suit, investigation or other proceeding pending or, to Buyer's knowledge, threatened, which would have a material adverse effect on Buyer's ability to perform in accordance with the terms of this Agreement and Buyer has no knowledge of any facts that would result in the initiation of any such proceeding.

4.6 **Disclosure.** No representation or warranty made by Buyer herein or in any Exhibit or Schedule hereto or any certificate or other document delivered or to be delivered by or on behalf of Buyer pursuant to this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make any such statement contained herein or therein not misleading.

SECTION 5

COVENANTS OF SELLER AND BUYER

5.1 **Pre-Closing Covenants of Seller.** Except as expressly authorized by this Agreement, the Affiliation Agreement or with the prior written consent of Buyer which consent shall not be unreasonably withheld, and which shall be deemed given if Buyer does not respond to Seller's request within five (5) business days of receipt thereof, between the date hereof and the Closing Date, Seller shall:

- (a) operate the Station in the ordinary course of business, consistent with and in accordance with its past practices and consistent with its representations and warranties set forth in this Agreement;
- (b) operate the Station in compliance with the FCC Licenses, the Communications Act, the rules and regulations of the FCC, and with all other laws, regulations, rules and orders applicable to the Station and the Station Assets;
- (c) not sell, convey or encumber any of the Station Assets except for the retirement of items of Personal Property in the ordinary course of business;

- (d) permit Buyer and its representatives and agents reasonable access to the Station and the Station Assets, provided that such access does not disrupt the normal operation of the Station;
- (e) promptly notify Buyer in the event there is any material damage to the Station Assets or interruption to the normal broadcast operations of the Station in excess of twelve (12) hours at any one time;
- (f) promptly notify Buyer in writing if it determines, or has reasonable grounds to believe, that any representation, warranty or covenant of Seller or of Buyer is no longer accurate in all material respects;
- (g) other than in the ordinary course, consistent with past practices, not enter into any new agreements which would require post-Closing payments by Buyer without the written consent of Buyer which consent shall not be unreasonably withheld;
- (h) except as noted on Schedule 1.1, not create or assume any liens, encumbrances or security interests of any nature whatsoever affecting any of the Station Assets; and
- (i) use its commercially reasonable efforts to obtain any third party consents necessary for the assignment of any Assumed Contract.

5.2 **Control of Station.** Subject to the provisions of Section 5.2 and the terms of the Affiliation Agreement, Buyer shall not, directly or indirectly, control, supervise or direct the operations of the Station prior to the Closing. Such operations shall be the sole responsibility of Seller and shall be in its complete discretion.

5.3 **Pre-Closing Covenants of Buyer.** Except as expressly authorized by this Agreement or with the prior written consent of Seller, which consent shall not be unreasonably withheld, between the date hereof and the Closing Date, Buyer shall:

- (a) take no action that would impair its qualifications to be the licensee of the Station or materially delay obtaining the FCC Consent, take any action that could result in its disqualification under the rules of the FCC to be the licensee of the Station or that would require it to obtain a waiver of the FCC rules, regulations or policies in order to be the licensee of Station;
- (b) promptly notify Seller in writing if it determines, or has reasonable grounds to believe, that any representation, warranty or covenant of Buyer or Seller is no longer accurate in all material respects; and
- (c) cooperate with Seller and use its commercially reasonable efforts to obtain any third party consents necessary for the assignment of any Assumed Contract.

5.4 **Post-Closing Covenants.** After the Closing, Seller and Buyer will take such actions, and execute and deliver to Buyer or Seller, respectively, such further bills of sale, assignments or other transfer or assumption documents as may be necessary to ensure the full and effective transfer of title to the Station Assets to Buyer or the assumption of the Assumed Liabilities by Buyer pursuant to this Agreement.

