

AFFILIATION AGREEMENT - FOTV

This Affiliation Agreement (this "Agreement") is effective as of March 20, 2017 (the "Effective Date") by and between DISH Network L.L.C. ("DISH"), having a place of business at 9601 South Meridian Boulevard, Englewood, Colorado 80112; and FilmOn TV Networks ("Network"), having a place of business at 301 N Canon Drive, Suite 208, Beverly Hills, CA 90210. Each of DISH and Network may be referred to in this Agreement as a "Party" and, together, as the "Parties."

RECITALS

WHEREAS, DISH has established a multi-channel video distribution system for the distribution of programming services; and

WHEREAS, Network desires to grant, and DISH desires to obtain, the rights to distribute the Station Service (as defined below) in accordance with the terms and conditions contained in this Agreement;

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties mutually agree as follows:

AGREEMENT

1. **Certain Definitions**. The following terms have the meanings set forth below:

a. "3D" means three dimensional.

b. "Affiliate" means any person or entity that directly or indirectly (including, without limitation, through one or more intermediaries) controls, is controlled by or is under common control with the applicable Party (or other applicable person or entity); provided that, notwithstanding the foregoing, in no event will EchoStar be deemed a DISH Affiliate, unless, until and to the extent that, after the Effective Date, EchoStar is directly or indirectly (including, without limitation, through one or more intermediaries) controlled by DISH Network Corporation (or its successor). The term "control" (and its correlative form "controlled by"), as used in this definition, means the power to direct or cause the direction of the management, policies and/or affairs of a person or entity, whether through the ownership of voting securities, by contract or otherwise. EchoStar" means EchoStar Corporation and any of its direct or indirect subsidiaries.

c. "Children's Television Requirements" means the Children's Television Act of 1990 and the regulations of the FCC promulgated under such Act, as such Act and regulations may be amended from time to time.

d. "Closed Captioning/Video Narration Requirements" means all Laws pertaining to closed captioning and/or video narration requirements (including, without limitation, 47 C.F.R. § 79.1 of the regulations of the FCC), as such Laws may be amended from time to time.

e. "Commercial Loudness Requirements" means the CALM Act of 2010 and the regulations of the FCC promulgated under such Act, as such Act and regulations may be amended from time to time.

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f. “Confidential Information” means the existence of this Agreement, the terms of this Agreement (including, without limitation, the expiration date), and all non-public information disclosed by one Party to the other Party in connection with this Agreement, the Station Service or delivery of the Station Service, including, without limitation, technical information, technical or marketing tests, product plans, and Subscriber Information (which Subscriber Information the Parties agree is DISH’s Confidential Information).

g. “DBS” means direct broadcast satellite.

h. “Distribution System” means the distribution system employed by DISH to distribute audio, video, data and other programming services to Subscribers in the Territory whereby the programming signal or feed is: (i) received by DISH (or any DISH Affiliate or subcontractor) and, if applicable, digitized, compressed, encrypted, encoded, transcoded and/or otherwise processed; and (ii) transmitted for reception by Subscribers using transmission systems that are owned, operated, leased, controlled, managed or otherwise accessed by DISH (or any DISH Affiliate or subcontractor). For clarity, “Distribution System” includes all transmission systems used by DISH (or any DISH Affiliate or subcontractor) to transmit audio, video, data and other programming services, including, without limitation, C-band receive facilities, such as single master antenna television (a/k/a SMATV) systems; all forms of wireless and wire-line data distribution technology (including, without limitation, BSS and FSS satellite regardless of frequency or band, copper wire, fiber optic lines, twisted pairs or coaxial cable, all forms of terrestrial wireless and all Internet Technologies); and all other technologies, whether now existing or later developed.

i. “DMA” means a designated market area as defined in 17 U.S.C. § 122(j).

j. “FCC” means the Federal Communications Commission.

k. “HD” means high-definition.

l. “IRD” means integrated receiver-decoder.

m. “Internet” means the series of global, interconnected, packet-switched networks that utilize transmission control protocols (“TCP”) and internet protocols (“IP”) to communicate and otherwise transmit information to and from connected users’ computers and operating systems.

n. “Internet Technologies” means technologies using one or more computer networks that utilize TCP/IP, IP or other architecture or that utilize computer terminals, terminal servers, routers, multicasting technology or other data processing or transmission devices (regardless of transmission speed experienced by the end user), whether via cable, wire, wireless or other technology, regardless of the end user’s reception and/or viewing device (e.g., television, computer (including, without limitation, tablet), cellular telephone or other mobile device, Blu-ray player, gaming console, IRD)). Without limiting the generality of the immediately foregoing sentence, “Internet Technologies” includes, without limitation, the Internet as presently configured and all modifications and additions thereto and substitutions thereof (including, without limitation, the Internet2), whether using means, methods, processes,

media or technology now known or later developed. Each of the Parties specifically acknowledges and agrees that "Internet Technologies" includes temporary and progressive "downloading," "streaming," "caching" and "pre-caching" (as such terms are used in the telecommunications industry), regardless of whether the viewing time is determined by DISH, the end user or any other person or entity.

o. "Law" means any applicable current or future federal, state, local or international law, rule, government or quasi-government order, action or regulation.

p. "Look Back Functionality" means a distributor's recording a program on a linear television service so that a subscriber may, without having recorded the program him-, her- or itself, watch such content up to a certain period of time following such content's airing on the television service (including, without limitation, the functionality to restart a program already in progress).

q. "Network Marks" means, collectively, "9021go" and any other of Network's trade names, service marks, trademarks and/or logos that are protectable under trademark Laws, including, without limitation, the names, titles or logos of certain programs that appear in the Station Service and any subsequently selected names or marks for the Station Service.

r. "Primary Signal" means the principal video and accompanying audio portions of the Signal.

s. "Reporting Period" means the period of time beginning the twenty-second (22nd) day of one calendar month and ending the twenty-first (21st) day of the immediately following calendar month; provided that, DISH may change such period from time to time in DISH's sole discretion.

t. "Required Materials" means all data or information: (i) that Network includes in or around the Primary Signal when delivering such Primary Signal to DISH; and (ii) that the FCC or any applicable Law requires that DISH transmit.

u. "SD" means standard definition.

v. "Signal" means the programming signal or feed containing the Station Service, including, without limitation, all video, audio, data and other components delivered by Network to DISH.

w. "Station Service" means, collectively: (i) the twenty-four (24) hour per day, seven (7) day per week, linear television programming service known as FOTV (as more fully described in Section 4); and (ii) all portions of the VBI (or its digital equivalent) and any commercial advertising that may be included on such service. The Parties acknowledge and agree that there may be different feeds of the Station Service generated by Network for the Los Angeles, CA DMA, the Miami, FL DMA and the Las Vegas, NV DMA and that each such feed is a feed of the "Station Service".

x. “Station Service Subscriber” means any Subscriber that DISH (or a DISH Affiliate or Subdistributor) has intentionally authorized to receive, and who actually receives, the Station Service.

y. “Subdistributor” means any person or entity that DISH or a DISH Affiliate has intentionally authorized to distribute the Station Service to customers pursuant to this Agreement, including, without limitation, franchised and non-franchised cable operators.

