relating to document retention or destruction, (d) any attempt by a Foreign government or other Foreign entity to induce an employee of the Corporation to violate United States law and (e) any decision by the Corporation not to comply with lawful U.S. process because of Foreign laws or requests from a Foreign government or other foreign entity. For the purposes of this subsection only, the term "Foreign" means non-U.S.

For the purposes of this Section 3 only, "Related Party Transaction" means any transaction or series of transactions between the Corporation or any of its subsidiaries on the one hand, and another party or parties on the other hand, in such amounts and related to such matters that the Audit Committee determines could be considered an interested transaction between the Company or its subsidiaries and such other party or parties.

Section 4. Compensation Committee.

(a) The Compensation Committee shall be composed of at least three (3) Directors. The Compensation Committee shall have the power and authority to approve, adopt and implement the incentive, stock option and similar plans of the Corporation and its Subsidiaries. The Compensation Committee shall have the power to approve, disapprove, modify or amend all plans designed and intended to provide compensation primarily for officers of the Corporation. The Compensation Committee shall review, fix and determine from time to time the salaries and other remunerations of all officers of the Corporation.

(b) The Compensation Committee shall have such powers and authority as necessary to carry out the foregoing responsibilities and shall have such other responsibilities, and such other powers and authority, as may be determined by the Board.

(c) The Compensation Committee may have additional responsibilities as shall be set forth in the Compensation Committee Charter from time to time.

Section 5. Nominating / Corporate Governance Committee.

(a) The Nominating / Corporate Governance Committee shall be composed of at least three (3) Directors. The Nominating / Corporate Governance Committee shall have the full and exclusive power and authority to evaluate Director candidates for election to the Board and committees of the Board, to nominate Directors for election to the Board at any annual or special meeting of stockholders. The Committee shall also be responsible for matters related to service on the Board, and associated issues of corporate governance.

(b) The Nominating / Corporate Governance Committee shall have such powers and authority as necessary to carry out the foregoing responsibilities and shall have such other responsibilities, and such other powers and authority, as may be determined by the Board.

(c) The Nominating / Corporate Governance Committee may have additional responsibilities as shall be set forth in the Nominating / Corporate Governance Committee Charter from time to time.

ARTICLE IV

OFFICERS

Section 1. General.

The officers of the Corporation shall be elected by the Board and shall be a Chairman of the Board (who must be a Director), a President (who shall also be the Chief Executive Officer), a Secretary and a Treasurer. The Board, in its sole discretion, may also choose one or more Vice Chairmen, Senior Executive Vice Presidents, Executive Vice Presidents, Senior Vice Presidents, Vice Presidents, Assistant Secretaries, Assistant Treasurers and other officers. Any number of offices may be held by the same person, unless otherwise prohibited by law, the Certificate of Incorporation or these By-Laws. The Board may, from time to time, delegate the powers or duties of any officer to any other officers or agents, notwithstanding any contrary provision hereof.

Section 2. Election; Removal.

The Board at its first meeting held after each Annual Meeting of stockholders shall elect the officers of the Corporation who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time solely by the Board, which determination may be by resolution of the Board or in any By-Law provisions duly adopted or approved by the Board and all officers of the Corporation shall hold office until their successors are chosen and qualified, or until their earlier resignation or removal. The salaries of the officers elected by the Board shall be fixed from time to time by the Board or by such officers as may be designated by resolution of the Board, upon recommendation or action of the Compensation Committee. Any officer elected by the Board may be removed at any time by the Board with or without cause. Only the Board may fill any vacancy occurring in any office of the Corporation.

Section 3. Chairman of the Board.

The Chairman of the Board shall be initially appointed in accordance with the Merger Agreement, shall preside at all meetings of the Board and of stockholders (unless the Board designates another person) and, except where by applicable law the signature of the President is required, the Chairman of the Board shall possess the same power as the President to sign all contracts, certificates and other instruments of the Corporation which may be authorized by the Board. The Chairman of the Board shall also perform such other duties and may exercise such other powers as may from time to time be assigned by these By-Laws or by the Board.

Section 4. Vice Chairmen of the Board.

The Vice Chairmen, if such are appointed by the Board, shall report and be responsible to the Chairman of the Board or, if the Board so directs, the President and Chief Executive Officer. The Vice Chairmen shall have such powers and perform such duties as from time to time may be assigned or delegated to him or her by the Board or are incident to the office of Vice Chairman. During the absence, disability, or at the request of the Chairman of the Board, a Vice Chairman shall perform the duties and exercise the powers of the Chairman of the Board. In the absence or disability of both the Vice Chairmen and the Chairman of the Board, the President or another person designated by the Board shall perform the duties and exercise the powers of the Vice Chairmen, and unless otherwise determined by the Board, the duties and powers of the Chairman.

Section 5. President and Chief Executive Officer.

The President shall report and be responsible to the Board and shall be initially appointed in accordance with the Merger Agreement. The President shall be the Chief Executive Officer of the Corporation and shall have general supervision of the business of the Corporation and shall have the authority to see that all orders and resolutions of the Board are carried into effect and shall have such powers and perform such duties as from time to time may be assigned or delegated to him or her by the Board or are incident to the office of President. During the absence or disability of the Vice Chairman (if there be one so appointed), or at the request of the Chairman of the Board, the President shall perform the duties and exercise the powers of the Vice Chairman of the Board. During the absence or disability of the Chairman of the Board and the Vice Chairman, or at the request of the Chairman of the Board, the President shall perform the duties and exercise the powers of the Vice Chairman and the Chairman of the Board. In the absence or disability of the President, the person designated by the Board shall perform the duties and exercise the powers of the President, and unless otherwise determined by the Board, the duties and powers of the Vice Chairman.

Section 6. Senior Executive Vice Presidents.

The Senior Executive Vice Presidents shall have such powers and perform such duties as from time to time may be prescribed for them respectively by the Board or are incident to the office of Senior Executive Vice President.