SECTION 6

SPECIAL COVENANTS AND AGREEMENTS

6.1 FCC Applications

- (a) **FCC Consent.** The assignment of the FCC Licenses as contemplated by this Agreement is subject to the prior consent and approval of the FCC (the “**FCC Consent**”). Within five (5) business days of the date of this Agreement, Buyer and Seller shall file with the FCC an appropriate application for the FCC Consent (the “**Assignment Application**”). The parties shall prosecute the Assignment Application with all reasonable diligence and use their commercially reasonable efforts to obtain the grant of the Assignment Application expeditiously. The transfer of the Station Assets hereunder is expressly conditioned upon the grant of the FCC Consent without the imposition of any condition that is materially adverse to Buyer or Seller, and compliance by the parties with any other conditions imposed by the FCC Consent.
- (b) **Non-Commercial Station.** Seller agrees to reasonably cooperate with Buyer in connection with the filing of an application by Buyer to modify the FCC License to designate the Station as a non-commercial facility (“**Non-Commercial Application**”) to be effective on or after the Closing Date, so long as any such Non-Commercial Application is filed on a basis that is contingent and effective only upon a prior Closing, and does not adversely affect any operations of Seller. The grant of the any such application shall not be a condition to Closing hereunder. The Non-Commercial Application shall be made and prosecution thereof shall be conducted solely at Buyer’s expense. Seller will provide a written statement to Buyer authorizing the filing of the Non-Commercial Application as required by FCC rules.

6.2 **Taxes, Fees and Expenses.** Except as provided for in this Section 6.2 or in the Affiliation Agreement, each party shall be solely responsible for all expenses incurred by it in the negotiation and closing of this Agreement. Buyer shall be solely responsible for and pay all sales, use, transfer and purchase taxes and fees, if any, arising out of the transfer of the Station Assets pursuant to this Agreement. Buyer and Seller shall each pay one-half (1/2) of any filing and other fees payable to the FCC in connection with the filing and grant of the Assignment Application.

6.3 Risk of Loss.

- (a) Seller shall bear the risk of any casualty loss or damage to any of the Station Assets prior to the Closing Date, and Buyer shall bear such risk on and after the Closing Date. In the event of any casualty loss or damage to the Station Assets prior to the Closing Date and subject to any rights of Seller under the Affiliation Agreement,, Seller shall be responsible for repairing or replacing (as appropriate under the circumstances) any lost or damaged Station Asset (the “**Damaged Asset**”), unless such Damaged Asset was obsolete and unnecessary for the continued operation of the Station consistent with Seller’s past practice and the FCC Licenses and applicable law, or unless such Damaged Asset or assets can be repaired or replaced by Buyer after Closing for an amount of less than \$50,000.00. If Seller is unable to repair or replace a Damaged Asset by the date on which the Closing would otherwise occur under this Agreement, then the proceeds of any insurance covering such Damaged Asset shall be assigned to Buyer at Closing, and to the extent such proceeds are not sufficient to cover the reasonable out-of-pocket costs incurred by Buyer in repairing or replacing the Damaged Asset after the Closing, Seller shall reimburse Buyer by an amount equal to the deficiency.
- (b) If the Station is off the air prior to the Affiliation Commencement Date due to equipment failure, then Seller shall use commercially reasonable efforts to return the Station to the air as promptly as practicable in the ordinary course of business.

6.4 **Broker’s Commission.** Each of Seller and Buyer represent that it has not engaged any third party to act as a finder, broker, agent, consultant or in a similar capacity in connection with this Agreement and the transactions contemplated hereby. Each of Seller and Buyer agree to indemnify and hold harmless the other with respect to any claim for a finder’s, consultant’s, broker’s or similar commission or fee made by any third party on the basis of the conduct of Seller or Buyer, respectively.

SECTION 7

CONDITIONS TO OBLIGATIONS OF BUYER AND SELLER

7.1 **Conditions to Obligations of Buyer to Close.** All obligations of Buyer at the Closing hereunder are subject to the fulfillment prior to and at the Closing of each of the following conditions, any of which (except for obtaining the FCC Consent) may be waived by Buyer in writing, in its sole discretion, at or prior to the Closing:

- (a) **Representations and Warranties.** The representations and warranties of Seller shall be true and complete in all material respects at and as of the Closing Date as though such representations and warranties were made at and as of such time.
- (b) **Covenants and Conditions.** Seller shall have in all material respects performed and complied with the covenants, agreements, and conditions

required by this Agreement to be performed or complied with by it prior to or on the Closing Date.