z. “Subscriber” means any person, entity, or location, whether residential or commercial, in the Territory that DISH (or a DISH Affiliate or Subdistributor) has intentionally authorized to receive any level of television programming service or package of television programming services. For clarity, “Subscriber” includes individuals; owners and managers of multi-family dwelling complexes (e.g., apartments, condominiums, homeowners’ associations, gated communities, student housing complexes); owners and managers of hotels, motels, timeshares, hospitals, rehabilitation facilities, assisted-living facilities, RV parks, truck stops, and prisons; owners and managers of firehouses, oil rigs, and other commercial locations where individuals reside while working; owners and managers of bars, restaurants, offices, retail locations, and schools and universities; and owners and managers of airlines, commercial hauling vehicles and other vehicles.

aa. “Subscriber Information” means any and all information relating to one or more Subscribers (including, without limitation, Station Service Subscribers), including, without limitation, names, addresses, account numbers, account history, and usage data (regardless of whether such usage data is anonymized and/or aggregated). Network acknowledges and agrees that any and all Subscribers (including, without limitation, Station Service Subscribers) are, and at all times shall be, deemed customers of DISH.

bb. “Territory” means the United States and its territories, commonwealths and possessions, including, without limitation, the District of Columbia, Puerto Rico and the United States Virgin Islands.

cc. “VBI” means vertical blanking interval.

2. **Term.** This Agreement shall commence on the Effective Date and, unless terminated earlier in accordance with the provisions of this Agreement, shall expire at 5:00 p.m. Mountain Time on March 20, 2020 (the “Initial Term”). Unless either Party provides written notice of non-renewal to the other Party at least ninety (90) calendar days prior to the scheduled expiration of the Initial Term (and either Party may elect non-renewal in its sole discretion), this Agreement shall renew automatically for successive one (1)-year terms (each, a “Renewal Term” and the Initial Term and any applicable Renewal Terms, the “Term”); provided that, in the event there are any Renewal Terms, either Party may elect not to have any additional Renewal Terms by providing written notice of non-renewal to the other Party at least ninety (90) calendar days prior to the scheduled expiration of the applicable Renewal Term (and either Party may elect non-renewal in its sole discretion). During any applicable Renewal Term(s), either Party may terminate this Agreement for any reason or no reason upon at least ninety (90) calendar days’ prior written notice of termination to the other Party.

3. Grant of Rights.

a. Grant. Network hereby grants DISH and its Affiliates the non-exclusive right and license (including, without limitation, the license to all copyright, trademark and other intellectual property rights appurtenant to the programming content that makes up or relates to the Station Service) throughout the Term to: (i) distribute the Station Service in the Territory via the Distribution System for reception, viewing, exhibition and display by Station Service Subscribers using any form of device used for the reception and/or display of visual images, audio and/or data; (ii) record, store, copy, digitize, compress, encode, transcode, and otherwise process (including, without limitation, for adaptive bit-rate streaming) the Station Service; and (iii) record, store, copy, duplicate, process, encode, transcode, and/or delay all or any portion of the content of the Station Service, in DISH's sole discretion, following such content's airing on the Station Service in order to enable Look Back Functionality for each program in the Station Service. For clarity, but without limiting the generality of the immediately foregoing sentence, the rights granted to DISH in this Agreement include the right to distribute the Station Service to: (A) residential locations; (B) commercial locations; (C) vehicles (e.g., cars, airplanes, recreational vehicles and commercial hauling vehicles); (D) cellular telephones and other mobile devices; and (E) personal computers (including, without limitation, tablets).

b. Additional Rights. In addition to and without limiting the generality of the grant of rights contained in Section 3(a), Network hereby grants DISH and its Affiliates the non-exclusive right and the license throughout the Term to: (i) receive and decrypt the Station Service; (ii) up-convert the Signal (e.g., from SD to HD); (iii) down-convert the Signal (e.g., from HD to SD); and (iv) advertise, promote, publicize, market and sell subscriptions to the Station Service (and/or the Station Service as bundled with other services) in the Territory (which right, for the avoidance of doubt, extends to DISH's Affiliates, Subdistributors, and retail distribution network), in each case for purposes of exercising its rights contained in this Agreement. Network acknowledges that the Station Service may or may not be broadcast over-the-air by television broadcast stations and agrees that, to the extent that any television broadcast station(s) broadcasts the Station Service over-the-air, Network hereby grants to DISH all other rights (including, without limitation, grants of retransmission consent) necessary for DISH to fully effectuate all rights granted to DISH in this Agreement.

c. Transport and Subdistribution. In addition to and without limiting the generality of the grant of rights contained in Sections 3(a) and 3(b), Network hereby grants DISH and its Affiliates the non-exclusive right and the license throughout the Term to: (i) transport and arrange for the transport of the Signal in the Territory to third parties who gain rights to the Station Service independent of DISH (e.g., through an agreement with Network), including, without limitation, to cable system operators (both franchised and non-franchised); and (ii) subdistribute, resell and/or otherwise sublicense the Station Service to Subdistributors (including, without limitation, on a bulk-bill basis) for distribution to, *inter alia*, multi-family dwelling complexes (e.g., apartments, condominiums, homeowners' associations, gated communities, student housing complexes); hotels, motels, timeshares, hospitals, rehabilitation facilities, assisted-living

facilities, RV parks, truck stops, and prisons; firehouses, oil rigs, and other commercial locations where individuals reside while working; retail locations; schools and universities; and airlines, commercial hauling vehicles and other vehicles.

d. Right to Record. Network hereby grants DISH and its Affiliates the right to record, in DISH's sole discretion, all or any portion of the Station Service for the purposes expressly set forth in this Agreement (e.g., DISH's right to preempt and replace content that airs on the Station Service pursuant to Section 4(k)).

e. Overspill. Notwithstanding anything to the contrary contained in this Agreement, Network acknowledges and agrees that the Signal, when transmitted by DISH, its Affiliates or its subcontractors, may extend beyond the geographic boundaries of the Territory and that such "overspill," in and of itself, will not be deemed a breach of this Agreement.

4. Content of the Station Service.

a. Content Description. Network shall ensure that, at all times during the Term, the programming contained in the Station Service consists primarily of reality television as such term is commonly understood in the industry. Except as expressly set forth in this Agreement, Network may not black out any programming that airs on the Station Service, and shall ensure that the Station Service does not include any programming for which Network seeks a surcharge or additional fee of any kind.

b. Content Limitations. Network shall ensure that the Station Service (including, without limitation, any advertising contained in the Station Service) does not contain, at any time during the Term: (i) any programming that is rated (or if not rated, that would have been rated) more restrictively than PG-13 by the Motion Picture Association of America or TV-14 under the National Cable Television Association TV Parental Guidelines (or any comparable rating under any successor or other industry ratings system that is widely adopted by the cable television industry); (ii) any religious programming; (iii) a sufficient quantity of music videos such that the Station Service could be characterized as a music video service; (iv) a sufficient quantity of children's programming such that the Station Service could be characterized as a children's programming service; (v) any live or taped actual courtroom trials, hearings or other similar proceedings as a substantial component of the programming, regardless of whether such programming is excerpts from or whole trials, hearings or proceedings; (vi) any pay-per-view movies or events; (vii) any financial news; (viii) any blackouts; (ix) any promotion or marketing of "800," "888," "900," or "976" telephone services or other similar services that bill a caller for placing or confirming the call (other than for the telephone company's cost of the call); (x) any programming containing solicitations for funds or contributions; or (xi) any programming that relates directly or indirectly to gambling, the occult, astrological, psychic, sexual or romantic activities or other adults-only services.