Section 7. Executive Vice Presidents.

The Executive Vice Presidents shall have such powers and perform such duties as from time to time may be prescribed for them respectively by the Board or are incident to the office of Executive Vice President.

Section 8. Senior Vice Presidents.

The Senior Vice Presidents shall have such powers and perform such duties as from time to time may be prescribed for them respectively by the Board or are incident to the office of Senior Vice President.

Section 9. Vice Presidents.

The Vice Presidents shall have such powers and perform such duties as from time to time may be prescribed for them respectively by the Board or are incident to the office of Vice President.

Section 10. Secretary.

The Secretary shall keep or cause to be kept, at the principal executive office of the Corporation or such other place as the Board may order, a book of minutes of all meetings of stockholders, the Board and its committees, with the time and place of holding, whether regular or special, and if special, how authorized, the notice thereof given, the names of those present at Board and committee meetings, the number of shares present or represented at stockholders' meetings, and the proceedings thereof. The Secretary shall keep, or cause to be kept, a copy of the By-Laws of the Corporation at the principal executive office of the Corporation or such other place as the Board may order.

The Secretary shall keep, or cause to be kept, at the principal executive office of the Corporation or at the office of the Corporation's transfer agent or registrar, if one be appointed, a stock register, or a duplicate stock register, showing the names of the stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates issued for the same, and the number and date of cancellation of every certificate surrendered for cancellation.

The Secretary shall give, or cause to be given, notice of all meetings of the stockholders, and of the Board and any committees thereof required by these By-Laws or by law to be given, shall keep the seal of the Corporation in safe custody and shall have such other powers and perform such other duties as may be prescribed by the Board.

Section 11. Treasurer.

The Treasurer shall have custody of the corporate funds and securities of the Corporation and shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Corporation, and shall send or cause to be sent to the stockholders of the Corporation such financial statements and reports as are required by law or these By-Laws to be sent to them.

The Treasurer shall deposit all monies and valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board, shall render to the President and the Board, whenever they request it, an account

of all transactions and of the financial condition of the Corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board.

Section 12. Other Officers.

Such other officers or assistant officers as the Board may designate shall perform such duties and have such powers as from time to time may be assigned to them by the Board. The Board may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers.

Section 13. Execution of Contracts and Other Documents.

Each officer of the Corporation may execute, affix the corporate seal and/or deliver, in the name and on behalf of the Corporation, deeds, mortgages, notes, bonds, contracts, agreements, powers of attorney, guarantees, settlements, releases, evidences of indebtedness, conveyances, or any other document or instrument which is authorized by the Board or is required to be executed in the ordinary course of business of the Corporation, except in cases where the execution, affixation of the corporate seal and/or delivery thereof shall be expressly and exclusively delegated by the Board to some other officer or agent of the Corporation.

Section 14. Action with Respect to Securities of Other Corporations.

Powers of attorney, proxies, waivers of notice of meeting, consents and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the Chairman of the Board or the President or any other officer or officers authorized by the Board, the Chairman of the Board or the President, and any such officer may, in the name of and on behalf of the Corporation, vote, represent and exercise on behalf of the Corporation all rights incident to any and all shares of any other corporation and take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities and at any such meeting shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed if present. The Board may, by resolution from time to time, confer like powers upon any other person or persons.

ARTICLE V

STOCK

Section 1. Certificates of Stock.

The interest of each stockholder of the Corporation shall be evidenced by certificates for shares of stock in such form as the appropriate officers of the Corporation may from time to time determine, provided that the Board may provide by resolution or resolutions that some or all of any or all classes or series of the stock of the Corporation shall be represented by uncertificated shares. Notwithstanding the adoption of such a

resolution or resolutions by the Board, each stockholder shall be entitled, upon request, to a certificate certifying the number of shares owned by him or her and signed in the name of the Corporation (i) by the Chairman or Vice Chairman of the Board, the President or any Executive Vice President, Senior Vice President or Vice President and (ii) by the Secretary or an Assistant Secretary, or the Treasurer or an Assistant Treasurer. Where a certificate is countersigned by (i) a transfer agent or (ii) a registrar, any other signature on the certificate may be a facsimile. In case any officer, transfer agent or registrar whose signature appears on the certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue. Except as expressly provided by law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

Section 2. Transfers of Stock.

Transfers of shares of capital stock of the Corporation shall be made only on the stock record of the Corporation by the holder of record thereof or by his, her or its attorney thereunto authorized by the power of attorney duly executed and filed with the Secretary of the Corporation or the transfer agent thereof, and, in the case of certificated shares, only on surrender of the certificate or certificates representing such shares, properly endorsed or accompanied by a duly executed stock transfer power. Upon receipt of proper transfer instructions from the registered owner of uncertificated shares, such uncertificated shares shall be cancelled and issuance of new equivalent uncertificated shares or certificated shares shall be made to the person entitled thereto and the transaction shall be recorded in the books of the Corporation. Registration of transfer of any shares shall be subject to applicable provisions of the Certificate of Incorporation and applicable law with respect to the transfer of such shares. The Board may make such additional rules and regulations as it may deem expedient concerning the issue and transfer of certificates representing shares of the capital stock of the Corporation.

Section 3. Record Date.

