



Administered by University of Maine System
Office of Strategic Procurement
Request for Proposal (RFP)

University of Maine System FM Radio
Translator License Assignment

RFP #2016-57

Issue Date: April 25, 2016

Response Deadline Date/Time: May 6, 2016 by 2:00 p.m. EST

Response Submission Information:

Submitted electronically to robin.cyr@maine.edu

Email Subject Line – University of Maine System FM Radio Translator
License Assignment - RFP#2016-57

Response Contact Information:

Strategic Sourcing Manager: Robin Cyr
Email: robin.cyr@maine.edu Phone: (207) 621-3098

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1.0 INTRODUCTION

1.1 Definitions, Background, Purpose and Specifications

1.1.1 Definitions

The University of Maine System will hereinafter be referred to as the "University" or "UMS." Respondents to the document shall be referred to as "Respondent(s)" or "Respondent".

The Respondent to whom the Agreement is awarded shall be referred to as the "Buyer."

1.1.2 Background

UMS is the licensee of noncommercial educational radio Station WMPG, Gorham, Maine. It is also the licensee of associated FM Translator Station W281AC, Facility Id 87718, 104.1 MHz, Channel 281, Portland, Maine (the "Translator"). UMS has determined that it no longer requires the Translator in order to provide public radio service.

Although not part of this RFP, UMS currently leases rooftop space in Portland, Maine for the transmission equipment associated with the Translator License. The Respondent to whom an award is made may inquire about purchasing surplus equipment and seeking assignment of the associated lease.

1.1.3 Purpose

This Request for Proposal (RFP) presents an opportunity for a qualified entity (hereinafter "Respondent") to accept assignment from UMS of the Translator License.

Because of the unique nature of this offering, the University intends to accept the highest bid, subject to Respondent's acceptance of the University's Translator License Assignment Agreement and Respondent's eligibility to qualify under FCC rules to take assignment of the Translator License.

1.2 General Information

1.2.1 Translator License Assignment Agreement and Conditions

1.2.1.1 The winning Respondent will be required to execute a contract in the form of a University of Maine System Translator License Assignment Agreement, which is attached to this response as **Appendix C**.

The Agreement entered into by the parties shall consist of the University of Maine System Translator License Assignment Agreement (attached to this document), the RFP, the selected Respondent's submission, requiring signatures of the University and the Buyer, all of which shall be referred to collectively as the Agreement Documents.

In the event of a conflict of terms the following precedence will apply:

1. University of Maine System Translator License Assignment Agreement
2. Agreement Riders as required
3. The University's RFP
4. Respondent's Submission

1.2.1.2 Although the University may exercise discretion to negotiate terms and conditions of the Agreement, due to its public nature, the University will not :

- a. Provide any defense, hold harmless or indemnity;
- b. Waive any statutory or constitutional immunity;
- c. Apply the law of a state other than Maine;
- d. Add any entity as an additional insured to UMS policies of insurance;
- e. Pay attorneys' fees, costs, expenses or liquidated damages;
- f. Promise confidentiality in a manner contrary to Maine's Freedom of Access Act; or
- g. Permit an entity to change unilaterally any term or condition once the contract is signed.

1.2.1.3 By submitting a response to this Request for Proposal your entity understands and agrees that:

- a. The above Agreement provisions (**Section 1.2.1.2**) will not be modified and are thereby incorporated into any agreement entered into between University and your entity; that such terms and condition shall control in the event of any conflict with such agreement; and that your entity will not propose or demand any contrary terms;
- b. The above Agreement provisions (**Section 1.2.1.2**) will govern the interpretation of such agreement notwithstanding the expression of any other term and/or condition to the contrary;
- c. Your entity agrees that the resulting Agreement will be the entire agreement between it and the University (including University's employees).
- d. Your entity will identify at the time of submission which, if any, portion or your submitted materials are entitled to "trade secret" exemption from disclosure under Maine's Freedom of Access Act; that failure to so identify will authorize UMS to conclude that no portions are so exempt; and that your entity will defend, indemnify and hold harmless UMS in any and all legal actions that seek to compel UMS to disclose under Maine's Freedom of Access Act some or all of your submitted materials

and/or contract, if any, executed between UMS and your entity.