c. Same Programming. Network shall ensure that, at all times during the Term, the programming on the Station Service (and any and all programming that uses the name, brand or logo of the Station Service), as delivered to DISH at all points in time, is the same as

the programming delivered by Network to all end users and all third-party distributors at such points in time, whether in the same or any other format. In the event that for any reason such programming is not the same, as required by the immediately foregoing sentence, then, in addition to and without limiting any other rights and remedies that DISH may have at law, in equity, under contract (including, without limitation, this Agreement) or otherwise, all of which are hereby expressly reserved, DISH shall have the right, without any obligation that DISH or any of its Affiliates satisfy any additional term or condition whatsoever (including, without limitation, additional payment), to require that Network promptly provide to DISH the same programming content that Network is providing to one or more third-party distributors for DISH's distribution pursuant to this Agreement, and Network shall deliver such programming to DISH in accordance with the delivery requirements contained in this Agreement.

d. Feeds. Network hereby grants DISH the right to distribute (and, to the extent that Network is delivering the Signal in accordance with Section 5(a), shall promptly provide to DISH) any and all existing and future feeds of the Station Service (including, without limitation, any and all alternate format(s) (e.g., SD, HD, 3D), time zone and secondary audio programming feeds), without any obligation that DISH or any of its Affiliates satisfy any additional term or condition whatsoever (including, without limitation, additional payment), for DISH's distribution pursuant to this Agreement.

e. Closed Captioning, Video Narration and Program Rating Information. Network shall, at its sole cost and expense, include as part of the Signal closed-captioning and video narration information to the full extent required by any Law and to the extent required to ensure that DISH is in compliance with all Laws, regardless of whether the Law now or in the future imposes the obligation to include closed captioning and/or video narration information on Network, DISH or any of its Affiliates, or a third party. Such Network obligation includes, without limitation, meeting any and all benchmarks for captioning and/or narrating programming, including, without limitation, foreign language programming, as set forth in any Closed Captioning/Video Narration Requirement. Network shall cooperate with DISH to the extent necessary, at Network's sole cost and expense, to establish the Station Service's compliance with the Closed Captioning/Video Narration Requirements. Network acknowledges and agrees that neither DISH, nor any of DISH's Affiliates or subcontractors, will have any liability whatsoever in connection with Network's failure to prepare, insert or include closed-captioning and/or video narration information, as applicable, in the Station Service as required by this Section 4(e) or any Law. Further, Network shall, at its sole cost and expense, include as part of the Signal industry-wide voluntary ratings and advisories regarding programming and content that enable Station Service Subscribers to exercise parental controls over the programming on the Station Service, and Network shall ensure that such ratings information and other data are, at all times during the Term, compatible with DISH's technology. Network shall use its best efforts to provide complete, accurate and timely program rating data to DISH's then-currently designated data provider (currently TiVo), as DISH may change such data provider from time to time in DISH's sole discretion. Network shall provide to DISH once per calendar quarter, or more frequently upon receipt of a DISH request, all records necessary for DISH to timely demonstrate its compliance with the Closed Captioning/Video Narration Requirements.

f. Children's Television. Network represents, warrants and covenants that the Station Service complies, and that the Station Service will, at all times during the Term, comply in all respects with the Children's Television Requirements, regardless of whether such Children's Television Requirements now or in the future impose such requirements on Network, DISH or any of its Affiliates, or a third party. Network acknowledges and agrees that neither DISH nor any of DISH's Affiliates or subcontractors will have any liability whatsoever in connection with Network's failure to comply with any Children's Television Requirement. Network shall provide to DISH once per calendar quarter, or more frequently upon receipt of a DISH request, all records necessary for DISH to timely demonstrate its compliance with the Children's Television Requirements.

g. Commercial Loudness. Network represents, warrants and covenants that the Station Service complies, and that the Station Service will, at all times during the Term, comply in all respects with the Commercial Loudness Requirements, regardless of whether such Commercial Loudness Requirements now or in the future impose such requirements on Network, DISH or any of its Affiliates, or a third party. Network acknowledges and agrees that neither DISH nor any of DISH's Affiliates or subcontractors will have any liability whatsoever in connection with Network's failure to comply with any Commercial Loudness Requirement. Upon DISH's written request, Network shall deliver the Signal to DISH in accordance with DISH's reasonable technical specifications pertaining to commercial loudness. Network shall provide to DISH once per calendar quarter, or more frequently upon receipt of a DISH request, all records necessary for DISH to timely demonstrate its compliance with the Commercial Loudness Requirements.

h. Compliance with Laws. In addition to and not in limitation of anything in this Agreement, in the event that any programming or other content on the Station Service is regulated by any Law, regardless of whether such Law now or in the future is applicable to Network, DISH or any of its Affiliates, or a third party, then Network shall comply with such Law(s); ensure that the Station Service complies with such Law(s); and provide DISH with all documents reasonably necessary for DISH to timely demonstrate compliance with such Law(s).

i. Non-Frustration. Network may not take any action or refrain from taking any action with the intent of, or having the effect of, frustrating, interfering with or otherwise circumventing the application of this Section 4.

j. Certificate of Compliance. Within thirty (30) calendar days following the last day of each calendar year during the Term, and within thirty (30) calendar days following Network's receipt of a written request from DISH at any time during the Term, Network shall deliver to DISH written certification signed by Network's Chief Executive Officer or Chief Financial Officer stating that Network: (i) is or is not, as applicable, in compliance with this Section 4; and (ii) has or has not, as applicable, taken any action or refrained from taking any action designed to, with the intent of, or having the effect of frustrating, interfering with or otherwise circumventing the application of this Section 4. Network shall include in each such certification a description of the means and mechanisms Network used to determine whether it has complied or failed to comply with this Section 4.

k. Content Deviation. In the event that DISH reasonably believes that any programming included in the Station Service violates any Law (e.g., defamatory, legally obscene) or infringes upon a third party's rights, DISH may, in its sole discretion, in addition to and without limiting any other rights and remedies that DISH may have at law, in equity, under contract (including, without limitation, this Agreement) or otherwise, all of which are hereby expressly reserved, and without incurring any liability whatsoever, immediately preempt such programming in its entirety from DISH's distribution of the Station Service, and DISH may replace such programming with a slate or with other programming, in DISH's sole discretion. Network acknowledges and agrees that compliance with this Section 4 is material to this Agreement and that any remedial measure specified in this Agreement is bargained for, not as a penalty but rather as a reasonable allocation of damages that would otherwise be difficult to ascertain.

5. Delivery of the Station Service.

a. Delivery by Network.

