

DISH Standard Terms and Conditions

All capitalized terms used but not otherwise defined in these Terms and Conditions have the meanings set forth in Service Agreement. In the event of a conflict between the Service Agreement and these Terms and Conditions, these Terms and Conditions will prevail

1. **Compliance with Laws.** Each party agrees to comply with and that this Agreement is subject to all applicable federal, state and local laws, rules, regulations, statutes, ordinances, codes and governmental administrative orders and all amendments thereto, now enacted or hereinafter promulgated in force during the Term (each, a "Law," and collectively "Laws").

2. **Representations and Warranties.**

A. **Company.** Company represents and warrants to DISH that neither Company's execution nor performance of this Agreement will violate, conflict with, or result in a default under or a breach of any contract or agreement, oral or written, including any lien, mortgage, deed of trust or encumbrance.

B. **DISH.** DISH represents and warrants to Company that DISH's execution of this Agreement will not violate, conflict with, or result in a default under or breach of any contract or agreement, oral or written, applicable to DISH.

3. **Indemnification.**

A. **Company.** Company shall indemnify, defend and hold harmless DISH and its affiliates, and its and their respective officers, directors, employees, agents and shareholders, and its and their respective assigns, heirs, successors and legal representatives (collectively, the "DISH Group"), from and against any and all costs, losses, liabilities, damages, lawsuits, judgments, claims, actions, penalties, fines and expenses, including without limitation, interest, penalties, attorneys' fees, and all monies paid to one (1) or more people or entities in the investigation, defense or settlement of any or all of the foregoing (each, a "Claim" and collectively, the "Claims") made by any third party that arise out of or are incurred in connection with: (i) Company's performance or failure to perform its obligations under this Agreement; (ii) Company's breach of any representation or warranty contained in this Agreement; (iii) Company's or any of Company's customers' violation of the Service Agreement or any other policies or requirements referenced therein; and/or (iv) Company's failure to comply with any

applicable Law. In the event that a Claim is asserted against the DISH Group that would give rise to a claim for indemnification under this Section 3A, the DISH Group shall: (a) provide written notice to Company within ten (10) days after becoming aware of such Claim; (b) be entitled to representation by counsel of its choosing, at Company's sole cost and expense; and (c) have the right to the exclusive conduct of all negotiations, litigation, settlements and other proceedings arising from any such Claim, and Company shall, at its sole cost and expense, render all assistance required by the DISH Group in connection with any such negotiation, litigation, settlement or other proceeding.

B. **DISH.** DISH shall indemnify, defend and hold harmless Company and its officers, directors, employees, agents and shareholders, and its and their respective assigns, heirs, successors and legal representatives (the "Company Group") from and against any and all Claims made by any third party that arise out of or are incurred in connection with: (i) DISH's performance or failure to perform its obligations under this Agreement; (ii) DISH's breach of any representation or warranty contained in this Agreement; and/or (iii) DISH's failure to comply with any Law. In the event that a Claim is asserted against the Company Group that would give rise to a claim for indemnification under this Section 3B, Company shall provide written notice to DISH within ten (10) days after becoming aware of such Claim. DISH, at its sole cost and expense and upon written notice to Company, may assume the defense of such Claim with counsel selected by DISH in its sole and absolute discretion. The Company Group: (a) shall not compromise the Claim in any way or admit liability without DISH's prior written consent; and (b) shall cooperate with DISH in defense of such Claim and shall accept any settlement recommended by DISH so long as (1) the Company Group does not admit any fault or liability under such settlement, and (2) the amount of such settlement is paid by DISH. The provisions of this Section 3B shall survive the expiration or termination of this Agreement, for whatever reason, indefinitely.

4. **Limitation of Liability.** THE PARTIES ACKNOWLEDGE AND AGREE THAT, EXCEPT FOR AMOUNTS PAYABLE UNDER SECTION 3 (INDEMNIFICATION) UNDER THESE TERMS AND CONDITIONS, NEITHER PARTY NOR ITS AFFILIATES SHALL BE LIABLE FOR ANY INDIRECT, EXEMPLARY, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR OTHER INDIRECT DAMAGES OF

WHATEVER NATURE, WHETHER FORESEEABLE OR NOT, INCLUDING WITHOUT LIMITATION, ANY PAYMENT FOR LOST BUSINESS, FUTURE PROFITS, OR LOSS OF GOODWILL, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING WITHOUT LIMITATION, NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

5. **General Provisions.**

A. **Notices.** All notices that either party are required or may desire to serve upon the other party shall be in writing, signed by the party giving notice and sent by: (i) first class certified mail, postage prepaid; (ii) nationally and commercially recognized overnight delivery service; (iii) facsimile; or (iv) courier, to the following address(es) or such other address(es) as each party may designate to the other at any time and from time to time in accordance with this **Section 5A.**

Company: Please see the information on the first page of the Service Agreement.