1.2.2 Communication with the University

It is the responsibility of the Respondent to inquire about any requirement of this document that is not understood. Responses to inquiries, if they change or clarify the document in a substantial manner, will be forwarded by addenda to all parties that have received a copy of the document. Addenda will also be posted on our web site, www.maine.edu/strategic/upcoming_bids.php

It is the responsibility of all Respondents to check the web site before submitting a response to ensure that they have all pertinent documents. The University will not be bound by oral responses to inquiries or written responses other than addenda.

Inquiries must be made using the **Response Contact Information** provided on the cover sheet of this document.

Refer to table in **Section 1.3.1 Timeline of Key Events** for deadline requirements.

1.2.3 Confidentiality

The information contained in responses submitted for the University's consideration will be held in confidence until all evaluations are concluded and a Respondent selected (the successful Respondent). At that time the University will issue award notice letters to all participating Respondents and the successful Respondent's response may be made available to participating Respondents upon request. Such request will be made by submitting a written request to the individual noted in the **Response Contact Information** shown on the cover sheet of this document, with a copy of the request to the successful Respondent.

After the protest period has passed and the Agreement is fully executed, the winning response will be available for public inspection.

Pricing and other information that is an integral part of the offer cannot be considered confidential after an award has been made. The University will honor requests for confidentiality for information of a proprietary nature to the extent allowed by law. Clearly mark any portion of your submitted materials which are entitled to "trade secret" exemption from disclosure under Maine's Freedom of Access Act. Failure to so identify as trade secret will authorize the University to conclude that no portions are so exempt; and that your entity will defend, indemnify and hold harmless the University in any and all legal actions that seek to compel the University to disclose under Maine's Freedom of Access Act some or all of your submitted materials and/or contract, if any, executed between the University and your entity.

The University must adhere to the provisions of the Maine Freedom of Access Act (FOAA), 1 MRSA §401 et seq. As a condition of submitting a response under this section, a respondent must accept that, to the extent required by the Maine FOAA, responses to this solicitation, and any ensuing contractual documents, are considered public records and therefore are subject to freedom of access requests.

1.2.4 Costs of Preparation

Respondent assumes all costs of preparation of the response and any presentations necessary to the response process.

1.3 General Submission Provisions

1.3.1 Timeline of Key Events

Reference Section	Event Name	Event Due Date
Section 1.2.2	Deadline for Written Inquiries/Questions	April 28, 2016
Section 1.2.2	Response to Written Inquiries/Questions	May 2, 2016
Section 1.2.2	Deadline for Proposal Submission	May 6, 2016
Section 2.2	Award Announcement (subject to change)	May 13, 2016
	Award Protest Period	May 23 – 27, 2016
	Execute Translator License Assignment Agreement	Within three (3) business days following expiration of protest period or final resolution of any protest
	Filing of Application for FCC License Assignment Approval	Within five (5) business days of executing Translator License Assignment Agreement
	Estimated Assignment Date (subject to change)	Five business days after FCC consent to license assignment, subject to procedures set forth in Translator License Assignment Agreement

1.3.2 Eligibility to Submit Responses

Persons or entities of any type that are eligible to hold the FCC license for the Translator are invited to submit a response to this document.

1.3.3 Response Understanding

By submitting a response, the Respondent agrees and assures that the description of the Translator License available for assignment is adequate, and the Respondent accepts the terms and conditions herein. Any exceptions should be noted in your response.

1.3.4 Response Validity

Unless specified otherwise, all responses shall be valid for ninety (90) days from the due date of the response.

1.3.5 Non-Response Submission

The University will not consider non-responsive submissions, i.e., those with material deficiencies, omissions, errors or inconsistencies or that otherwise do not follow instructions. The University in its sole discretion will determine what is Non-Responsive.