(i) *Delivery of Signal.* Network shall, at its own cost and expense, deliver the Signal to DISH's designated receive facility in the Los Angeles, CA DMA or any other location chosen by DISH in its sole discretion (each an "LRF") using a delivery method chosen by DISH in its sole discretion: (A) at a high level of video and audio quality; (B) at a minimum, at a technical quality comparable to that of signals delivered by other programming services providers; (C) in compliance with DISH's reasonable technical requirements; and (D) in compliance with the highest industry standards. Network acknowledges and agrees that DISH's launch and distribution of the Station Service is, at all times, expressly contingent upon Network's timely providing the Signal to DISH in compliance with this Section 5(a) and DISH's having sufficient time to test the Station Service. The Signal will be deemed delivered to DISH when DISH receives such Signal in a form technically acceptable to DISH. Except as expressly set forth in this Agreement, DISH shall bear all costs and expenses incurred with respect to its distribution of the Station Service to Station Service Subscribers.

(ii) *Change in Delivery.* To the extent that Network is delivering the Signal in accordance with Section 5(a)(i), in the event that Network changes the encryption technology of the Signal or otherwise modifies the Signal (or its delivery) in a manner that DISH (or its Affiliates or subcontractors, if applicable) can no longer receive or use the Signal as set forth in this Agreement (a "Delivery Change"), then Network shall reimburse DISH for the costs to acquire and install the necessary equipment to receive and/or use the modified Signal, which amount shall be payable by Network within thirty (30) calendar days following Network's receipt of an invoice therefor. Network shall provide DISH with at least ninety (90) calendar days' prior written notice of any Delivery Change; provided that, in the event that a Delivery Change results from a Force Majeure Event, then Network shall provide DISH with such written notice as soon as reasonably practicable.

b. Required Materials. To the extent that DISH is distributing the Station Service, DISH shall transmit to Station Service Subscribers all Required Materials in a format reasonably determined by DISH.

c. Reservation of Rights to Bandwidth. Network represents, warrants and covenants that, except for the Primary Signal and the Required Materials, the signal distribution capacity contained within the bandwidth of the Signal (including, without limitation, any portion of the bandwidth that may be created or made usable as a result of the processing of the Signal) is not essential to or a part of the Station Service and is not necessary to the delivery or distribution of the Station Service. DISH hereby reserves all rights in and to (including, without limitation, all rights to use) such nonessential bandwidth of the Signal, including, without limitation, audio sub-carriers and all lines of the VBI (and/or its digital equivalent) from the LRFs through to Station Service Subscribers. Nothing contained in this Agreement may be deemed to restrict DISH from using any or all of the nonessential bandwidth of the Signal from the LRFs through to Station Service Subscribers by any means or for any purpose so long as the use does not materially degrade or interfere with the quality of the Primary Signal. Notwithstanding anything to the contrary contained in this Agreement, Network hereby grants DISH and its Affiliates the right to distribute any material, information, data, images, sounds, features and/or other functionality contained or embedded in or around any portion of the Signal, and DISH may elect to distribute any or all of the foregoing items with the Signal in its sole discretion.

d. Embedding. Except for Required Materials, Network may not embed any information, data, images, sounds, features, calls to action, messages, prompts or triggers that are not related to the Station Service (collectively, "Embedded Information") into or around any portion of any of the Signal, unless DISH (or a DISH Affiliate or subcontractor) can remove and/or block such Embedded Information using equipment then-existing and available at the LRF, and Network acknowledges and agrees that DISH (or a DISH Affiliate or subcontractor) may remove and/or block such Embedded Information in DISH's sole discretion so long as the removal and/or blocking does not remove, block, interfere with, or impede in any way the Primary Signal or the Required Materials. Network shall provide to DISH assistance and information reasonably requested by DISH with respect to such removal and/or blocking. Notwithstanding anything to the contrary contained in this Agreement, Network may not include any Embedded Information, other than Required Materials, that may degrade the Primary Signal and/or impede, interfere with or degrade the function of any hardware, software or firmware or any other equipment, device or technology used by DISH (or DISH's Affiliates or subcontractors) or Station Service Subscribers. In the event that Network, currently or in the future, uses Nielsen's video-based measurement system, Network acknowledges that Nielsen's video-based measurement system may cause minimal degradation to the Primary Signal that may be perceptible to Station Service Subscribers, and Network shall use commercially reasonable efforts to transition to the Nielsen audio-based measurement system or a similar system that does not degrade the Primary Signal. Network represents and warrants that, other than the Required Materials, it is not currently embedding any Embedded Information. Network shall provide DISH with at least one hundred twenty (120) calendar days' written notice (or such shorter time as is practicable under the circumstances) prior to commencing embedding any Embedded Information, which notice must describe with specificity the information that Network intends to embed and the technical placement of the information within the Signal.

Further, Network shall, after commencement of the embedding, provide DISH with at least one hundred twenty (120) calendar days' written notice (or, if shorter, the maximum length of time that is practicable under the circumstances) prior to any change of any of the Embedded Information and/or the technical placement of the Embedded Information within the Signal.

e. Consumer Technology. Notwithstanding anything to the contrary in this Agreement, nothing contained in this Agreement prohibits or is intended to prohibit (and nothing in this Agreement may be construed to prohibit) DISH or its Affiliates from making available any time-shifting technology (e.g., DVR), place-shifting technology (e.g., Sling, DISH Transfer), digital locker technology and/or dish-pointing technology (e.g., Tailgater) in connection with the Station Service or in connection with any product or service used or made available by DISH or its Affiliates. Further, nothing contained in this Agreement restricts or is intended to restrict (and nothing in this Agreement may be construed to restrict) any customer from undertaking any activity (e.g., establishing a connection between such customer's consumer electronics device and such customer's DISH IRD).

6. Carriage of Station Service.

a. Launch. At a time during the Term determined by DISH in its sole discretion (which may be different for the Miami, FL DMA and the Las Vegas, NV DMA), DISH shall launch the Station Service for distribution via the Distribution System (including, in DISH's sole discretion and without limitation, by using Internet Technologies), to Station Service Subscribers in the Miami, FL DMA and the Las Vegas, NV DMA; provided that, DISH may determine in its sole discretion which Station Service Subscribers in the Miami, FL DMA and the Las Vegas, NV DMA receive the Station Service, including, without limitation, by not reflecting previous or future changes to the DMA. In addition to and without limitation of any other carriage cessation rights, to the extent that DISH is distributing the Station Service, DISH may discontinue distribution (or any portion thereof) upon at least thirty (30) calendar days' prior written notice to Network.

b. Packaging. DISH may, in its sole discretion: (i) include the Station Service in any package of programming services (and, for clarity, may vary which packages it is included in (or if it is included at all) based on DMA); and/or (ii) offer the Station Service as an a la carte offering.

c. SD/HD. DISH may carry either the SD feed or the HD feed of the Station Service, as determined by DISH in its sole discretion at any time and from time to time. DISH may, at any time during the Term, carry both the SD feed and the HD feed of the Station Service; provided that, even in the event that DISH elects to carry both the SD feed and the HD feed of the Station Service for any period of time, DISH may cease carrying either such feed at any time.

d. Channels. DISH shall carry the Station Service on a channel designated by DISH in its sole discretion; provided that Network acknowledges and agrees that in the event that DISH carries the SD feed and the HD feed of the Station Service, then DISH

may carry the HD feed of the Station Service on a separate channel number and “map” such channel to the same channel number as the SD feed of the Station Service.

e. Cessation of Carriage. DISH may, in its sole discretion, cease carrying the Station Service in any one or more packages of programming services and/or cease offering the Station Service a la carte, at any time and in DISH’s sole discretion.