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in any other lawful action, the Board may fix, in advance, a record date in respect of such meeting, which record date shall not be more than 60 nor less than 10 days before the date of such meeting; provided, however, that if no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held, and, for determining stockholders entitled to receive payment of any dividend or other distribution or allotment of rights or to exercise any rights of change, conversion or exchange of stock or for any other purpose, the record date shall be at the close of business on the day on which the Board adopts a resolution relating thereto. A

determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

(b) Notwithstanding Section 3(a) of this Article V, the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting shall be as fixed by the Board or as otherwise established under this Section 3(b). Any person seeking to have the stockholders authorize or take corporate action by written consent without a meeting shall, by written notice addressed to the Secretary and delivered to the Corporation, request that a record date be fixed for such purpose. The Board may fix a record date for such purpose, which shall be no more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board and shall not precede the date such resolution is adopted. If the Board fails within 10 days after the Corporation receives such notice to fix a record date for such purpose, the record date shall be the day on which the first written consent is delivered to the Corporation in the manner described in Section 3(c) below unless prior action by the Board is required under the DGCL, in which event the record date shall be at the close of business on the day on which the Board adopts the resolution taking such prior action.

(c) Every written consent purporting to take or authorizing the taking of corporate action and/or revocations (each such written consent and related revocation is referred to in this Section 3(c) as a "Consent") shall bear the date of signature of each stockholder who signs the Consent, and no Consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated Consent delivered in the manner required by this Section 3(c), Consents signed by a sufficient number of stockholders to take such action are so delivered to the Corporation. A Consent shall be delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery to the Corporation's registered office, to its principal place of business or to such officer or agent shall be made by hand or by certified or registered mail, return receipt requested. In the event of the delivery to the Corporation of a Consent, the Secretary of the Corporation shall provide for the safe-keeping of such consent and shall promptly conduct such ministerial review of the sufficiency of the Consents and of the validity of the action to be taken by stockholder consent as he or she deems necessary or appropriate, including, without limitation, whether the holders of a number of shares having the requisite voting power to authorize or take the action specified in the Consent have given consent; provided, however, that if the corporate action to which the Consent relates is the removal or replacement of one or more members of the Board, the Secretary or the Corporation shall promptly designate two persons who shall not be members of the Board, to serve as inspectors with respect to such Consent and such inspectors shall discharge the functions of the Secretary of the Corporation under this Section 3(c). If the Certificate of Incorporation provides for the issuance of any class or series of stock which is convertible into any other class or series of stock, as a condition to counting the votes cast by any holder of shares at any annual or special meeting of stockholders, or in connection with any Consent of stockholders, the Board or a duly authorized committee thereof, in its discretion, may require the holder of

any shares to furnish such affidavits or other proof as the Board or such committee deems necessary and advisable to determine whether such shares have been converted pursuant to the terms governing the issuance and conversion of such shares in the Certificate of Incorporation. If after such investigation the Secretary or the inspectors (as the case may be) shall determine that the Consent is valid and that the action therein specified has been validly authorized, that fact shall forthwith be certified on the records of the Corporation kept for the purpose of recording the proceedings of meetings of stockholders, and the Consent shall be filed in such records, at which time the Consent shall become effective as stockholder action. In conducting the investigation required by this Section 3(c), the Secretary or the inspectors (as the case may be) may, at the expense of the Corporation, retain special legal counsel and any other necessary or appropriate professional advisors, and such other personnel as they may reasonably deem necessary or appropriate to assist them, and shall be fully protected in relying in good faith upon the opinion of such counsel or advisors.

Section 4. Lost, Stolen or Destroyed Certificates.

The Board may direct a new certificate to be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate, the Board may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate, or his or her legal representative, to advertise the same in such manner as the Board shall require and/or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

Section 5. Regulations.

The issue, transfer, conversion and registration of certificates of stock shall be governed by such other regulations as the Board may establish.

Section 6. Record Owners.

The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by law.

ARTICLE VI

NOTICES

Section 1. Notices.

Whenever written notice is required by law, the Certificate of Incorporation or these By-Laws, except as otherwise specifically provided herein or required by law, all notices required to be given to any stockholder, Director, officer, employee or agent shall be in writing and may in every instance be effectively given by hand delivery to the recipient thereof, by depositing such notice in the mails, postage paid, recognized overnight delivery service or by sending such notice by facsimile, receipt acknowledged, or by prepaid telegram or mailgram. Any such notice shall be addressed to such stockholder, Director, officer, employee or agent at his or her last known address as the same appears on the books of the Corporation. The time when such notice is received, if hand delivered, or dispatched, if delivered through the mails or by telegram or facsimile shall be the time of the giving of the notice.

Section 2. Waivers.

A written waiver of any notice, signed by a stockholder, Director, officer, employee or agent, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such stockholder, Director, officer, employee or agent. Neither the business nor the purpose of any meeting need be specified in such a waiver. Attendance at any meeting shall constitute waiver of notice of such meeting except attendance for the sole purpose of objecting to the timeliness of notice.

ARTICLE VII

MISCELLANEOUS

Section 1. Facsimile Signatures.

In addition to the provisions for use of facsimile signatures elsewhere specifically authorized in these By-Laws, facsimile signatures of any officer or officers of the Corporation may be used whenever and as authorized by the Board or a committee thereof.

Section 2. Corporate Seal.

The Board may provide a suitable seal, containing the name of the Corporation, which seal shall be in the charge of the Secretary. If and when so directed by the Board or a committee thereof, duplicates of the seal may be kept and used by the Treasurer or by an Assistant Secretary or Assistant Treasurer.

Section 3. Reliance upon Books, Reports and Records.

Each Director, each member of any committee designated by the Board, and each officer of the Corporation shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or committees of the Board so designated, or by any other person as to matters which such Director or committee member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

Section 4. Fiscal Year.

The fiscal year of the Corporation shall be as fixed by the Board.

Section 5. Time Periods.

In applying any provision of these By-Laws which requires that an act be done or not be done a specified number of days prior to an event or that an act be done during a period of a specified number of days prior to an event, calendar days shall be used, the day of the doing of the act shall be excluded, and the day of the event shall be included.

Section 6. Disbursements.

All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board may from time to time designate.

ARTICLE VIII

INDEMNIFICATION

Section 1. Power to Indemnify in Actions, Suits or Proceedings Other Than Those by or in the Right of the Corporation.

