

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of the Joint Petition Filed by Dish Network, LLC, the United States of America, and the States of California, Illinois, North Carolina, and Ohio For Declaratory Ruling Concerning the Telephone Consumer Protection Act (TCPA) Rules.

CG Docket No. 11-50.

and

In the Matter of The Petition Filed by Philip J. Charvat for Declaratory Ruling Concerning the Telephone Consumer Protection Act (TCPA) Rules.

CG Docket No. 11-50.

and

In the Matter of The Petition Filed by Dish Network, LLC for Declaratory Ruling Concerning the Telephone Consumer Protection Act (TCPA) Rules.

CG Docket No. 11-50.

**SUBMISSION OF ROBERT
BIGGERSTAFF FOR THE RECORD**

Robert Biggerstaff respectfully makes the following submission for the record in the above captioned proceedings.

Documents Submitted

The reply comments of DISH Network, LLC seem to imply that the facts recited by consumer commenters are untrue or made for an improper purpose. The Commission of course, is not adjudicating a dispute limited to DISH, but is a policy-making agency that must adjudicate this matter in the way that is proper for applicability to the entire country, and in consideration of the practices of an entire industry, not just one company. Attached are documents that the Commission may wish to consider in its adjudication, particularly when considering the veracity of comments filed in these proceedings and the ability of sellers, like DISH, to be indemnified and made whole for any TCPA liability visited upon them by the acts of their marketers. These include:

1. Declaration of Roberto C. Menjivar, filed in *FTC v. Voice Touch, Inc.*, et al., No. 09-CV-2929 (N.D. Ill.), dated May 13, 2009. This independent investigation demonstrates customers of illegal robo-callers are promised that they are “bulletproof” (¶20) and can mask their Automatic Number Identification (“ANI”) (¶19) to prevent being traced.
2. Check stub for just one residual DISH check to Century Satellite for \$19,796.21 dated April 1, 2004.
3. Incentivized Retailer Agreement between Echostar and Century Satellite, dated March 1, 2004. This is an agreement, drafted by DISH, is informative of the types of terms imposed in such agreements, including the complex compensation structure and the indemnification provisions.

4. Retailer Agreement between Recreational Sports & Imports, Inc., and Century Satellite, Inc., Dated February 2, 2004. This is an agreement, drafted by DISH, which states RS&I is an “Authorized EchoStar Distributor” and is informative of the types of terms imposed in such agreements, including the complex compensation structure and the indemnification provisions. Note section 6.1.2 which provides DISH has final say in making chargebacks against the retailer. Section 6.8 provides for offsets. Such provisions can easily incorporate any amounts due to DISH for indemnification (section 13). Older versions of the DISH contracts, at least dating back to 1999, contained similar provisions, although numbered differently.

I also encourage the Commission to review the dockets in the following cases for additional factual information regarding the nature of the robo-call industry:

FTC v. Voice Touch, Inc., et al., No. 09-CV-2929 (N.D. Ill.)

FTC v. Asia Pacific Telecom, Inc., et al., No. 10-CV-3168 (N.D. Ill.)

Respectfully submitted, this the 20th day of May, 2011.

/s/ Robert Biggerstaff

**DECLARATION OF ROBERTO C. MENJIVAR
PURSUANT TO 28 U.S.C. § 1746**

I, Roberto C. Menjivar, hereby state that I have personal knowledge of the facts set forth below. If called as a witness, I could and would testify as follows:

1. I am a United States citizen. I am employed as an investigator with the Federal Trade Commission (“FTC” or “Commission”). My office address is 55 West Monroe Street, Suite 1825, Chicago, Illinois 60603.
2. I have been employed as an FTC investigator for more than five years. As an investigator, my duties include monitoring and investigating parties who are suspected of violating the FTC Act or other laws enforced by the FTC. I interview victims and other witnesses, in addition to reviewing documents, financial records, and other evidence in connection with FTC investigations and litigation in federal court.
3. In the course of my employment, I was assigned to participate in the FTC’s investigation of Voice Touch, Inc. (“Voice Touch”); Network Foundations, LLC (“Network Foundations”); James (“Jim”) Dunne; Maureen Dunne; and Damian Kohlfeld (collectively referred to as “Voice Touch”). I have also been assigned to participate in the FTC’s investigation of Transcontinental Warranty, Inc., and Christopher D. Cowart (collectively referred to as “Transcontinental”). Throughout this declaration, I refer to the Voice Touch and Transcontinental matters collectively as “the investigation.”