7. Affiliate Fee.

a. Affiliate Fee. Network shall pay to DISH a per Station Service Subscriber monthly fee of \$0.01 (the “Affiliate Fee”). Affiliate Fees will be payable as set forth in this Agreement.

b. Subscribers. For the purpose of calculating Affiliate Fees due under this Agreement for any Reporting Period, the number of Station Service Subscribers will be an amount equal to *the quotient of:* (i) the *sum of* (A) the number of Station Service Subscribers as of the last day of the applicable Reporting Period and (B) the number of Station Service Subscribers as of the last day of the immediately preceding Reporting Period; *divided by* (ii) two (2). By way of example, but not limitation, in the event that (x) there are thirty thousand (30,000) Station Service Subscribers as of the last day of the June Reporting Period and (y) there are twenty thousand (20,000) Station Service Subscribers as of the last day of the May Reporting Period (*i.e.*, the immediately preceding Reporting Period), then, in the case of (x) and (y), there would be twenty-five thousand (25,000) Station Service Subscribers for the June Reporting Period ($((30,000 + 20,000)/2=25,000)$).

c. Payments. Network shall pay the Affiliate Fee no later than thirty (30) calendar days following the receipt of DISH’s subscriber report, which report shall be sent no later than sixty (60) calendar days after the end of each calendar month during which the applicable the Reporting Period ends. Network shall make payment by check made payable to DISH, via U.S. Mail, to the address set forth in Section 14 of this Agreement (or by any other method chosen by DISH in its sole discretion).

8. Marketing and Use of Marks.

a. Marketing by DISH. DISH may market, promote, advertise, offer for sale, sell, and determine the retail pricing of the Station Service (and any package of programming services containing the Station Service) in its sole discretion. Upon DISH’s request, Network shall provide to DISH marketing and promotional advice for purposes of marketing the Station Service. Further, Network shall make available to DISH, at prices not exceeding the lesser of Network’s actual cost and the cost Network charges any other distributor, reasonable quantities of any marketing and promotional materials that DISH may request.

b. Marketing by Network. Network shall promote DISH’s carriage of the Station Service at least as favorably as it promotes the carriage of the Station Service by any third-party distributor (including, without limitation, the frequency, prominence and reference of such third-party distributor by name). Network may not undertake

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marketing tests, surveys and/or other research using any Subscribers (including, without limitation, Station Service Subscribers) without DISH's prior written consent.

c. Clips. Network hereby grants DISH, its Affiliates and Subdistributors, and any person or entity that is a part of DISH's distribution chain: (i) the right to use recorded portions of the Station Service, generally up to fifteen (15) seconds in length; and (ii) the right to create, edit, reproduce and exhibit promotional segments or clips of the programming on the Station Service, in the case of each of (i) and (ii) for promotional and marketing purposes related to the Station Service and/or the Distribution System.

d. Communications. Network acknowledges and agrees that it could cause DISH significant harm by communicating directly with or targeting messaging specifically to Subscribers (including, without limitation, Station Service Subscribers). Network may not, at any time, engage in any such communications or messaging. In the event that, notwithstanding the immediately foregoing sentence, Network engages in any such communications and/or messaging, including, without limitation, through the use of crawls (as such term is commonly understood in the pay-television industry) or other messages embedded in the Station Service, in addition to and without limiting any other rights and remedies that DISH may have at law, in equity, under contract (including, without limitation, this Agreement) or otherwise, all of which are hereby expressly reserved, DISH shall have the right, in its sole discretion, without incurring any liability whatsoever, to: (i) "cover" such crawls or messages; and/or (ii) if applicable, remove the Station Service or the applicable programming, in DISH's sole discretion, from the Distribution System (and, in DISH's sole discretion, replace such programming with a slate or with other programming).

e. Payment from Station Service Subscriber. Under no circumstances may Network collect a payment directly from a Station Service Subscriber for any programming or other material received by the Station Service Subscriber pursuant to this Agreement. In the event that Network receives such a payment, then it shall immediately forward the full payment to DISH.

f. Network Marks. Network hereby licenses to DISH (and DISH's Affiliates, Subdistributors, and retail distribution network), and grants DISH (and DISH's Affiliates, Subdistributors and retail distribution network) the right to use, the Network Marks to market, promote and advertise the Station Service (and any package of programming services containing the Station Service) and the Distribution System. DISH acknowledges that the Network Marks are the exclusive property of Network and its suppliers and that DISH has not and will not acquire any proprietary rights in the Network Marks other than as expressly set forth in this Agreement. Any and all goodwill arising from DISH's use of the Network Marks shall inure solely to the benefit of Network.

9. **Early Termination Rights.** In addition to all other rights and remedies that each Party may have at law, in equity, under contract (including, without limitation, this Agreement) or otherwise, all of which are hereby expressed reserved, each Party shall have the right to terminate this Agreement in the event that the other Party has: (a) breached or defaulted under any of its material obligations under this Agreement (unless the breach is cured within thirty (30) calendar days following the breaching Party's receipt of notice of the breach from the other Party; provided that in the event that a shorter or longer cure period is provided elsewhere in this Agreement for a particular breach, then such shorter or longer cure period shall apply and, in the case where immediate termination is provided for elsewhere in this Agreement, immediate termination shall apply; provided further that each Party acknowledges and agrees that certain breaches are incapable of being cured and, therefore, in such cases, the non-breaching Party need not provide the other Party with a thirty (30)-day cure period); (b) filed a petition in bankruptcy, is insolvent, or has sought relief under any Law related to such Party's financial condition or its ability to meet its payment obligations; or (c) had any involuntary petition in bankruptcy filed against it, or any relief under any bankruptcy Law has been sought by any of its creditors, unless the involuntary petition is dismissed, or the relief is denied, within thirty (30) calendar days after it was filed or sought. Without limiting the generality of the immediately foregoing sentence, DISH shall have the right to terminate this Agreement immediately and without incurring any liability whatsoever upon providing written notice to Network in the event that: (i) any person or entity that, as of the Effective Date, did not possess, directly or indirectly, the power to direct or cause the direction of management or policies of Network, whether by virtue of the ownership of voting stock, by contract or otherwise, later comes into possession of such power; (ii) DISH ceases distributing the top-ten Nielsen-rated programming services then carried by DISH; (iii) delivery of the Station Service by Network to DISH is discontinued or interrupted for a period of at least fifteen (15) continuous calendar days; and/or (iv) for any reason or no reason by providing Network with written notice at least thirty (30) calendar days prior to the date on which such termination will take effect.