Subject to Section 3 of this Article VIII, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that such person is or was a Director or officer of the Corporation, or is or was a Director or officer of the Corporation serving at the request of the Corporation as a director or officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the

best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

Section 2. Power to Indemnify in Actions, Suits or Proceedings by or in the Right of the Corporation.

Subject to Section 3 of this Article VIII, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a Director or officer of the Corporation, or is or was a Director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 3. Authorization of Indemnification.

Any indemnification under this Article VIII (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the Director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Sections 1 or 2 of this Article VIII, as the case may be. Such determination shall be made, with respect to a person who is a Director or officer at the time of such determination, (i) by a majority vote of the Directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (ii) by a committee of such Directors designated by a majority vote of such Directors, even though less than a quorum, or (iii) if there are no such Directors, or if such Directors so direct, by independent legal counsel in a written opinion or (iv) by the stockholders. Such determination shall be made, with respect to former Directors and officers, by any person or persons having the authority to act on the matter on behalf of the Corporation. To the extent, however, that a present or former Director or officer of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding

described above, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith, without the necessity of authorization in the specific case.

Section 4. Good Faith Defined.

For purposes of any determination under Section 3 of this Article VIII, a person shall be deemed to have acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, or, with respect to any criminal action or proceeding, to have had no reasonable cause to believe such person's conduct was unlawful, if such person's action is based on the records or books of account of the Corporation or another enterprise, or on information supplied to such person by the officers of the Corporation or another enterprise in the course of their duties, or on the advice of legal counsel for the Corporation or another enterprise or on information or records given or reports made to the Corporation or another enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Corporation or another enterprise. The term "another enterprise" as used in this Section 4 shall mean any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise of which such person is or was serving at the request of the Corporation as a Director, officer, employee or agent. The provisions of this Section 4 shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth in Sections 1 or 2 of this Article VIII, as the case may be.

Section 5. Indemnification by a Court.

Notwithstanding any contrary determination in the specific case under Section 3 of this Article VIII, and notwithstanding the absence of any determination thereunder, any Director or officer may apply to the Court of Chancery in the State of Delaware for indemnification to the extent otherwise permissible under Sections 1 and 2 of this Article VIII. The basis of such indemnification by a court shall be a determination by such court that indemnification of the Director or officer is proper in the circumstances because such person has met the applicable standards of conduct set forth in Section 1 or 2 of this Article VIII, as the case may be. Neither a contrary determination in the specific case under Section 3 of this Article VIII nor the absence of any determination thereunder shall be a defense to such application or create a presumption that the Director or officer seeking indemnification has not met any applicable standard of conduct. Notice of any application for indemnification pursuant to this Section 5 shall be given to the Corporation promptly upon the filing of such application. If successful, in whole or in part, the Director or officer seeking indemnification shall also be entitled to be paid the expense of prosecuting such application.

Section 6. Expenses Payable in Advance.

Expenses incurred by a Director or officer in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article VIII.

Section 7. Nonexclusively of Indemnification and Advancement of Expenses.

The indemnification and advancement of expenses provided by or granted pursuant to this Article VIII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the Certificate of Incorporation, any By-Law, agreement, vote of stockholders or disinterested Directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, it being the policy of the Corporation that indemnification of the persons specified in Sections 1 and 2 of this Article VIII shall be made to the fullest extent permitted by law. The provisions of this Article VIII shall not be deemed to preclude the indemnification of any person who is not specified in Section 1 or 2 of this Article VIII but whom the Corporation has the power to or obligation to indemnify under the provisions of the General Corporation Law of the State of Delaware, or otherwise.

Section 8. Insurance.

The Corporation may purchase and maintain insurance on behalf of any person who is or was a Director or officer of the Corporation, or is or was a Director or officer of the Corporation serving at the request of the Corporation as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability under the provisions of this Article VIII.

Section 9. Certain Definitions.

For purposes of this Article VIII, references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its Directors or officers, so that any person who is or was a Director or officer of such constituent corporation, or is or was a Director or officer of such constituent corporation serving at the request of such constituent corporation as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, shall stand in the same position under the provisions of this Article VIII

with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued. For purposes of this Article VIII, references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a Director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such Director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article VIII.

Section 10. Survival of Indemnification and Advancement of Expenses.

The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a Director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 11. Limitation on Indemnification.

Notwithstanding anything contained in this Article VIII to the contrary, except for proceedings to enforce rights to indemnification (which shall be governed by Section 5 hereof), the Corporation shall not be obligated to indemnify any Director or officer in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board of the Corporation.

Section 12. Indemnification of Employees and Agents.

The Corporation may, to the extent authorized from time to time by the Board, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation similar to those conferred in this Article VIII to Directors and officers of the Corporation.

ARTICLE IX

AMENDMENTS

(a) Subject to paragraph (b) of this Article IX below, and in furtherance and not in limitation of the powers conferred by law, in addition to any affirmative vote of the holders of any particular class or series of the capital stock of the Corporation required by law, the Certificate of Incorporation or these By-Laws, the affirmative vote of the holders of at least a majority of the voting power of all of the then-outstanding shares entitled to vote generally on matters requiring approval of stockholders, voting together as a single class, shall be authorized to adopt, alter, amend or repeal any provision of these By-Laws, and, subject to the power of the holders of capital stock of the Corporation to adopt, alter, amend or repeal the By-Laws under the

DGCL, the Board is also expressly authorized to adopt, alter, amend or repeal any provision of these By-Laws.