1.3.6 Response Submission

A **SIGNED** virus-free electronic copy must be submitted as follows:

- The response must be received electronically to the E-Mail shown in the **Response Submission Information** section of the cover page of this document.
- Electronic submission must be received by the required **Response Deadline Date/Time** reflected on the cover page of this document.
- Response submissions that exceed 20 MB will be submitted with multiple emails modifying email subject line shown in the **Response Submission Information** section of the cover page of this document to include: Submission 1 of X ('X' representing the number of files being submitted).

2.0 EVALUATION AND AWARD PROCESS

2.1 Evaluation Criteria

2.1.1 High Bid

Assuming Respondent's FCC eligibility to accept assignment of the Translator License and acceptance of the terms in the University's Translator License Assignment Agreement, the University intends to accept the highest bid received in response to the RFP.

2.1.2 Scoring Section Descriptions

2.1.2.1 Purchase Price Evaluation

Award will be made to the high bid respondent provided that all other requirements are satisfactorily met, including receipt of bid as outlined in **Appendix B**.

The University will NOT seek a best and final offer (BAFO) from any Respondent in this procurement process. All Respondents are expected to provide their best offer with the submission of their response. Respondents will NOT be given an opportunity to modify bids once submitted.

2.1.2.2 Translator License Assignment Agreement

Responses should indicate full acceptance of the terms and conditions set forth in the Translator License Assignment Agreement.

2.1.2.3 FCC Rule Requirements

A Bidder must be qualified under the FCC's rules to hold an FM translator license. Prospective Bidders should consult their own FCC counsel regarding the exact nature of the FCC's requirements.

2.2 Award

The University reserves the right to waive minor irregularities, which may include contacting the Respondent to resolve the irregularity. Scholarships, donations, or gifts to the University, will not be considered in the evaluation of responses. The University reserves the right to reject any or all responses, in whole or in part, and is not necessarily bound to accept the highest bid response if that response is contrary to the best interests of the University. The University may cancel this request or reject any or all responses in whole or in part. Should the University determine in its sole discretion that only one Respondent is fully qualified, or that one Respondent is clearly more qualified than any other under consideration, an Agreement may be awarded to that Respondent without further action.

The award of the sale will be contingent upon all required approvals, including but not limited to, that of the Federal Communications Commission.

2.3 Negotiations

The University reserves the right to negotiate with the successful Respondent to finalize a contract. If an acceptable contract cannot be negotiated with the high bidding Respondent that is eligible to accept assignment of the Translator License, the University may withdraw its award and negotiate with the next-highest bidding Respondent, and so on, until an acceptable contract has been finalized. Alternatively, the University may cancel the RFP, at its sole discretion.

2.4 Award Protest

Respondents may appeal the award decision by submitting a written protest to the University of Maine System's Chief Procurement Officer within five (5) business days of the date of the award notice, with a copy of the protest to the successful Respondent. The protest must contain a statement of the basis for the challenge.

3.0 RESPONSE FORMAT REQUIREMENTS

3.1 General Format Instructions

3.1.1 Electronic Submissions

Documents submitted as part of the electronic response are to be prepared on standard electronic formats of 8-1/2" x 11" and of PDF file type. The only response required is the proposed price for assignment of the Translator License and, if Respondent is unwilling to accept the terms of the Translator License Assignment Agreement attached hereto, an explanation of the basis for any concerns. In the event that a Respondent chooses to submit supporting information, such information must be submitted as Appendices, clearly numbered and referencing the Section in which they provide supporting information.

For clarity, the Respondent's name should appear on every document page, including Appendices. Each Appendix must reference the section or subsection number to which it corresponds.

3.1.2 Respondent's Responsibility

It is the responsibility of the Respondent to provide all information requested in the document package at the time of submission. Failure to submit any explanation for concerns about executing the Translator License Assignment Agreement attached hereto shall constitute Respondent's representation that it is ready and able to enter into the Translator License Assignment Agreement in the form proposed by UMS.