10. **Representations and Warranties.**

a. **Mutual Warranties.** Each Party hereby represents, warrants and covenants to the other Party that: (i) it is duly organized, validly existing and in good standing under the Laws of the state or country under which it is organized; (ii) it has the power and authority to enter into this Agreement and to perform fully its obligations hereunder; (iii) the individual executing this Agreement on its behalf has the authority to do so; and (iv) the obligations created by this Agreement, insofar as they purport to be binding on it, constitute legal, valid and binding obligations enforceable in accordance with their terms.

b. **Network Warranties.** Network represents, warrants and covenants to DISH that:

(i) Network holds any applicable FCC licenses that are required to perform its obligations under this Agreement;

(ii) the Station Service is, and will be at all times during the Term, of a high quality that at least meets the standards of quality, with respect to audio and visual quality and quality of content, that are standard in the video programming industry;

(iii) it presently has and will continue to have, at all times during the Term, all rights necessary (including, without limitation, with regard to the Network Marks) to grant DISH the rights contracted for by DISH under this Agreement, in each case free and clear of all liens, restrictions, charges, claims and encumbrances;

(iv) it has obtained and will maintain throughout the Term all licenses, permits, rights, exemptions, authorizations and consents necessary to fully perform this Agreement; it and the Station Service presently are, and will remain at all times during the Term, in full compliance with all Laws, including without limitation all Laws enforced, administered, promulgated or pronounced in the United States and in the country or countries in which any content for the Station Service originated;

(v) it has licensed, obtained and paid for, and will at all times during the Term continue to license, obtain and pay for, all copyright, royalty or other performance rights and licenses (including, without limitation, "through-to-the-viewer" music performance rights and any other rights necessary from ASCAP, BMI, SESAC and any other applicable performing rights organizations or other applicable entities) for the programming contained in the Station Service;

(vi) no third party has or has claimed, any right that would be inconsistent with the rights granted to DISH in this Agreement;

(vii) the Station Service will not, at any time during the Term, contain any material that is obscene, libelous, slanderous, indecent or defamatory, or any material that violates or infringes any copyright, trademark, right of privacy, literary or dramatic right, music performance right, or any other right of any person or entity; and

(viii) it is under no contractual or other legal obligation that will in any way interfere with its full, prompt and complete performance under this Agreement.

c. DISH Warranties. DISH represents, warrants and covenants to Network that it presently is, and will remain at all times during the Term, in material compliance with all material applicable Laws with regard to its ability to perform its obligations under this Agreement.

11. Indemnification.

a. Network's Indemnification. Network shall indemnify, defend and hold harmless each of DISH and its Affiliates, each of its and their present and future contractors, subcontractors, authorized distributors, authorized Subdistributors, authorized retailers, directors, members, managers, officers, owners, employees, representatives and agents, and each of their respective assigns, heirs, successors and legal representatives from, against and with respect to any and all third-party claims, losses, damages, lawsuits, judgments, actions,

penalties, liabilities, costs and expenses (including, without limitation, reasonable court costs and attorneys' fees) (collectively, "Claims") to the extent incurred in connection with or arising out of: (i) the breach or default (or alleged breach or default) by Network of any provision contained in the Agreement; (ii) the content of the Station Service (including, without limitation, advertising spots and infomercial programming), including, without limitation, any assertions that any content or the transmission thereof is obscene, libelous, slanderous, indecent or defamatory, or violates or infringes any copyright, trademark, right of privacy, literary or dramatic right, music performance right, or any other right of any person or entity; (iii) the sale or marketing of any product or service by, through or on the Station Service, including, without limitation, assertions related to product liability, patent, trademark, copyright infringement, right of privacy or publicity, express or implied warranties, warranties relating to compliance with Laws, and personal injuries (physical, economic or otherwise) to any person who may use, consume or be affected by the products and services sold or marketed by, through or on the Station Service; (iv) Network's and/or the Station Service's failure to comply with any Law(s) or any other failure on Network's part that causes DISH to violate any Law(s) or court or administrative decree(s); (v) Network's failure to have acquired at the pertinent time when all or part of the Station Service is made available to DISH, good title to, and/or each and every property right and/or other right necessary for Network to satisfy the obligations imposed on it pursuant to this Agreement; (vi) Network's advertising and marketing of the Station Service; (vii) any other materials relating to the Station Service, including, without limitation, advertising or promotional copy supplied or permitted by Network; and/or (viii) any interruptions in the transmission of the Station Service to DISH.

b. DISH's Indemnification. DISH shall indemnify, defend and hold harmless Network, each of its their present and future directors, officers, employees and agents, and each of their respective assigns, heirs, successors and legal representatives from, against and with respect to any and all third-party Claims to the extent incurred in connection with or arising out of the breach or default by DISH of any provision contained in the Agreement.

c. Claim. A Party claiming indemnification under this Section 11 shall promptly notify the other Party in writing of any Claim for which indemnification is sought (an "Indemnification Claim"); provided that any failure of such Party claiming indemnification to promptly notify the other Party shall only relieve such other Party of its indemnification obligation under this Section 11 to the extent that such other Party is actually prejudiced by such delay. The indemnifying Party shall undertake the defense of the Indemnification Claim and permit the indemnified Party to participate in the defense using counsel of such indemnified Party's choosing, in each case at the indemnifying Party's sole cost and expense. In the event that, in the reasonable discretion of DISH, Network fails to diligently pursue an Indemnification Claim for which it is the indemnifying Party, then DISH may assume the control of the Indemnification Claim at Network's expense. The indemnified Party, at the indemnifying Party's sole cost and expense, shall cooperate fully in the defense of the Indemnification Claim. The settlement of any Indemnification Claim, in whole or in part, by an indemnified Party, without the indemnifying Party's prior written consent, shall release the indemnifying

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Party from its obligations hereunder with respect to the portion of the Indemnification Claim settled. The indemnifying Party shall not settle any Claim without the indemnified Party's prior written consent unless: (i) the indemnified Party admits no liability; and (ii) the indemnified Party pays no damages and is not obligated to undertake or forego any action.

12. Confidentiality.

a. **Confidential Information.** Neither DISH nor Network, nor any of either of their Affiliates, may disclose (orally, in writing, by press release or by public disclosure of any kind or otherwise) to any third party (other than its respective directors, officers, members, managers, employees, auditors, consultants, financial advisors, lenders, attorneys and existing and potential third-party financial investors (in Network, the Station Service, or DISH, as applicable) and, with respect to DISH, EchoStar, in each case in their capacity as such and on a need-to-know basis, and in the case of third-parties, subject to a confidentiality agreement (including, without limitation, confidentiality obligations contained in another agreement) between the relevant Party and such third party), any Confidential Information, except: (i) to comply with the Law; (ii) to the extent necessary to comply with the valid order of an administrative agency, an arbitrator, or a court of competent jurisdiction, in which case redacted to the greatest extent possible and, in which case the Party making such disclosure shall so notify the other as promptly as practicable (and, if possible, prior to making such disclosure) and shall seek confidential treatment of such information; (iii) in order to enforce its rights pursuant to this Agreement; (iv) if mutually agreed to in writing in advance by DISH and Network; or (v) if the information that would otherwise be Confidential Information under this Agreement is already public (i.e., known by one or more third parties not subject to a confidentiality agreement regarding such information). DISH shall have absolutely no obligation whatsoever to (and nothing in this Agreement shall require DISH to) disclose Subscriber Information to Network or any person or entity (including, without limitation, auditors) acting on Network's behalf. Unless agreed to by both Parties in advance in writing, neither Network nor DISH may issue any press release or other public announcement concerning this Agreement.

b. **Equitable Relief.** Each Party agrees that a breach of this Section 12 will result in the substantial likelihood of irreparable harm and injury to the other Party for which monetary damages alone would be an inadequate remedy, and which damages are difficult to accurately measure. Accordingly, each Party agrees that the other Party shall have the right to obtain immediate injunctive relief, as well as other allowable equitable relief, for any breach or potential breach of this Section 12. The right to equitable relief will be in addition to and without limiting any other rights and remedies that each Party may have at law, in equity, under contract (including, without limitation, this Agreement) or otherwise, all of which are hereby expressly reserved.