- (c) **Licenses**. Seller shall be the holder of the FCC Licenses and except as contemplated by the Non-Commercial Application, there shall not have been any modification of any of such license which has a material adverse effect on the Station or the business or operations of the Station.
- (d) **FCC Consent**. The FCC Consent shall have been obtained.
- (e) **Adverse Proceedings**. No action, suit, claim or governmental proceeding shall be pending against, and no order, decree or judgment of any court, agency or other governmental authority shall have been rendered against, Seller or Buyer which: (i) renders it unlawful, as of the Closing Date, to close the transactions contemplated by this Agreement in accordance with its terms; (ii) declares invalid or illegal the transactions contemplated hereby; (iii) enjoins the closing of the transactions contemplated hereby; (iv) awards material damages on account of the consummation of any transaction contemplated hereby; or (v) is a petition of bankruptcy by or against Seller, an assignment by Seller for the benefit of its creditors, or other similar proceeding.
- (f) **Required Consents**. Seller shall have obtained all third party consents necessary for the assignment of any Assumed Contract to Buyer.
- (g) **Lien Releases**. Seller shall have obtained releases of liens, mortgages, financing statements, security interests and other encumbrances necessary to convey clear title to the Station Assets to Buyer from of all liens, claims and other encumbrances.
- (h) **Deliveries**. Seller shall have made or be willing and able to make all the deliveries to Buyer set forth in Section 8.2.

7.2 **Conditions to Obligations of Seller to Close**. All obligations of Seller at the Closing hereunder are subject to the fulfillment prior to and at the Closing of each of the following conditions, any of which may be waived by Seller in writing, in its sole discretion, at or prior to the Closing:

- (a) **Representations and Warranties**. The representations and warranties of Buyer shall be true and complete in all material respects at and as of the Closing Date as though such representations and warranties were made at and as of such time.
- (b) **Covenants and Conditions**. Buyer shall have in all material respects performed and complied with the covenants, agreements, and conditions required by this Agreement to be performed or complied with by it prior to or on the Closing Date.

- (c) **Adverse Proceedings.** No action, suit, claim or governmental proceeding shall be pending against, and no order, decree or judgment of any court, agency or other governmental authority shall have been rendered against, any party hereto which: (i) renders it unlawful, as of the Closing Date, to effect the transactions contemplated by this Agreement in accordance with its terms; (ii) declares invalid or illegal the transactions contemplated hereby; (iii) enjoins the transactions contemplated hereby; (iv) awards material damages on account of the consummation of any transaction contemplated hereby; or (v) is a petition of bankruptcy by or against Buyer, an assignment by Buyer for the benefit of its creditors, or other similar proceeding.
- (d) **Deliveries.** Buyer shall have made or be willing and able to make all the deliveries set forth in Section 8.3.

SECTION 8

CLOSING AND CLOSING DELIVERIES

8.1 **Closing.** Subject to the satisfaction or waiver of the conditions set forth in Sections 7.1 and 7.2 and if this Agreement has not been terminated pursuant to Section 9.1, the transactions contemplated by this Agreement shall be consummated by Buyer and Seller (“**Closing**”) at a mutually agreeable location, on the later date of a mutually agreeable date no later than the tenth (10th) business day following the FCC Consent having been obtained (the “**Closing Date**”).

8.2 **Deliveries by Seller.** Prior to or on the Closing Date, Seller shall deliver to Buyer the following, in form and substance reasonably satisfactory to Buyer and its counsel:

- (a) **Transfer Documents.** Duly executed bills of sale, assignments, and other transfer documents sufficient to vest good, marketable and insurable title to the Station Assets in the name of Buyer free and clear of any claims, liabilities, mortgages, liens, pledges, conditions, charges, or encumbrances of any nature whatsoever;
- (b) **Officer’s Certificate.** A certificate, dated as of the Closing Date and executed by a duly authorized officer of Seller, certifying (i) that the representations and warranties of Seller are true and complete in all material respects as of the Closing Date as though made on and as of that date, and (ii) that Seller has, in all material respects, performed its obligations and complied with its covenants set forth in this Agreement to be performed and complied with prior to or on the Closing Date; and
- (c) **Corporate Resolutions.** Resolutions of Seller approving the execution of this Agreement, and all related agreements and documents, and the delivery of the closing documents provided for hereunder.