(b) Notwithstanding any of the foregoing, (i) Article II, Sections 1, 2, 3, 12, 13, (ii) Article III, Sections 1, 3, 4, 5, (iii) Article IV, and (iv) this Article IX of these By-Laws, may only be amended, altered or repealed (x) by the affirmative vote of at least a majority of the Directors, including at least a majority of Independent Directors then serving on the Board, or (y) by the affirmative vote of the holders of at least a majority of the voting power of all of the then-outstanding shares entitled to vote generally on matters requiring approval of stockholders, voting together as a single class, but excluding such shares Beneficially Owned by Purchaser, or (z) in the event any person, together with its Affiliates, shall have acquired ownership of sixty-five percent (65%) or more of the Corporation's Voting Securities then outstanding, pursuant to paragraph (a) of this Article IX above.

The DIRECTV Group, Inc.
Audit Committee
Policy and Procedures Regarding Related Party Transactions

As Adopted on January 28, 2004

Background:

Pursuant to Section 6 of Article V of the Amended and Restated Certificate of Incorporation of The DIRECTV Group, Inc. (formerly Hughes Electronics Corporation) (the "Company"), Section 3(d) of Article III of the Amended and Restated By-Laws of the Company, and the Charter of the Audit Committee, the Audit Committee of the Company has the sole authority to review, consider and pass upon any Related Party Transaction, and no such transaction may be effected without the approval or authorization of a majority of the Audit Committee, provided that any such transaction may be ratified by the Audit Committee. This Policy describes the process for identifying Related Party Transactions which are subject to Audit Committee approval or ratification as well as establishing certain reporting requirements to assure that the Audit Committee is aware of all relevant transactions with Related Parties.

Implementation and Responsibility:

The Company's General Counsel is responsible for implementing this Policy, with the support of the senior financial and legal staff of the Company and each Subsidiary. To ensure compliance by the Company and its Subsidiaries with this Policy, the Audit Committee may request that internal audits be conducted.

Definitions:

For purposes of this Policy, capitalized terms not otherwise defined herein shall have the meanings given them in Exhibit A to this Policy (which incorporates definitions from Section 6 of Article V of the Certificate of Incorporation or Section 2 of Article II of the By-Laws) and the following terms shall be defined as follows:

(a) "Excluded Subsidiary" means any Subsidiary of the Company which: (i) has publicly-traded equity securities; and (ii) has a committee of at least three (3) independent directors (as determined in accordance with the rules of the stock exchange on which such Subsidiary's equity securities are listed) with authority to review and approve (or reject) transactions between such Subsidiary and any Related Party.

(b) "Excluded Transaction" means any contract, transaction or arrangement or series of contracts, transactions or arrangements, which would otherwise be considered a Related Party Transaction under clause (i) of the definition of such term but

which fall within one or more of the following exclusions as determined in good faith by the Company's General Counsel:

(i) any Related Party Transaction involving any Excluded Subsidiary and which is ratified or approved by the committee of independent directors of such Excluded Subsidiary;

(ii) any Related Party Transaction in effect on December 21, 2003, and renewals or extensions thereof pursuant to the contractual arrangements in effect and binding on the Company and its Subsidiaries on December 21, 2003;

(iii) any purchase or use by the Company or its Subsidiaries of advertising on channels or other media controlled or owned by the Purchaser Group or any Purchaser Affiliate (or vice versa) in the ordinary course of business at rate card or otherwise on arm's-length terms;

(iv) any transfer of any employee(s) of the Purchaser Group to, or hiring of any such person(s) by, the Company or any of its Subsidiaries (or vice versa), and any associated employment arrangements otherwise properly authorized; and

(v) any Related Party Transaction the relevant terms of which are imposed by applicable law, regulation or order of a court, arbitrator or other governmental authority having jurisdiction over the Company and its Subsidiaries.

(c) "Related Party" means (i) the Purchaser Group; (ii) any Purchaser Affiliate; or (iii) any Person which notifies the Company or any of its Subsidiaries that it is a party to any contract or arrangement with the Purchaser Group or any Purchaser Affiliate pursuant to which the Purchaser Group or any Purchaser Affiliate has a financial interest in the terms of any contract, transaction or arrangement not otherwise negotiated or established by the Company or its Subsidiaries.

(d) "Related Party Transaction" means any contract, transaction or arrangement, or series of related contracts, transactions or arrangements, which (i) either: (a) require or are reasonably expected to result in the payment by or to the Company or its Subsidiaries to or from any Related Party of $500,000 or more in any 12-month period; or (b) involve a transfer of intellectual or other property or other assets by or to the Company or its Subsidiaries to or from any Related Party having an aggregate value of $500,000 or more in any 12-month period; and (ii) in each case, is not an Excluded Transaction.

Approval or Ratification of Related Party Transaction:

No Related Party Transaction shall be binding on the Company or any of its Subsidiaries unless such Related Party Transaction is approved or ratified by a majority of the members of the Audit Committee and, if rejected by the Audit Committee, any such Related Party Transaction shall be void and unenforceable against the Company or its Subsidiaries.

In determining whether to approve or reject any Related Party Transaction, the Audit Committee shall be entitled to rely in good faith upon such information, opinions, reports or statements presented to the Audit Committee by any officer or employee or by any other person as to matters the Audit Committee reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Audit Committee; provided that the officer, employee or other person shall have disclosed to the Audit Committee (or the Audit Committee shall otherwise have knowledge of) all material facts as to any relationship or interest of such officer, employee or other person in the Related Party or arising out of the Related Party Transaction.

Termination:

Unless otherwise determined by the Audit Committee, this Policy shall automatically terminate, and the Purchaser Group and any Purchaser Affiliate shall cease to be considered a "Related Party" as defined herein if, at any time, the Purchaser Group and all Purchaser Affiliates shall not either (a) beneficially own at least ten percent (10%) of the voting securities of the Company, or (b) otherwise Control the Company.

Reporting:

At each quarterly meeting of the Audit Committee, the Chief Executive Officer, General Counsel or the Chief Financial Officer of the Company shall provide a schedule or other report listing all Related Party Transactions and all Excluded Transactions, as well as a separate report or schedule of payments by or to the Company and its Subsidiaries to or from any Related Party for the immediately preceding fiscal quarter of the Company, for any quarter ending after the date of adoption of this Policy.