Company Information

4. On May 11, 2009, I obtained the following documents from the Florida Department of State, Division of Corporations’ publicly available website at www.sunbiz.org:
 - a. a “Detail by Entity Name” record of the incorporation status of Voice Touch, Inc.,

- as well as related corporate filings. These documents list Maureen Dunne as the sole officer and director of Voice Touch, Inc., and show that the company's principal address is 22 Promenade at Lion's Paw, Daytona Beach, Florida. A true and correct copy of these documents are attached hereto as **Menjivar Att. A.**
- b. a "Fictitious Name Detail" record and application for a fictitious business name and registration summary for Voice Touch. These documents identify the owner as Maureen Dunne and list the mailing address of Voice Touch as 437 Sundown Trail, Casselberry, Florida. A true and correct copy of these documents are attached hereto as **Menjivar Att. B.**
- c. a "Detail by Entity Name" record of the incorporation status of Black Coat Marketing, Inc., as well as related corporate filings. These documents list James Dunne as an officer and incorporator of Black Coat Marketing and show the company's principal address as 2461 W. SR 426, Suite 2021, Oviedo, Florida. A true and correct copy of these documents are attached hereto as **Menjivar Att. C.**
- d. a "Detail by Entity Name" record and Application by Foreign Corporation for Authorization to Transact Business in Florida filed for Transcontinental. These documents list Christopher D. Cowart as the sole director and officer of Transcontinental and show the company's principal address as 1700 NW 64th Street, Suite 400, Ft. Lauderdale, Florida. The application states that the company's purpose is "Direct Marketing of Vehicle Service Contracts." A true and correct copy of these documents are attached hereto as **Menjivar Att. D.**
- e. a "Fictitious Name Detail" record and Application for Registration of Fictitious Name for Transcontinental. These documents identify the owner as

Transcontinental Warranty, Inc., and list the mailing address as P.O. Box 668787, Pompano Beach, Florida. A true and correct copy of these documents are attached hereto as **Menjivar Att. E.**

f. a “Fictitious Name Detail” record and Application for Registration of Fictitious Name for Guaranteemycar.com. These documents identify the owner as Transcontinental Warranty, Inc., and list the mailing address for Transcontinental as P.O. Box 668787, Pompano Beach, Florida. A true and correct copy of these documents are attached hereto as **Menjivar Att. F.**

5. FTC staff requested and obtained a certified copy of Network Foundations’ certificate of formation from the State of Delaware, Division of Corporations. A true and correct copy of this document is attached hereto as **Menjivar Att. G.**

6. FTC staff requested and obtained a certified copy of Transcontinental’s certificate of incorporation and 2007 Annual Franchise Tax Report from the State of Delaware, Division of Corporations. True and correct copies of these documents are attached hereto as **Menjivar Att. H.**

7. On May 11, 2009, I obtained file detail and manager reports for Network Foundations from the Illinois Secretary of State’s publicly available website at www.cyberdriveillinois.com. These reports identify Damian Kohlfeld as a manager of Network Foundations and list the company’s principal address as 33 North LaSalle Street, #210, Chicago, Illinois. True and correct copies of these documents are attached hereto as **Menjivar Att. I.**

8. FTC staff requested and obtained a D&B Business Information Report from Dun & Bradstreet regarding Network Foundations. A true and correct copy of this document is

attached hereto as **Menjivar Att. J.**

9. FTC staff requested and obtained from the United States Postal Inspection Service a copy of the PS-Form 1093-X, Application for Post Office Box Service, for P.O. Box 668787, Pompano Beach, Florida, dated September 19, 2007. A true and correct copy of this document is attached hereto as **Menjivar Att. K.** Personal identifiable or sensitive information has been redacted.