3.2 Response Format Instructions

This section contains instructions for Respondents to use in preparing their response. The Respondent's submission must follow the outline used below, including the numbering of section and sub-section headings. Failure to use the outline specified in this section or to respond to all questions and instructions throughout this document may result in the response being disqualified as non-responsive or receiving a reduced score.

The University and its evaluation team for this document have sole discretion to determine whether a variance from the document specifications should result in disqualification.

Re-phrasing of the content provided in this document will, at best, be considered minimally responsive. The University seeks detailed yet succinct responses that demonstrate the Respondent's experience and ability to perform the requirements specified throughout this document.

3.2.1 Section 1 - Response Cover Page

- 3.2.1.1 Label this response - Section 1 – UMS Response Cover Page
- 3.2.1.2 Insert Appendix A – University of Maine System Response Cover Page

3.2.2 Section 2 - Purchase Price Offered

3.2.2.1 Label this response - Section 2 – Purchase Price Offered

3.2.2.2 Insert Appendix B – Purchase Price Offered Exhibit

3.2.3 Section 3 - Translator License Assignment Agreement

3.2.3.1 Label this response - Section 3 – Acceptance of/Explanation of Concerns about Translator License Assignment Agreement

3.2.3.2 Insert Appendix C – Explanation of Concerns about Translator License Assignment Agreement

Appendix A – University of Maine System Response Cover Page

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University of Maine System FM Radio Translator License Assignment

Person or Organization Name:	
Chief Executive – Name/Title:	
Telephone:	
Fax:	
Email:	
Headquarters Street Address:	
Headquarters City/State/Zip:	
Lead Point of Contact for Quote – Name/Title:	
Telephone:	
Fax:	
Email:	
Street Address:	
City/State/Zip:	

1. This offer will remain firm for a period of 90 days from the date and time of the bid deadline date.
2. No personnel currently employed by the University or any other University agency participated, either directly or indirectly, in any activities relating to the preparation of the Respondent's response.
3. No attempt has been made or will be made by the Respondent to induce any other person or firm to submit or not to submit a response.
4. The undersigned is authorized to enter into contractual obligations on behalf of the above-named organization.
5. By submitting a response to a Request for Proposal, bid or other offer to do business with the University your entity understands and agrees that:
 - a. The Agreement provisions in **Section 1.2.1.2** of this document will not be modified and are thereby incorporated into any agreement entered into between University and your entity; that such terms and condition shall control in the event of any conflict with such agreement; and that your entity will not propose or demand any contrary terms;
 - b. The above Agreement provisions in **Section 1.2.1.2** of this document will govern the interpretation of such agreement notwithstanding the expression of any other term and/or condition to the contrary;
 - c. Your entity agrees that the resulting Agreement will be the entire agreement between it and the University (including University's employees).
 - d. Your entity will identify at the time of submission which, if any, portion or your submitted materials are entitled to "trade secret" exemption from disclosure under Maine's Freedom of Access Act; that failure to so identify will authorize UMS to conclude that no portions are so exempt; and that your entity will defend, indemnify and hold harmless UMS in any and all legal actions that seek to compel UMS to disclose under Maine's Freedom of Access Act some or all of your submitted materials and/or contract, if any, executed between UMS and your entity.

To the best of my knowledge all information provided in the enclosed response, both programmatic and financial, is complete and accurate at the time of submission.

Date: _____

Name and Title (Printed)

Authorized Signature

Appendix B – Required Purchase Price and Earnest Money Deposit

University of Maine System
Purchase Price and Earnest Money Deposit

RFP # 2016-57
University of Maine System FM Radio Translator License Assignment

Respondent's Organization Name:

GENERAL INSTRUCTIONS:

1. The Respondent must submit the Purchase Price offer using the form directly below.
2. Purchase Price will be guaranteed by the Respondent for 90 days.
3. The University will NOT seek a best and final offer (BAFO) from any Respondent in this assignment process. All Respondents are expected to provide their best bid with the submission of their response. Respondents will NOT be given an opportunity to modify their bid once submitted.