Exhibit A

"Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise or the beneficial ownership (as such term is used in Rule 13d-3 of the Securities Exchange Act of 1934, as amended) of more than fifty percent (50%) of the voting securities of a Person.

"Person" means any individual, corporation, partnership, limited liability company, firm, joint venture, association, joint-stock company, trust, unincorporated organization, governmental authority or other entity.

"Purchaser" shall mean The News Corporation Limited, an Australian corporation.

"Purchaser Affiliate" means, as of any particular time, a Person that, directly or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with the Purchaser as of such time; provided, however, that the term "Purchaser Affiliate" shall not include Hughes and its Subsidiaries.

"Purchaser Group" means Purchaser, Subsidiaries of Purchaser or Purchaser Successors and (i) K. Rupert Murdoch and any executor, administrator, guardian, conservator or similar legal representative thereof, (ii) any member of the immediate family of K. Rupert Murdoch, (iii) Cruden Investments Pty. Limited, an Australian company, and any successor (by merger, consolidation, transfer of assets or otherwise) to all or substantially all of its business and assets, (iv) any settlement and trusts, and any entities which are controlled by settlements and trusts, set up for the benefit of K. Rupert Murdoch or members of his family (exclusively or also for the benefit of others) and (v) any Person acting as agent for Purchaser, any Subsidiary of Purchaser, any Purchaser Successor or any Person described in clauses (i) through (iv) hereof.

"Purchaser Successor" means any Person to whom any member of the Purchaser Group transfers (other than pursuant to open market transactions) more than ten percent (10%) of the outstanding voting securities of Hughes or any successor of any such Person.

"Subsidiary" with respect to a Person, means any corporation, limited liability company, partnership, trust or unincorporated organization of which such Person owns, directly or indirectly, fifty percent (50%) or more of the outstanding stock or other equity interests, the holders of which are entitled to vote for the election of the board of directors or others performing similar functions with respect to such corporation, limited liability company, partnership, trust or unincorporated organization.

REDACTED
FOR PUBLIC INSPECTION

EXHIBIT I

TELEVISION GAMES NETWORK AFFILIATION AGREEMENT

This Agreement ("Agreement") is made and entered into as of the Programming Distribution Closing Date as defined in that certain Asset Purchase Agreement between, among others, the parties hereto and entered into contemporaneous with this Agreement (the "Effective Date"), by and between ODS Technologies, L.P., a limited partnership organized under the laws of the State of Delaware, d/b/a TVG Network and/or TVG, whose principal place of business is located 6701 Center Drive West, Suite 160, Los Angeles, California 90045 ("Network"), and EchoStar Satellite LLC, a limited liability company organized under the laws of the State of Colorado, whose principal place of business is located at 9601 South Meridian Boulevard Englewood, Colorado 80112 ("EchoStar").

RECITALS:

A. This Agreement supercedes any and all prior written or oral agreements between the parties, including that certain agreement, dated November 2, 1999, by and between Network and EchoStar Satellite Corporation.

B. TVG is Network's horse-racing oriented programming service, comprised of the Data, Content and Software (the "Service") as more specifically described herein.

C. EchoStar is experienced in satellite transmission, and in the business of offering, marketing and authorizing receipt of various programming services and maintains facilities for that purpose.

D. EchoStar desires, and Network desires EchoStar to transmit, offer subscriptions to, market, promote, and authorize reception of the Service (as defined below) in accordance with the terms of this Agreement.

AGREEMENT:

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the receipt, sufficiency and adequacy of which is hereby acknowledged, the parties agree as follows:

1. Definitions. Unless the context shall otherwise require, the following terms, along with other terms defined elsewhere in this Agreement, shall be equally applicable to both the singular and plural forms of the terms defined:

(a) "Affiliate" with respect to either party means any person or company that directly or indirectly or through one or more intermediaries, controls or is controlled by, or is under common control with a party to this Agreement; and for the purposes of this definition, the term control (including the words controlling or controlled by) shall mean 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.

(b) "Account Wagering" shall mean all wagering activities associated with the Service. Network agrees that in order to engage in Account Wagering a Person (whether or not such person is a Service Subscriber and regardless of the means by which a Person engages in Account Wagering) shall be required to establish an Account Wagering account with Network or its authorized agent and agree to all terms and conditions associated with such Account Wagering account ("Account Wagering Account") in accordance with the requirements set forth in Section 2(f) below. The establishment of an Account Wagering Account allows such Persons to place wagers with one or more remote centers (known as "Wagering Hubs") established by Network or its authorized agents for the purpose of accepting such wagers through Account Wagering platforms offered by the Service, (such platforms include, without limitation all automated telephone software, the use of certain digital set-top boxes and/or over the Internet (such wagering capabilities may be referred to collectively as "Interactive Wagering"); and where enabled (as set forth in Section 2(e)), the ITV Wagering Application (as defined below) shall be included as Interactive Wagering. For clarity, no Person shall be able to engage in any Account Wagering (including, without limitation, all Interactive Wagering) activities without first establishing an Account Wagering Account.

(c) "Content" shall mean all Data, text, graphics, animation, screen designs, audio and/or video components and all other components of the Service other than Software (as defined below), including, without limitation, Intellectual Property (as defined below), industrial, or other proprietary rights therein.

(d) "Data" shall mean the data and information to be displayed or available to be displayed as a part of the Service or the applicable portion thereof, including, but not limited to, horse-racing, handicapping, and wagering-related data and information including, without limitation, the ITV Wagering Application.