DISH: Executive Vice President – Strategic Planning
DISH Network L.L.C.
9601 South Meridian Blvd
Englewood, Colorado 80112
Fax: (720) 514-6364

With a copy to: General Counsel
DISH Network L.L.C.
9601 South Meridian Blvd
Englewood, Colorado 80112
Fax: (303) 723-2050

B. **Confidentiality.** Company represents and warrants that it has not disclosed, and covenants and agrees that it will not disclose (whether orally or in writing, by press release or otherwise), to any third party any information with respect to the terms, conditions and provisions of this Agreement, any information contained in any document or report delivered hereunder, or any communications or materials related hereto in any way, except: (i) to its officers, directors, employees, auditors and attorneys who have a need to know such information, in their capacity as such, so long as such personnel agree to abide by the terms of this **Section 5B** and Company agrees to be responsible for the breach of the terms of this **Section 5B** by such personnel; (ii) to the extent necessary to comply with any applicable legal

requirements, in which case Company shall notify DISH in writing of such requirement prior to such disclosure and shall seek confidential treatment of such information; (iii) to perform its obligations under this Agreement; or (iv) as DISH has agreed to in writing prior to the disclosure. The provisions of this **Section 5B** shall survive the expiration or termination of this Agreement, for whatever reason, indefinitely.

C. **Force Majeure.** Neither party shall be deemed in default hereunder, nor shall it hold the other party responsible for, any cessation, interruption or delay in the performance of any of its obligations hereunder due to an act of force majeure, including without limitation, earthquake, flood, fire, storm, natural disaster, technical failure (including without limitation, the failure of all or part of any communications satellite or transponders, fiber optic cables or other cabling on which DISH utilizes to provide services to Company, or of related uplinking or other equipment), act of God, act of war, act of terrorism, armed conflict, labor strike, lockout, boycott, internet or telecommunications failures or degradations (including, without limitation, cable cuts, power outages, hardware, equipment and/or software provided by any third party) that are beyond DISH's reasonable control, or any other reason beyond the reasonable control of the party whose performance is prevented during the period of such occurrence; provided that the party relying upon this **Section 5C:** (i) has given the other party written notice thereof promptly and in any event within five (5) business days of discovery thereof, and (ii) has taken all reasonable steps necessary under the circumstances to mitigate the effects of the force majeure event upon which such notice is based. In the event that a force majeure event described in this **Section 5C** affects one (1) or both parties for a period in excess of thirty (30) consecutive days, either party may immediately terminate this Agreement.

D. **Assignment.** This Agreement is binding upon the heirs, legal representatives, successors and permitted assigns of DISH and Company. Neither party shall assign this Agreement without the prior written consent of the other party (which consent shall not be unreasonably withheld), except that DISH may assign this Agreement in whole or in part, at any time and in its sole and absolute discretion, without Company's consent to a person or entity directly or indirectly controlling, controlled by or under common control with DISH. A new company's acceptance of DISH's continued performance under this agreement shall be deemed to be such company's assumption of this Agreement; provided that Company shall remain liable until such

time as a formal assignment and assumption of this Agreement is executed. The provisions of this Agreement are for the exclusive benefit of the parties hereto, and their affiliates, heirs, legal representatives, successors and permitted assigns, and nothing in this Agreement is intended, or shall be deemed or construed, to confer upon any third party (except as expressly provided for in this Agreement) any rights, benefits, duties, obligations, remedies or interests of any nature or kind whatsoever under or by reason of this Agreement.

E. Independent Contractors. The relationship of the parties is that of independent contractors. Neither party is an agent, representative, or employee of the other party. Neither party shall have any right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other party. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the parties or to impose any partnership obligation or liability upon either party. Each party shall bear its own costs and expenses in performing this Agreement.