PURCHASE PRICE/EARNEST MONEY:

For such _____ Respondent agrees to pay the total purchase price of \$_____.

Earnest money will be applied against the amount owed at time of closing. The remainder of the purchase price shall be paid by wire, certified, cashier's or trust account check upon delivery of the _____.

Appendix C – Translator License Assignment Agreement

TRANSLATOR LICENSE ASSIGNMENT AGREEMENT

This TRANSLATOR LICENSE ASSIGNMENT AGREEMENT (“Agreement”) is made as of _____, 2016 between the University of Maine System (“University”) and _____ (“Buyer”).

WHEREAS, University owns and holds the authorization for FM Translator W281AC, Portland, Maine (Facility ID Number 87718) (“Translator”), issued by the Federal Communications Commission (“FCC”); and

WHEREAS, subject to the terms and conditions in this Agreement, University desires to assign the Translator license and FCC authorization, and Buyer desires to accept such assignment and authorization.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties, intending to be legally bound, agree as follows:

1. **Translator License.** At the Closing (as defined below), University agrees to assign and deliver to Buyer, and Buyer will accept from University, all of the right, title, and interest of University in and to the Translator License (“Translator License”).
2. **Purchase Price.** Buy will pay \$_____.00 for the Translator License, as adjusted if necessary pursuant to Section 5 hereof (the "Purchase Price").
3. **Deposit.** Upon execution and delivery of this Agreement, Buyer will pay to University ten percent (10%) of the Purchase Price (the "Deposit"). At the Closing, as defined below, the Deposit shall be retained by University as a credit against the Purchase Price. Should this Agreement be terminated before the Closing for any reason other than an uncured default of the Buyer, the Deposit will be returned to Buyer as set forth in Section 20 below.
4. **Assumption of Obligations.** On the Closing Date, Buyer will assume all obligations arising from the business and operations of the Translator after the Closing Date.
5. **Prorations and Adjustments.** All prepaid and deferred expenses arising from the conduct of the business and operations of the Translator shall be prorated as of 11:59 p.m. on the Closing Date. The prorations and adjustments contemplated by this Section 5, if any, shall be made to the extent practicable at the Closing, and to the extent not made at the Closing shall be made within thirty (30) calendar days after the Closing Date.
6. **Closing.** Subject to satisfaction or waiver of the conditions set forth herein, consummation of the sale of the Translator License under this Agreement (the “Closing”) will occur on a date (the “Closing Date”) mutually agreed upon by the parties in writing, which date will be within five (5) business days after the grant of FCC Consent (as defined below) having become a “Final Order” (as defined below), unless the requirement of a Final Order is waived by University, in which case the Closing will occur after the initial grant of FCC Consent upon notice by University to Buyer of University’s waiver of the Final Order requirement.
7. **FCC Consent.** The Closing is subject to and conditioned upon prior FCC consent (the “FCC Consent”) to the assignment of the FCC Licenses to Buyer and, unless waived by University, the FCC

Consent having become a Final Order. “Final Order” means an action by the FCC as to which: (a) no request for stay by the FCC is pending, no such stay is in effect, and any deadline for filing a request for any such stay has passed; (b) no petition for reconsideration or application for review is pending before the FCC and the deadline for filing any such petition or application has passed; (c) the FCC has not initiated reconsideration or review on its own motion and the time in which such reconsideration or review is permitted has passed; and (d) no appeal to a court, or request for stay by a court, of the FCC’s action is pending or in effect, and the deadline for filing any such appeal or request has passed.