13. Limitation of Liability. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, EXCEPT WITH RESPECT TO THE CONFIDENTIALITY AND INDEMNIFICATION OBLIGATIONS CONTAINED IN

THIS AGREEMENT, IN NO EVENT WILL DISH OR ITS AFFILIATES BE LIABLE FOR ANY INCIDENTAL, PUNITIVE, SPECIAL, CONSEQUENTIAL OR OTHER INDIRECT DAMAGES, WHETHER FORESEEABLE OR NOT, OCCASIONED BY ANY FAILURE TO PERFORM OR THE BREACH OR DEFAULT OF ANY OBLIGATION UNDER THIS AGREEMENT FOR ANY REASON WHATSOEVER, WHETHER BASED ON NEGLIGENCE OR OTHERWISE. IN NO EVENT WILL DISH OR ANY DISH AFFILIATE BE REQUIRED TO SPECIFICALLY PERFORM ANY OBLIGATION CREATED BY THIS AGREEMENT.

14. **Notices.** All notices in connection with this Agreement must be in writing and must be delivered by hand delivery; by postage-prepaid, certified mail, return receipt requested; by Federal Express or similar overnight delivery service; or by facsimile transmission, in each case to the other Party at the following address(es) (unless a Party at any time designates another address for itself by notifying the other Party as set forth in this Section 14, in which case the new address shall be used) :

To Network: 902lgo Inc
Attn: Alki David

If by nationally recognized courier service or first-class certified mail:

301 N. Canon Drive,
Suite 208 Beverly Hills,
CA 90210

If by facsimile:
Fax: (310) 861-1059

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To DISH:

DISH Network L.L.C.
Attn: Senior Vice President, Programming

If by nationally recognized courier service:
9601 South Meridian Blvd.
Englewood, Colorado 80112

If by first-class certified mail:
P.O. Box 6655
Englewood, Colorado 80155

If by facsimile:
Fax: (303) 723-1999

cc: Office of the General Counsel

If by nationally recognized courier service:
Same address as noted above for DISH
nationally recognized courier delivery

If by first-class certified mail:
Same address as noted above for DISH
first- class certified mail delivery

If by facsimile:
Fax: (303) 723-1699

Notice given by hand delivery will be deemed given on delivery. Notice given by certified mail, return receipt requested will be deemed given the date set forth on the receipt (or the date of refusal or failure of receipt, if applicable). Notice given by Federal Express or similar overnight delivery service will be deemed given the date set forth on the receipt (or the date of refusal or failure of receipt, if applicable). Notice given by facsimile transmission will be deemed given on the date indicated on an applicable confirmation of transmission.

15. Miscellaneous.

a. Assignment. This Agreement will inure to the benefit of and be binding upon each of the Parties and each of their respective assigns, heirs, successors and legal representatives. Notwithstanding anything to the contrary contained in the immediately foregoing sentence, neither Party may assign or otherwise transfer any of its rights or obligations under this Agreement, in any manner, direct or indirect, contingent or otherwise, in whole or in part, voluntarily or by operation of law without the prior express written consent of the other Party, except that DISH shall have the right to assign some or all of its rights and/or obligations under this Agreement, without obtaining the consent of Network, to: (i) a DISH Affiliate; (ii) a successor entity to its business, whether by merger or by sale of all or substantially all of its assets or stock; (iii) any entity in which DISH or any DISH

Affiliate has any direct or indirect equity investment; and/or (iv) any other entity directly or indirectly controlled by any of the foregoing entities. In the event of any valid assignment of this Agreement in accordance with the terms of this Section 15(a), the assigning Party will be relieved of all obligations arising after the assignment, and the non-assigning Party shall look solely to the assignee for enforcement of such obligations. Any attempted assignment in violation of this Section 15(a) will be null and void ab initio.

b. Station Service Combinations. In the event that the Station Service is acquired by or merged or combined with, or Network acquires control of, any other programming service (each, a “Merger”), and DISH has (at the time of the Merger) an affiliation agreement regarding distribution of the other programming service (a “Current Affiliation Agreement”), DISH shall elect, in its sole discretion, to apply either the Current Affiliation Agreement or this Agreement to the combined or acquired service.

c. Governing Law; Venue. This Agreement, the validity of this Agreement, any of its terms and provisions, any of the rights and duties of the Parties hereunder, the termination of this Agreement, the rights and obligations of the Parties following termination, and any other claims under or relating to this Agreement, whether arising in contract, tort, under statute or otherwise, shall be governed by and construed in accordance with the laws of the State of Colorado applicable to contracts to be made and performed entirely within the State of Colorado by residents of the State of Colorado, without giving any effect to any of its conflict of law or any other provisions that would require the application of the laws of any other jurisdiction, and any and all disputes relating to the foregoing shall be litigated solely and exclusively in the United States District Court for the District of Colorado; provided, however, that in the event that the United States District Court for the District of Colorado does not have subject matter jurisdiction over any matter for which it is specified in this Section 15(c) as the proper venue, then such matter shall be litigated solely and exclusively before the appropriate state court of competent jurisdiction located in the City and County of Denver in the State of Colorado. The Parties and their present and future Affiliates consent to the *in personam* jurisdiction of such courts for such purposes. The Parties waive, fully and completely, any objection to venue in such courts, including, without limitation, any right to dismiss and/or transfer any action pursuant to 28 U.S.C. § 1404 or 1406 (or any successor statute).

d. Relationship. The relationship of the Parties is that of independent contractors. Nothing in this Agreement may be construed or implied to create a relationship between the Parties of agency, partners, affiliates, joint employers, or joint venturers. Neither Party will have the power or authority to act for the other in any manner or to create obligations or debts that would be binding on the other Party. Neither Party will be responsible for any obligation of the other Party, any act or omission of the other Party, or any employee, agent or representative of the other Party. Each Party will be responsible for all wages, salaries, taxes and expenses incurred for or by its employees. Neither Party will be, or will hold itself out as, the agent of the other Party or as a joint venturer under this Agreement. No Subscriber will be deemed to have any privity of contract or direct contractual or other relationship with Network by virtue of this Agreement. No supplier of advertising included in the Station Service by DISH will be deemed to have any privity of contract or direct contractual or

other relationship with Network by virtue of this Agreement. No supplier of advertising, programming or any other material (e.g., information, functionality, features, technical materials) included in the Station Service by Network will be deemed to have any privity of contract or direct contractual or other relationship with DISH by virtue of this Agreement. Network hereby disclaims any present or future right, interest or estate in or to the transmission facilities of DISH and its Affiliates and subcontractors, such disclaimer being to acknowledge that none of DISH, its Affiliates and EchoStar and its and their facilities are common carriers.