- (d) **W-9 and Utility Bill.** Seller shall have delivered to Buyer (i) an IRS Form W-9, completed and executed by Seller and (ii) a current utility bill for the Leased Real Property;

8.3 **Deliveries by Buyer.** Prior to or on the Closing Date, Buyer shall deliver to Seller the following, in form and substance reasonably satisfactory to Seller and its counsel:

- (a) **Purchase Price.** The Purchase Price for the Station Assets delivered to Seller in accordance with Sections 2.1 and 2.2 of this Agreement;
- (b) **Assumption Agreements.** Appropriate assumption agreements pursuant to which Buyer shall assume and undertake to perform Seller's obligations arising on and after the Closing under (i) the FCC Licenses and all other governmental licenses and authorizations, and (ii) the Assumed Contracts;
- (c) **Buyer's Certificate.** A certificate, dated as of the Closing Date and executed by a duly authorized officer of Buyer, certifying (i) that the representations and warranties of Buyer are true and complete in all material respects as of the Closing Date as though made on and as of that date, and (ii) that Buyer has, in all material respects, performed its obligations and complied with its covenants set forth in this Agreement to be performed or complied with on or prior to the Closing Date; and
- (d) **Corporate Resolutions.** Certified resolutions of Buyer approving the execution of this Agreement, and all related agreements and documents, and the delivery of the closing documents provided for hereunder.
- (e) **Indemnity Agreement.** An indemnity agreement between Buyer and Seller pursuant to which Buyer shall indemnify Seller for any defaults, costs, losses or expenses under the Real Property Lease [in the alternative, Buyer could obtain a release of Seller from American Tower].

8.4 **Instructions to Escrow Agent.** Prior to or on the Closing Date, each of Seller and Buyer shall deliver to the Escrow Agent written instructions directing the Escrow Agent to deliver the Escrow Deposit to Seller in partial payment of the Purchase Price, and the earnings on the Escrow Deposit to Buyer, in accordance with the terms of the Escrow Agreement.

SECTION 9

RIGHTS OF BUYER AND SELLER ON TERMINATION OR BREACH

9.1 **Termination Rights.** This Agreement may be terminated by either Buyer or Seller by written notice to the other party upon the occurrence of any of the following events or conditions, provided that, the terminating party is not then in breach of any material provision of this Agreement:

- (a) if there shall be in effect on the Closing Date any judgment, decree or order that would prevent or make unlawful the Closing of this Agreement;

- (b) if the Assignment Application shall be set for hearing by the FCC for any reason;
- (c) if the Closing has not occurred on or prior to 11:59 p.m., central time, on the date which is one (1) year after the execution date of this Agreement;
- (d) by Buyer, if Seller is in material breach of its obligations hereunder and fails to cure such material breach within thirty (30) days of receipt of written notice from Buyer of the substance of Seller's material breach;
- (e) by Seller, if Buyer is in material breach of its obligations hereunder and fails to cure such material breach within ten (10) days of receipt of written notice from Seller of the substance of Buyer's material breach, provided that Buyer shall be in immediate material breach without notice from Seller if it fails to deliver to Seller the entire Purchase Price on the scheduled Closing Date;
- (f) by Buyer, if the conditions to Closing set forth in Section 7.1 are not fulfilled or waived by Buyer; or
- (g) by Seller, if the conditions to Closing set forth in Section 7.2 are not fulfilled or waived by Seller.

9.2 **Liquidated Damages and Specific Performance.**

- (a) If this Agreement is terminated pursuant to Sections 9.1(a), (b), (c), (d) and (f) of this Agreement, the parties hereto shall not have any further liability to each other and Buyer shall be entitled to the immediate return of the Escrow Deposit plus all earnings thereon and such return of the Escrow Deposit plus all earnings thereon shall be Buyer's exclusive remedy;
- (b) if this Agreement is terminated pursuant to Sections 9(e) and (g) or because Buyer is in default or in breach of any material provision of this Agreement and has failed to cure such breach in a timely fashion, Seller shall be entitled to the Escrow Deposit as liquidated damages in full and complete compensation for any damages to Seller as a result of Buyer's breach or default, the parties hereby agreeing that actual damages in the event of such a breach or default would be difficult or impossible to determine and that the amount of the Escrow Deposit would be fair and just compensation to Seller for such breach or default, and in which event Buyer shall be entitled to the immediate return of the earnings on the Escrow Deposit; or
- (c) if Seller is in default or in breach of any material provision of this Agreement, Buyer shall be entitled, at its option, to seek specific performance to compel Seller to close on the sale of the Station Assets to