8. FCC Application. Within five (5) business days of the date of this Agreement, University and Buyer will file an application with the FCC (the “FCC Application”) request the FCC Consent. University and Buyer will diligently prosecute the FCC Application and otherwise use their best efforts to obtain the FCC Consent as soon as practicable. University authorizes Buyer to file an FCC Form 349 Application to modify the Translator’s facilities, if necessary and/or as appropriate in Buyer’s discretion, which application may be processed by the FCC during the pendency of the FCC Application. Buyer agrees to complete all work necessary for the preparation of the Form 349 Application and to pay the filing fee, and University agrees to assist in the filing.

9. Buyer's Representations and Warranties. Buyer makes the following representations and warranties to University:

(a) Buyer is duly organized, validly existing and in good standing under the laws of the State of _____. Buyer has the requisite power and authority to execute and deliver this Agreement and to comply with the terms, conditions, and provisions hereof.

(b) The execution, delivery and performance of this Agreement by Buyer have been duly authorized and approved by all necessary organizational action of Buyer. This Agreement is a legal, valid and binding agreement of Buyer enforceable in accordance with its terms, except (i) as may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally, and (ii) as such enforceability is subject to general principles of equity.

(c) No broker, finder or other person is entitled to a commission, brokerage fee or other similar payment in connection with this Agreement or the transactions contemplated hereby as a result of any agreement or action of Buyer [except for _____, whose fee or other similar payment is payable solely by Buyer].

(d) Buyer is legally, financially and otherwise qualified to be the licensee of the Translator under the Communications Act of 1934, as amended, and the rules, regulations, and policies of the FCC.

(e) There are no suits, arbitrations, administrative charges or other legal proceedings, claims or governmental investigations pending against, or, to Buyer's knowledge, threatened against, Buyer relating to or affecting this Agreement or the transactions contemplated hereby.

10. University's Representations and Warranties. University makes the following representations and warranties to Buyer:

(a) University is duly organized, validly existing and in good standing under the laws of the State of Maine. University has the requisite power and authority to execute and deliver this Agreement and to comply with the terms, conditions, and provisions hereof.

(b) The execution, delivery and performance of this Agreement by University have been duly authorized and approved by all necessary corporate action of University. This Agreement is a legal, valid and binding agreement of University enforceable in accordance with its terms, except (i) as may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally, and (ii) as such enforceability is subject to general principles of equity.

(c) The License is held by University, and has been issued for the full term customarily issued to radio translators in the State of Maine. The License is in full force and effect and has not been revoked, suspended, canceled, rescinded or terminated and has not expired. To the University's knowledge, there are no pending investigations against University in connection with the Translator, and there are no outstanding forfeitures or fees against University in connection with the Translator. The Translator has been and is being operated in compliance with all state, local, and Federal laws and regulations, including those of the FCC.

(d) No insolvency proceedings of any character, including without limitation, bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, affecting University of any of the Translator License, are pending or, to University's knowledge, threatened, and University has not made any assignment for the benefit of creditors or taken any action which would constitute the basis for the institution of such insolvency proceedings.

(e) No broker, finder or other person is entitled to a commission, brokerage fee or other similar payment in connection with this Agreement or the transactions contemplated hereby as a result of any agreement or action of University.

(f) University is in compliance with all requirements under Maine law regarding the sale of its assets.

11. Buyer's General Covenants. Buyer covenants and agrees that, between the date of this Agreement and the Closing, Buyer will:

(a) maintain its qualifications to be the licensee of the Translator as set forth in Section 9(d) above;

(b) take necessary steps as required to be able to pay the Purchase Price and otherwise consummate this transaction; and

(c) notify the University promptly of any event, circumstance or occurrence which may reasonably be expected to interfere with the prompt consummation of this transaction at the Closing.

12. University's General Covenants. University covenants and agrees that, between the date of this Agreement and the Closing, University will:

(a) operate the Translator in the ordinary course of business consistent with its past practice or suspend such operations only in accordance with FCC rules and policies or with the written consent of the FCC;

(b) take all steps necessary to maintain the FCC Licenses in good standing with the FCC; and

(c) unless otherwise agreed with Buyer, not directly or indirectly, including by dissolution, liquidation, merger or otherwise, sell, lease or dispose of any of the Translator License unless those assets are replaced with assets of greater or equal value.