(e) "Distribution and Communications Fees" shall mean any and all payments and/or revenues of any kind received by Network from Account Wagering. For clarity, the Distribution and Communications Fees received by Network shall not includethe following: (i) actual payments made from the pari-mutuel pool made by Network or its authorized agents, to Persons who establish an Account Wagering Account; (ii) actual payments made by Network to host race tracks, (iii) actual payments made by Network to race tracks or other organizations the state(s) in which wager(s) are placed, (iv) taxes actually remitted by Network to government entities on gross revenues from Account Wagering, and (v) other actual payments required to be made by Network to third parties which are directly related to Account Wagering activities (e.g., the National Thoroughbred Racing Association). Network acknowledges and agrees that no payment specified in (i) through (v) above may be made to an Affiliate of Network. EchoStar acknowledges that Network may from time to time engage in negotiations with various third parties with respect to the payments specified in (i) through (v) above provided, that Network shall not enter into any binding agreement with such parties regarding such payments unless Network has a good faith belief that such agreement has the affect of increasing the Distribution and Communications Fees on an overall net effective basis.

(f) "Distribution System" shall mean the multichannel distribution system for video and other programming services utilizing transmission systems which are owned, operated, leased, controlled, managed or otherwise accessed by EchoStar (for clarity, the parties agree and acknowledge that such systems may include, without limitation, all forms of audio video distribution technology, terrestrial cable of any kind, satellite, microwave, wireless Internet, 3G technology and/or any other form or method of distribution technology (including, without limitation, Alternative Distribution Means (as defined in Section 2(g) below)) either now existing or hereafter developed).

(g) "Gross Compensation" shall mean revenue received by Network from a third party for purchase of Direct On-Air Sales Programming time on the Service, specifically excluding Net Sales Revenue. "Direct On-Air Sales Programming" shall mean any programming that includes the direct on-air marketing, offering for sale and/or sales of products and/or services, including, without limitation, all Infomercials (as defined in Section 1.1 (c) below) and direct response advertising, regardless of the length of such programming, except that Direct On-Air Sales Programming will not include Network's regularly scheduled commercial announcement time (i.e., the commercial announcements distributed throughout the Service during other programming that are generally thirty (30) seconds or less in length and primarily used for promotional announcements or third party advertising of products and services that are not directly sold to the viewer during such commercial announcements).

(h) "Gross Fee Revenue" shall mean the gross revenue received by Network from Distribution and Communications Fees and Service Fees.

(i) "Intellectual Property" shall mean any idea, design, concept, technique, invention, discovery, improvement, work, or other intellectual property, regardless of patentability or copyrightability, which is embodied in the Service, including, without limitation any such idea, design, concept, technique, invention, discovery, improvement, work, or other intellectual property industrial, or other proprietary right of any kind whatsoever that is embodied within Software (as defined below), or within its related documentation.

(j) "ITV Wagering Application" shall mean Network's interactive application (which shall include, without limitation, all components thereof, as more fully described in Section 2(e) below and including without limitation the Application Software) that can be deployed in digital receivers as an additional component of the Service in Restricted Territories, which application will allow Account Wagering to be conducted through digital receivers as well as e-commerce transactions.

(k) "License Fee" shall mean the total monthly fees payable to Network, as set forth and described in Exhibit A, attached hereto and incorporated herein by this reference.

(l) "Net Sales Revenue" shall mean gross sales revenue received by Network for merchandise and services offered by Network through Direct On-Air Sales Programming, less taxes, fees, returns, freight out and cash discounts, and specifically excluding Gross Compensation.

(m) "Person" shall include any individual, corporation, trust, estate, partnership, limited partnership, joint venture, limited liability company, limited liability partnership, company, organization or association (whether incorporated or not), governmental bureau, department or agency thereof, or other entity of whatsoever kind or nature.

(n) "Restricted Territory" shall mean the states in which Account Wagering is offered listed on Exhibit B. From time to time during the Term, Network shall notify EchoStar of any change in or interpretation of any law, rule, regulation or court or administrative decree concerning the wagering activities exhibited on the Service that, in Network's reasonable discretion and good faith judgment, makes the addition of jurisdictions to, or the deletion of jurisdictions from, Exhibit B necessary or desirable. Network shall provide such notice to EchoStar as soon as reasonably practicable and Exhibit B shall be deemed to be modified accordingly.

(o) "Service" shall mean the Service, (as more specifically described in Section 1.1 below) digitized, compressed encoded, re-uplinked, transmitted and delivered by EchoStar in accordance with the terms of this Agreement which term shall, for the avoidance of doubt, include any component part thereof including without limitation the ITV Wagering Application, all Content, Data, visual graphics and all portions of the VBI (or its digital equivalent) and all commercial advertising sold by Network.

(p) "Service Fees" shall mean Account Wagering subscription fees and/or any other transaction and/or usage fees Network may charge to persons engaging in Account Wagering; provided that, Service Fees shall not include such fees which are a direct cost reimbursement, without commission or deduction of any kind by Network or any of its Affiliates, charged by a third party that is not an Affiliate of Network in an arms length transaction (e.g., credit card transaction fees).

(q) "Service Subscriber" shall mean all Subscribers (including, for clarity, all residential and commercial Subscribers) who are intentionally authorized by EchoStar to receive and who actually receive the Service from the Distribution System.

(r) "Software" shall mean computer instructions to carry out the functions, including without limitation, all interfaces, navigational devices, menus, menu structures or arrangements, icons, help and other operational instructions and the literal and non-literal expressions of ideas that operate, cause, create, direct, manipulate, access or otherwise affect the Content in the Service or Interactive Wagering, and all Intellectual Property or industrial property rights therein, including, without limitation, Application Software and System Software (each as defined in Section 2(e) below).