Buyer pursuant to the terms and conditions of this Agreement. Seller agrees that specific performance is an appropriate remedy due to the unique nature of the Station Assets and the business made possible thereby, and agrees that it will not contest any such action on the ground that an adequate remedy at law exists. If Buyer seeks the remedy of specific performance, specific performance shall be Buyer's exclusive remedy, Buyer shall not be entitled to any other monetary or other damages and Buyer shall be required to post bond in an amount required to seek such relief. If Buyer terminates this Agreement pursuant to this Section 9.2(c), then Buyer shall be entitled to the immediate return of the Escrow Deposit plus all earnings thereon and such return of the Escrow Deposit plus all earnings thereon shall be Buyer's exclusive remedy.

9.3 **Effect of Termination**. A termination of this Agreement shall not terminate the Affiliation Agreement nor affect the parties rights and obligations thereunder, and the Affiliation Agreement shall terminate pursuant to its terms. Nothing in this section shall relieve any party from liability for any breach of this Agreement prior to termination.

SECTION 10 **INDEMNIFICATION**

10.1 **Buyer's Right to Indemnification**. Subject to the provisions of the Affiliation Agreement, and in addition to the indemnification obligations provided for in Section 18 of the Affiliation Agreement, from and after the Affiliation Commencement Date, Seller shall indemnify and hold harmless Buyer, its affiliates, shareholders, members, managers, employees, successors and assigns from and against and in respect of, and to reimburse them for, any and all losses, costs liabilities, claims, obligations and expenses, including reasonable attorneys' fees and expenses (together, "**Claims**"), incurred or suffered by any party arising from:

- (a) the operation of the Station or ownership of the Station Assets before the Closing Date;
- (b) any material breach, misrepresentation, or other violation of or failure to perform any of Seller's covenants, warranties or representations contained in this Agreement;
- (c) all obligations and liabilities of Seller arising under the FCC Licenses, other governmental licenses and authorizations and any of the Assumed Contracts prior to the Closing Date; and
- (d) all Retained Liabilities.

10.2 **Seller's Right to Indemnification**. Subject to the provisions of the Affiliation Agreement, and in addition to the indemnification obligations provided for in the Affiliation Agreement, from and after the Affiliation Commencement Date, (as defined in the Affiliation Agreement, Buyer shall indemnify and hold harmless Seller, its affiliates, shareholders,

partners, employees, successors and assigns from and against and in respect of, and to reimburse them for, any and all Claims incurred or suffered by such parties arising from:

- (a) the operation of the Station or ownership of the Station Assets by Buyer on or after the Closing Date;
- (b) a material breach, misrepresentation, or other violation of or failure to perform any of Buyer's covenants, warranties or representations contained in this Agreement; and
- (c) all Assumed Liabilities, including without limitation all liabilities under the Assumed Contracts, the FCC Licenses and other governmental licenses and authorizations arising on or after the Closing Date.