13. Joint Covenants. University and Buyer hereby covenant and agree that between the date of this Agreement and the Closing they shall cooperate fully with each other in taking any commercially reasonable actions (including to obtain the required consent of any governmental instrumentality or any third party) necessary to accomplish the transactions contemplated by this Agreement, including, but not limited to, the prompt satisfaction of any condition to the Closing set forth herein.

14. University's Conditions to Closing. The University's obligations hereunder are, at its option, subject to satisfaction at or before the Closing of each of the following conditions:

(a) The representations and warranties of Buyer made in this Agreement will be true and correct in all material respects as of the Closing Date except for changes permitted or contemplated by the terms of this Agreement, and the covenants and agreements to be complied with and performed by Buyer at or before the Closing will have been complied with or performed in all material respects.

(b) The FCC Consent will have been obtained and will be in full force and effect and will have become a Final Order, unless finality is waived by University, and no court, administrative or governmental order prohibiting the Closing will be in effect.

(c) Buyer will have made each of the deliveries contemplated by Section 16 hereof or otherwise reasonably required by this Agreement.

15. Buyer's Conditions to Closing. The obligations of Buyer hereunder are, at its option, subject to satisfaction at or before the Closing of each of the following conditions:

(a) The representations and warranties of University made in this Agreement will be true and correct in all material respects as of the Closing Date except for changes permitted or contemplated by the terms of this Agreement, and the covenants and agreements to be complied with and performed by University at or before the Closing will have been complied with or performed in all material respects.

(b) The FCC Consent will have been obtained and will be in full force and effect, and no court or governmental order prohibiting the Closing will be in effect.

(c) All security interests pertaining to the Translator License, if any, will be released of record and there will be no liens in respect of such assets, except Permitted Liens.

(d) University will have made each of the deliveries contemplated by Section 16 hereof or otherwise reasonably required by this Agreement.

16. Closing Deliveries. At the Closing, University will deliver or cause to be delivered to Buyer: an assignment and assumption agreement, a "bring-down" certificate as to representations, warranties, and covenants, documents of title and other instruments of conveyance, as may reasonably be requested by Buyer to convey, transfer and assign the Translator License to Buyer, free and clear of liens. Buyer will deliver by wire transfer of federal funds the Purchase Price, less the Deposit, as adjusted pursuant to Section 5 hereof, if appropriate or necessary, and a bring-down certificate as to its representations, warranties, and covenants.

17. Survival. The covenants, agreements, representations and warranties contained in this Agreement shall survive and not be affected by Closing for a period of eighteen (18) months, whereupon they shall expire and be of no further force or effect.

18. Party Liability. Each party will remain liable for its own conduct, actions, and omissions, including for any losses, costs, damages, liabilities, or expenses associated with its own conduct, actions, and omissions, for the time it is the lawful owner of the Translator and in carrying out its obligations under this Agreement. University reserves all rights and defenses under the Maine Tort Claims Act. Notwithstanding any other provision of this Agreement, neither party shall be liable to the other, or to any third party, whether in contract or in tort or under any other legal theory (including, without limitation, strict liability and negligence) for any indirect, special, exemplary, punitive, incidental, consequential or similar damages arising out of or related to this Agreement, even if advised of the possibility of such damages.

19. Termination. This Agreement may be terminated at any time before the Closing as follows:

(a) by mutual written consent of the parties;

(b) by written notice of University to Buyer if Buyer breaches in any material respect any of its representations or warranties or other terms of this Agreement, or defaults in any material respect in the performance of any of its covenants or agreements herein contained, and such breach or default is not cured within the Cure Period (as defined below);

(c) by written notice of Buyer to University if University breaches in any material respect any of its representations or warranties or other terms of this Agreement, or defaults in any material respect in the performance of any of its covenants or agreements herein contained, and such breach or default is not cured within the Cure Period;

(d) by written notice of University to Buyer, or Buyer to University, if the Closing shall not have been consummated on or before the date which is nine (9) months after the execution of this Agreement by both parties, and if the party giving notice is not then in default hereunder; or

(e) by written notice of Buyer to University, if due to a weather related cause, force majeure, or other cause beyond the control of University, a material portion of the Translator License are damaged or destroyed and University elects to not repair or replace such damaged or destroyed Translator License before the Closing Date.