(s) "Subscriber" shall mean each residential (whether in a single family or a multi-family building, and including, without limitation, individual sleeping rooms in hotels, motels, dormitories, fraternity and sorority houses and the like) and commercial location (including, but not limited to, communal living facility cooperative, and/or association, place of

public accommodation or free to guest facility), within the Territory receiving Television Programming Services from the Distribution System. Without limiting the generality of the foregoing, the parties agree that commercial Subscribers may include, by way of example but not limitation, bars, restaurants, dormitories, condominiums, long term care facilities, apartment complexes, town-homes, gated communities, airplanes, marinas, prisons, airports, casinos, health clubs, office complexes and individual offices within offices complexes, hotels, motels RV parks and campgrounds.

(t) "Television Programming Service" shall mean (i) video programming of broadcast television stations and/or (ii) video and/or audio programming of cable programming networks, and may also include video and/or audio programming available by pay-per-view providers, movies on demand providers, and personal video recorders, whether delivered via broadcast, narrowcast, the Internet or via other means of delivery developed in the future.

(u) "Term" shall mean the term of this Agreement as set forth in Section 10.

1.1 Service Definition.

(a) The "Service" shall mean the 24-hour per day, 7 days a week programming service currently known as "TVG Network" which is and shall remain focused primarily on the horse racing industry, and which shall feature professionally produced live and delayed broadcasting of horse races from numerous horse racing tracks, related interviews, shows, segments, and sports broadcasts that support Account Wagering on horse races, presented on a schedule which shall at all times materially comply with the programming schedule attached hereto as Exhibit D, which may be modified from time to time provided that, as a result of such modifications, Network's obligations contained herein shall not be materially changed or altered. The term Service shall, for the avoidance of doubt, include any component and/or part thereof including, without limitation, all interactive (ITV Wagering Application or otherwise) banners scrolls or visual graphics elements and all portions of the VBI. Notwithstanding anything contained herein to the contrary, the Service shall contain, at least six (6) live horse races per hour each day throughout the Term, (on average during the twelve (12) hour time period from 12:00 p.m. to 12:00 a.m. (Eastern Time Zone) each day calculated on a weekly basis) from top-rated racetracks throughout the Territory ("Race Commitment"). Additionally, and without limiting the generality of the foregoing, between the hours of 1:00 p.m. and 6:00 p.m. (Eastern Time Zone) each day during the Term (except Mondays and Tuesdays), Network guarantees that the Race Commitment shall be fulfilled by races from the Racetracks (as defined below), provided that horse races are conducted at any such Racetrack during such time period. Without limiting the generality of anything contained in this Section 1.1(a), at all times during the Term, Network shall (i) schedule horse races from the Racetracks in a manner that maximizes Distribution and Communication Fees (provided that Network shall be deemed to have met such obligation if it has good faith belief based on specific and articulated facts, along with its operating experience, knowledge and expertise in the field that, its schedule is designed to maximize Distribution and Communications Fees) and (ii) conduct Account Wagering in connection with all live races included on the Service, including, without limitation, from the Racetracks. Network shall use its commercially reasonable efforts to expand its rights to additional racetracks and shall include any additional racetracks in the Service (with the intention

of delivering a full time service dedicated to live horse racing and Account Wagering). The "Racetracks" shall mean the horse racetracks as specifically identified on Exhibit C attached hereto and incorporated herein (or any successor and/or additional racetracks; provided that such successor racetracks shall be substantially comparable in prominence as the other racetracks included on Exhibit C). The Service shall, at all times during the Term be comprised of at least per hour (with the exception of those hours dedicated to Infomercials (as set forth in Section 1.1(c) below) of solely such content as described in this Section 1.1(a), and such forty-four (44) minutes per hour shall not contain any commercial advertising of any kind whatsoever, including, without limitation commercial advertising time (as described in Section 1.1(d) below), Avails, and Direct-On-Air Sales programming. In addition to and without limiting the generality of the foregoing, Network agrees that any horse races for which it or any of its Affiliates have obtained audio video distribution rights shall air on the Service (subject to Network's ability to exercise its commercially reasonable discretion in choosing such events where two or more races occur simultaneously in accordance with its duty to maximize Distribution and Communications Fees).

(b) Service Restrictions. Notwithstanding anything to the contrary herein, the Service (i.e. all portions of the Service including without limitation the ITV Wagering application, all banners scrolls and graphic displays and all portions of the VBI (and/or its digital equivalent) and all commercial advertising that airs on the Service) shall not contain (i) any home shopping programming (which term for clarity shall not include Infomercials (as defined below)) (ii) any promotions or advertisements for any other multi-channel video programming distributor or other entity that competes with EchoStar in the distribution of television programming services (iii) any promotions or advertisements for any other cable programming service (including any such programming service affiliated or associated with Network) unless EchoStar distributes such service using the Distribution System (iv) any "calls to action" or similar messages, prompts or triggers with respect to information embedded in or around the signal of the Service except as consented to by EchoStar in writing. EchoStar hereby consents to video programming which advertises Internet based Account Wagering on Network's web-site, provided that all such advertising shall also comport with the restrictions on advertising contained herein. Additionally, Network shall not engage in "nesting" (whether or not for the express purpose of inducing subscriptions to) a cable programming service by "showcasting" a branded block of programming from such service within the Service, which such "showcasting" shall be deemed a means to promote or advertise such service. Network agrees that the Service will not air any promotional spot (whether alone or in conjunction with any other person) which advertises any other method of video distribution offers not available on the Distribution System and/or any Content which disparages the Distribution System (and/or any component part thereof), EchoStar or any Affiliate of EchoStar. Network further agrees that it will not use the Service to nest or incubate another cable television programming service within the Service, nor will it "clone" the Service into a second cable television programming service by migrating programming from the Service to any such second service which is distributed by Network in the Territory. EchoStar shall have the right to preempt all material that it deems in its reasonable discretion to be violative of the foregoing. At all times during the Term, the programming on the Service as delivered to EchoStar shall be the same as the programming delivered by Network to all other distributors and received by all other subscribers to the Service. If it is not, then EchoStar shall have the unconditional right to receive and distribute (at no extra cost whatsoever, all additional