10.3 **Conduct of Proceedings.** If any claim, action, suit or proceeding covered by the foregoing agreements to indemnify and hold harmless shall arise (an "**Indemnification Proceeding**"), the party who seeks indemnification (the "**Indemnified Party**") shall give written notice thereof to the other party (the "**Indemnitor**") promptly after the Indemnified Party learns of the existence of such Indemnification Proceeding; provided, however, that the Indemnified Party's failure to give the Indemnitor such notice shall not bar the Indemnified Party's right to indemnification except to the extent such failure has prejudiced the Indemnitor's ability to defend the Indemnification Proceeding. The Indemnitor shall have the right to employ counsel reasonably acceptable to the Indemnified Party to defend against any such Indemnification Proceeding, or to compromise, settle or otherwise dispose of the same, if the Indemnitor deems it advisable to do so, all at the expense of the Indemnitor; provided that the Indemnitor shall not have the right to control the defense of any such Indemnification Proceeding unless it has acknowledged in writing its obligation to indemnify the Indemnified Party fully from all liabilities incurred as a result of such Indemnification Proceeding; provided further that the Indemnitor shall not settle, or consent to entry of any judgment in any Indemnification Proceeding without obtaining a release of the Indemnified Party from all liability in respect of the Claims underlying such Indemnification Proceeding. If the Indemnified Party does not consent to a bona fide offer of settlement made by a third party and the settlement involves only the payment of money, then the Indemnitor may, in lieu of a payment of that amount to such third party, pay that amount to the Indemnified Party. After such payment to the Indemnified Party, the Indemnitor shall have no further liability with respect to that claim or Indemnification Proceeding and the Indemnified Party shall assume full responsibility for the defense, payment or settlement of such claim or Indemnification Proceeding. If the Indemnitor fails to acknowledge in writing its obligation to defend against or settle such Proceeding within thirty (30) days after receiving notice thereof from the Indemnified Party (or such shorter time specified in the notice as the circumstances of the matter may dictate), the Indemnified Party shall be free to dispose of the matter, at the expense of the Indemnitor, in any way in which the Indemnified Party deems to be in its best interest.

10.4 **Limitations.** The parties shall have no liability for indemnification under this Section 10 unless and until the aggregate amount of claims asserted by Buyer or Seller pursuant to this Section 10 exceeds Two Hundred Fifty Thousand Dollars (\$250,000.00) (the "**Indemnification Deductible**"), after which point the Indemnitor will be obligated to

indemnify the Indemnified Party only with respect to the aggregate amount of such claims in excess of the Indemnification Deductible. The maximum liability of Seller under this Agreement, including but not limited to this Section 10, is 10% of the Purchase Price. After the Closing, this Section 10 shall constitute the sole and exclusive remedy of the Buyer for any and all Claims or other claims relating to or arising from this Agreement and the transactions contemplated hereby; provided, however, that nothing contained in this Agreement shall relieve or limit the liability of any party for Claims arising out of or resulting from such party's fraud in connection with the transactions contemplated by this Agreement. Notwithstanding anything herein to the contrary, no party shall be liable to the other party for special, indirect, consequential, punitive or exemplary damages.

10.5 **Survival of Representations, Warranties and Covenants.** Except as specifically provided in this Section 10.5, the representations and warranties of the parties contained herein, and the parties' respective indemnification rights pursuant to Section 10 with respect thereto, shall survive the Closing (the "**Survival Period**") for a period of one (1) year at which time the same shall expire (except for claims asserted during such one (1) year period). The agreements and covenants of the parties contained herein shall survive the Closing until performed. No claim may be brought under such representations and warranties unless written notice describing in reasonable detail the nature and basis of such claim is given on or prior to the last day of the applicable Survival Period. In the event such a notice is given, the right to indemnification with respect thereto shall survive until such claim is finally resolved and any obligations with respect thereto are fully satisfied.

SECTION 11 **MISCELLANEOUS**

11.1 **Governing Law.** This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Delaware, but without regard to the choice of laws provisions thereof, and any action or proceeding arising out of this Agreement shall be brought and maintained in Delaware, without any regard to any conflict of law provisions. Buyer and Seller consent to the jurisdiction of the courts located in Delaware.

11.2 **Headings.** The headings herein are included for ease of reference only and shall not control or affect the meaning or construction of the provisions of this Agreement.

11.3 **Entire Agreement.** This Agreement, the Escrow Agreement, the Affiliation Agreement, all Schedules and Exhibits hereto, and all documents and certificates to be delivered by the parties pursuant hereto collectively represent the entire understanding and agreement between Buyer and Seller with respect to the subject matter hereof. All Schedules and Exhibits referenced in and attached to this Agreement and all documents referenced in the Agreement as previously delivered to either party shall be deemed part of this Agreement and incorporated herein, where applicable, as if fully set forth herein. This Agreement supersedes all prior negotiations, agreements and understandings between Buyer and Seller, including but not limited to any letter of intent between Buyer and Seller, including the Offer to Purchase dated January 29, 2018. This Agreement cannot be amended, supplemented or modified except by an agreement in writing which makes specific reference to this Agreement or an agreement

delivered pursuant hereto, as the case may be, and which is signed by the party against which enforcement of any such amendment, supplement or modification is sought.