e. **Force Majeure.** Notwithstanding anything to the contrary contained in this Agreement, neither Network nor DISH will incur any liability to the other Party or its Affiliates, or to any other person or entity, with respect to any failure of Network or DISH, as the case may be, to transmit or distribute the Station Service, or perform any of its obligations under this Agreement if the failure is due to or arises out of: (i) any act of God; (ii) any act of a public enemy; (iii) any act of any local, county, state, federal or other government in its sovereign or contractual capacity; (iv) any act of war or terrorism; (v) any riot; (vi) any fire, flood or adverse weather condition (including, without limitation, solar flare or sun outage with respect to satellite transmission interference); (vii) any epidemic or quarantine; (viii) any act of sabotage; (ix) any strike, lock-out or other labor disturbance; (x) any failure or degradation in performance of DISH's or Network's satellite(s) or any transponder on such satellite(s), or any failure or degradation of the Distribution System, any scrambling/descrambling equipment, or any other equipment owned or maintained by DISH or Network, as applicable, or any third party (including, without limitation, DISH's automated billing and authorization system); (xi) any failure at the origination and uplinking center used by Network or DISH (including, without limitation, the LRF); or (xii) any other cause beyond the reasonable control of Network or DISH, as applicable (each, a "**Force Majeure Event**"), and such non-performance will be excused for the period of time that such failure(s) causes non-performance; provided that, in the event that DISH determines, in its sole discretion, that it is commercially or technically infeasible to cure a Force Majeure Event with respect to the Distribution System or one or more satellites, and DISH so notifies Network in writing, then either Party may terminate this Agreement effective immediately upon the other Party's receipt of written notice of such termination. Each of the Parties acknowledges and agrees that, although the Station Service may at any given time be uplinked to only one of several satellites, failure or degradation in any of the satellites used by DISH may require DISH to reduce the number of programming services available for allocation among all of the satellites, with such reduction including, without limitation, curtailment or termination of the distribution of the Station Service by DISH, in DISH's sole discretion. Accordingly, DISH will incur no liability for its failure to distribute the Station Service in the event of a failure or degradation of any satellite(s) or the transponder(s) on any such satellite(s), regardless of whether the satellite to which the Station Service is uplinked at the time of the failure or degradation is itself the subject of the failure or degradation. Network hereby grants DISH the right to immediately insert programming of its choice on the channel identified with the Station Service in the event that the Station Service is interrupted or discontinued as a result of a Force Majeure Event until the Station Service is fully operational again.

f. **Severability.** The invalidity under applicable Law of any provision of this Agreement will not affect the validity of any other provision of this Agreement. In the event

that any provision in this Agreement is determined to be invalid, unenforceable or illegal: (i) the provision shall be reformed to the minimum extent necessary to cause the position to be valid, enforceable and legal while preserving the intent of the Parties as expressed in, and the benefits to the Parties provided by, this Agreement; or (ii) if the provision cannot be so reformed, the provision will be severed from this Agreement and the remainder of the Agreement will remain effective and will be construed in accordance with its terms as if the invalid, unenforceable or illegal provision were not contained in the Agreement.

g. Survival. Any provision of this Agreement that logically would be expected to survive termination or expiration of the Agreement will survive such termination or expiration, including, without limitation, all representations and warranties, indemnifications, confidentiality obligations, audit rights, limitations of liability, choice of law provisions, and notice provisions.

h. No Inference Against Author. Each of Network and DISH acknowledges that this Agreement was fully negotiated by the Parties and that, therefore, no provision of this Agreement may be interpreted against either Party because that Party or its legal representative drafted the provision.

i. Headings; References. The titles and headings of the sections in this Agreement are for convenience only and shall not in any way affect the interpretation of this Agreement. Any reference in this Agreement to a "section" or an "exhibit" will, unless the context expressly requires otherwise, be a reference to "section" in, or an "exhibit" to this Agreement. Any reference in this Agreement to the singular form of a word will include the plural form of the word, if applicable, and any reference to the plural will include the singular, if applicable. Forms of the word "include" mean "including, without limitation," and references to "hereunder," "herein," "hereof," and the like, refer to this Agreement. Notwithstanding anything to the contrary contained in this Agreement, "may not" and "shall not" will have the same meaning and will be construed as prohibitive.

j. Waivers; Cumulative Remedies. The failure of either Party to insist upon strict performance of any provision of this Agreement will not be construed as a waiver of any subsequent breach of the same or similar nature. Any waiver of any provision of this Agreement must be in writing and signed by the Party against whom the waiver is sought to be enforced. All rights, remedies and defenses expressly reserved to either Party under this Agreement will be cumulative and without limiting any other rights, remedies and defenses that either Party may have at law, in equity, under contract (including, without limitation, this Agreement) or otherwise, all of which are hereby expressly reserved

k. Change in the Law. Notwithstanding anything to the contrary contained in this Agreement, in the event that any Law is changed in a way that makes any term of this Agreement illegal or unenforceable, or changes the intent (including, without limitation, the economic, marketing, packaging or other intent) of any provision of this Agreement or of this Agreement as a whole, then the Parties shall negotiate in good faith to modify the Agreement to account for such change in the Law. In the event that the Parties are unable to mutually agree to a modification of the Agreement, then DISH may, at its sole discretion, either



terminate the Agreement without liability or deem the affected term eliminated from the Agreement.

l. Counterparts. The Parties may execute this Agreement in several counterparts, each of which is deemed an original and all such counterparts together constitute but one and the same instrument. The Parties may execute this Agreement by facsimile transmission and/or scanned and e- mailed copy, and each such transmitted copy is deemed an original.

m. No Third-Party Beneficiaries. The provisions of this Agreement are for the benefit of the Parties and their permitted assigns, and except as specifically set forth in this Agreement, no third party may be a beneficiary of, or have any rights by virtue of, this Agreement.

n. Integration. This Agreement, together with any documents and exhibits specifically referred to in this Agreement, constitutes the entire agreement between the Parties. All exhibits referenced in this Agreement are hereby incorporated in the Agreement by this reference. This Agreement may not be modified except in a writing executed by both Parties. Except as expressly set forth in this Agreement, neither Party will be bound by any communications between them on the subject matter of this Agreement unless the communication is: (i) in writing; (ii) bears a date contemporaneous with or subsequent to the date of this Agreement; and (iii) is executed to by both Parties. Upon execution of this Agreement, all prior agreements and understandings between the Parties will be null and void. Each of the Parties specifically acknowledges that there are no unwritten side agreements or oral agreements between the Parties that alter, amend, modify or supplement this Agreement.

[The rest of this page left intentionally blank.]

A handwritten signature in black ink, appearing to be 'MWB', is located in the bottom right corner of the page.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered as of the Effective Date.

Network

FilmOn TV Networks

By: _____
Alki David
CEO

DISH

DISH Network L.L.C.

By: _____
Warren Schlichting
EVP, Programming, Marketing and Media Sales