F. Governing Law; Venue; Personal Jurisdiction. The relationship between the parties and their present and future affiliates, including without limitation, all disputes, controversies and claims, 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 its conflict of law principles. In the event that either party chooses to file a lawsuit or pursue an action, such lawsuit or action shall be litigated solely and exclusively before the United States District Court for the District of Colorado. The parties and their present and future affiliates consent to the *in personam* jurisdiction of the United States District Court for the District of Colorado and the appropriate State Court located in the City and County of Denver in the State of Colorado and waive, fully and completely, any right to dismiss and/or transfer any action pursuant to Title 28 U.S.C. Section 1404 or 1406 (or any successor statute). In the event that the United States District Court for the District of Colorado does not have subject matter jurisdiction over any such matter, 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.

G. Attorneys' Fees and Costs. In the event of any suit or action between Company and any of its affiliates, on the one hand, and DISH and any of its affiliates, on the other hand, including without limitation, any suit or action to enforce this Agreement or any provisions hereof, the prevailing party, as such party is determined by the court, shall be entitled to recover its costs, expenses and reasonable attorneys' fees at trial and on appeal, in addition to and without limitation of all other sums allowed by the law.

H. Amendments. Any amendment or modification of any portion or the entirety of this Agreement requires a writing signed by an authorized officer of the party against whom the amendment or modification is sought to be enforced.

I. Waiver; Remedies Cumulative. A waiver of any portion of this Agreement requires a writing signed by an authorized officer of the party against whom the waiver is sought to be enforced. Except as otherwise expressly set forth herein, the failure of a party to insist upon strict performance of any provision of this Agreement shall not be construed as a waiver of any subsequent breach of the same or similar nature, nor shall a party's waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself. In addition to and without limiting the foregoing, the election of certain remedies by a party with regard to a breach of the other party hereunder shall not be deemed to prejudice any rights or remedies that the non-breaching party shall have at law, in equity, under contract or otherwise with respect to a similar or different breach of default hereunder by the breaching party, all of which are hereby expressly reserved.

J. Headings. The section and paragraph headings appearing in this Agreement are provided only as a matter of convenience and in no way define, govern, limit, modify or construe the scope or extent of the provisions of this Agreement to which they relate. Such headings are not part of this Agreement and shall not be given any legal effect.

K. Severability. The parties agree that each provision of this Agreement shall be construed as separable and divisible from every other provision and that the enforceability of any one (1) provision shall not limit the enforceability, in whole or in part, of any other provision hereof. If any one (1) or more of the provisions contained herein, or the application thereof to any person, entity, or circumstance, for any reason are held invalid, illegal or unenforceable in any respect, then such provision or provisions shall be

enforced to the maximum extent permissible, and the remaining provisions of this Agreement shall be unaffected thereby and shall remain in full force and effect.

L. Legal Construction and Interpretation. The parties hereby represent, warrant, acknowledge and agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement, including without limitation, any amendments hereto.

M. Modifications. Company acknowledges and agrees that DISH may, from time to time, in its sole and absolute discretion, make changes to these Terms and Conditions upon thirty (30) days' notice to Company (each, a "Change Notice"). In the event that any such change is material and unacceptable to Company, Company may provide DISH written notice of such objection within thirty (30) days following Company's receipt of the applicable Change Notice (each, an "Objection Notice"). In the event that DISH receives an Objection Notice from Company within the timeframe specified herein, then the Agreement shall continue to be governed by the unmodified version of these Terms and Conditions that existed immediately prior to the applicable Change Notice. Company's failure to deliver an Objection Notice to DISH within the timeframe specified herein will constitute Company's binding acceptance of the change.

N. Entire Agreement. This Agreement, including, without limitation, all exhibits attached hereto, each of which is hereby incorporated in this Agreement by this reference in their entirety, constitutes the entire agreement between the parties with respect to the subject matter of this Agreement. Except as expressly provided herein, neither party shall be bound by any communication between them on the subject matter of this Agreement, unless such communication: (i) is in writing; (ii) bears a date contemporaneous with or subsequent to the Effective Date; and (iii) is signed by both parties to this Agreement. The parties specifically acknowledge and agree that there are no unwritten side agreements or oral agreements between the parties that alter, amend, modify or supplement this Agreement. In addition to and without limitation of any provisions of this Agreement that expressly survive termination or expiration, any provision of this Agreement that logically would be expected to survive termination or expiration shall survive for a reasonable time period under the circumstances.