11.4 **Assignment**. Buyer shall not assign its interests or delegate its obligations under this Agreement without the prior written consent of the Seller, which consent shall not be withheld unreasonably; and further provided, that such assignment(s) does not delay receiving the FCC Consent or the Closing beyond the time period set forth in Section 9.1(c), and provided further, the assignor shall remain fully liable for the performance by such assignee of its obligations under this Agreement. This Agreement shall be binding upon the heirs, successors and assigns of the parties hereto.

11.5 **Notice**. All notices, demands and requests required or permitted to be given under the provisions of this Agreement shall be (i) in writing, (ii) delivered by personal delivery, by facsimile, or sent by nationally recognized overnight delivery service or registered or certified mail, return receipt requested, (iii) deemed to have been given on the date of personal delivery, or when dispatched by facsimile transmission (with the facsimile transmission confirmation being deemed conclusive evidence of such dispatch), or the date set forth in the records of the delivery service, or on the return receipt, and (iv) addressed as follows:

To Seller: Merlin Media, LLC
Merlin Media Licenses, LLC
Attn: Jerome L. Kersting
1717 Dixie Highway, Suite 650
Ft. Wright, KY 41011
Fax: (859) 331-6014

Copy to: John J. Kropp, Esq.
Karen J. Renz, Esq.
Graydon Head & Ritchey LLP
312 Walnut Street, Suite 1800
Cincinnati, Ohio 45202
Fax: (513) 651-3836

and to:

Marissa G. Repp, Esq.
Repp Law Firm
1629 K Street, NW, Suite 300
Washington, DC 20006-1631
Fax: (202) 400-3737

To Buyer: Educational Media Foundation
Attn: Mike Novak
5700 West Oaks Boulevard
Rocklin, California

Fax: (916) 251-1650

Copy to: Wilkinson Barker Knauer LLP
1800 M St. NW
Suite 800N Washington, DC 20036
Attn: David Oxenford and Paige Fronabarger
Fax: 202-783-5851

or to such other persons and addresses as the parties may from time to time designate in a writing to the other party delivered in accordance with this Section 11.5.


11.6 **Counterparts**. This Agreement may be signed in any number of counterparts with the same effect as if the signature on each such counterpart were upon the same instrument. Facsimile, PDF or other electronically delivered copies of signature pages to this Agreement or instrument delivered pursuant to this Agreement shall be treated as between the parties as original signatures for all purposes.

[Signatures on following page]

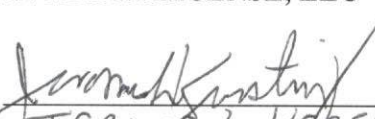
IN WITNESS WHEREOF, this Agreement has been executed by Buyer and Seller as of the date first above written.

Seller:

MERLIN MEDIA, LLC

By: 
Name: Jerome R. Kersting
Title: CFO

MERLIN MEDIA LICENSE, LLC

By: 
Name: Jerome R. Kersting
Title: CFO

Buyer:

**EDUCATIONAL MEDIA
FOUNDATION**

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, this Agreement has been executed by Buyer and Seller as of the date first above written.

Seller:

MERLIN MEDIA, LLC



By: _____
Name: _____
Title: _____

MERLIN MEDIA LICENSE, LLC

By: _____
Name: _____
Title: _____

Buyer:

**EDUCATIONAL MEDIA
FOUNDATION**

By:  _____
Name: Mike Novak
Title: CEO
Date:  _____

List of Schedules

Schedule 1.1 – Liens

Schedule 1.2 – Excluded Assets

Schedule 3.3 – Required Consents

Schedule 3.4 – FCC Licenses

Schedule 3.5 – Personal Property

Schedule 3.6 – Assumed Contracts

Schedule 3.7 – Intangible Property