The term "Cure Period" as used herein means a period commencing on the date that a party receives from the other party written notice of breach or default hereunder and continuing for twenty (20) days thereafter.

20. Damages upon Termination. The termination of this Agreement shall not relieve any party of any liability for breach or default under this Agreement before the date of termination. Upon termination under Section 19(a), (c), (d), or (e), this Agreement shall be deemed null and void and the Deposit shall be returned to Buyer. Neither party will have any further liability or obligation to the other. Upon termination under Section 19(b), due to default of the Buyer, this Agreement shall be deemed null and void and University shall be entitled to retain the Deposit as liquidated damages as its exclusive remedy. If this Agreement is terminated pursuant to Section 19(c) due to the default of University, the Buyer may, as an alternative to return of the Deposit, bring an action for specific performance, University hereby

acknowledging that the Translator License are of a special, unique and extraordinary character and that monetary damages would not be sufficient to compensate Buyer under such circumstances.

21. Expenses. Each party is solely responsible for all costs and expenses incurred by it in connection with the negotiation, preparation and performance of and compliance with the terms of this Agreement. Filing fees, if any, with respect to the FCC Application will be paid by Buyer.

22. Assignment. Neither party may assign any of its rights or obligations under this Agreement without the express prior written consent of the non-assigning party.

23. Conflict of Interest: No officer or employee of the University shall participate in any decision relating to this Agreement which affects his or her personal interest in any entity in which he or she directly or indirectly has interest. No employee of the University shall have any interest, direct or indirect, in this Agreement or proceeds thereof.

24. Modification: This Contract may be modified or amended only in a writing signed by both parties. No amendment to, or waiver of compliance with, any provision or condition hereof or consent pursuant to this Agreement shall be effective unless evidenced by such writing.

25. Applicable Law: This Contract shall be governed and interpreted according to the laws of the State of Maine applicable to contracts made and fully performed in this State, without giving effect to the choice of law provisions thereof that may require the application of the laws of any other state. If there is a dispute under this Agreement, suit may be brought only in a court of competent jurisdiction in the State of Maine, and each party hereby irrevocably submits to the jurisdiction of any such court.

26. Administration: Richard Thompson, Chief Information Officer, or his delegee or successor, shall be the University's authorized representative in all matters pertaining to the administration of the terms and conditions of this Contract.

27. Contract Validity: In the event one or more clauses of this Contract are declared invalid, void, unenforceable or illegal, that shall not affect the validity of the remaining portions of this Contract.

28. Notices: Unless otherwise specified in an attachment hereto, any notice hereunder shall be in writing and addressed to the persons and addresses below.

To the University:

University of Maine System
ATTN: Chief Information Officer
Robinson Hall
46 University Drive
Augusta, ME 04330

With copy to:

University of Maine System
ATTN: General Counsel
Robinson Hall
46 University Drive
Augusta, ME 04330

To Buyer:

BID INSTRUCTIONS – Bidder to supply information noted below for submission with their proposal/bid.

Company Name:
Contact Name:
Address:
Phone Number:
Fax Number:

FOR THE UNIVERSITY OF MAINE SYSTEM:

FOR THE BUYER:

LEGAL NAME: _____

BY: _____
(signature)

BY: _____
(signature)

Name: _____
(print or type)

Name: _____
(print or type)

Title: _____

Title: _____

Address: _____

Address: _____

Telephone: _____

Telephone: _____

Fax: _____

Fax: _____

Date: _____

Date: _____

Tax ID #: _____