James and Maureen Dunne

10. On May 11, 2009, using LexisNexis, I did a public records search for background information regarding James and Maureen Dunne. Partial results of these searches are attached hereto as **Menjivar Att. L.** These documents show that James and Maureen Dunne reside at 22 Promenade at Lion's Paw, Daytona Beach, Florida, and that they previously resided at 437 Sundown Trail, Casselberry, Florida. Personal identifiable or sensitive information has been redacted.
11. On May 11, 2009, I searched the publicly available website of the Volusia County Property Appraiser at <http://webserver.vcgov.org> and printed a property record card for 22 Promenade at Lion's Paw in Daytona Beach, Florida, which lists James and Maureen Dunne as the owners of this property. A true and correct copy of this document is attached hereto as **Menjivar Att. M.**
12. On May 11, 2009, I searched the publicly available website of the Seminole County Property Appraiser at <http://www.scpafl.org> and printed a parcel detail report for 437 Sundown Trail in Casselberry, Florida, which lists James Dunne as the owner of this property. A true and correct copy of this document is attached hereto as **Menjivar Att. N.**

Damian Kohlfeld

13. On May 11, 2009, using LexisNexis, I did a public records search for background information regarding Damian Kohlfeld. Partial results of these searches are attached hereto as **Menjivar Att. O**. Personal identifiable or sensitive information has been redacted.

Transcripts and Recordings of Telephone Calls with James Dunne

14. In or around February 2008, FTC staff was provided with two compact discs identified as containing recordings of three telephone conversations between James Dunne and representatives of an extended automobile warranty retailer in St. Louis. FTC staff subsequently ordered transcripts of these recordings.
15. On May 12, 2009, I copied the recordings as mentioned in paragraph 14 to my office workstation at the FTC. I also copied the recordings to a CD-R, a recordable compact disc. I finalized the CD-R to prevent further recordings. A true and correct copy of the compact disc containing these audio recordings is attached hereto as **Menjivar Att. P**. The compact disc is not attached to the electronic copy of this declaration, but has been provided to the Court and all Defendants named in the FTC's complaints against Voice Touch and Transcontinental.
16. The first recording appears to be a telephone conversation between James Dunne and a manager named Mark Johnson. True and correct copy of the transcript of this conversation is attached hereto as **Menjivar Att. Q**. In this conversation, Dunne states that Voice Touch is "the largest voice broadcaster[] in the world," *id.* at 5, and has done approximately "\$40 million worth of dialing" for extended automobile warranty companies. *Id.* at 7. Dunne claims to possess "unique numbers and unlisted numbers that nobody else has," *id.* at 5, and explains that Voice Touch "mask[s] the caller IDs

with each phone call. . . . [s]o [the calls] can't be tracked.” *Id.* at 10.

17. The second and third recordings appear to be telephone conversations between James Dunne and Jeff Zykan. True and correct copies of transcripts of these conversations are attached hereto as **Menjivar Att. R** and **Att. S**. Zykan identifies himself as the president of a prospective Voice Touch client during the call. *Menjivar Att. S* at 25.
18. In his second conversation with Zykan, Dunne directs Zykan to following website address: www.telcl.info. *Menjivar Att. R* at 5. Dunne then provides temporary login credentials to Zykan and walks him through a demonstration of how Voice Touch clients use this website to manage their robocalling campaigns. *Id.* at 5-8. At the conclusion of this demonstration, Dunne states: “Yeah, we mask the ante (phonetic). We mask the ante (phonetic) so that nobody can - they mask the ante (phonetic) so that they can never trace who the call is coming from.” *Id.* at 8. Upon information and belief, in this quoted passage, Dunne is using the acronym ANI, which stands for “Automatic Number Identification.” ANI is a service that tells the recipient of a telephone call the telephone number of the person initiating the call. In the transcript, ANI is spelled as “ante.”
19. In his second conversation with Zykan, Dunne claims that he has made over one billion “dials” for Voice Touch client National Auto Warranty Services, Inc. (“NAWS”). *Id.* at 20. In the transcript, NAWS is spelled as “NOZ.”
20. In their second conversation, Dunne assures Zykan that he would be “bulletproof” because Zykan would not be contracting with Voice Touch, but with an “offshore company” named “International Business Corp. where we’re listed as an anonymous beneficiary.” *Id.* at 22. Dunne further claims that he has “trustees that are in Hong Kong” as well as “protectors, which would be like maybe the Central Bank of Belize.” *Id.* Finally, Dunne states that there is “another layer” which he describes as “Panamanian

foundations set up now so that the money goes from the IBC [International Business Corp.] . . . over to a Panamanian foundation which goes out to Bank Swiss.” *Id.* In conclusion, Dunne states, “it’s impossible to track, impossible for them to find out who the company is.” *Id.*

21. In his first conversation with Zykan, Dunne claims that in addition to dialing on behalf of seven extended automobile warranty sellers or “rooms,” he also dials for “28 debt consolidation rooms” or operations. Menjivar Att. S at 13.
22. In his first conversation with Zykan, when pressed about the legality of voice broadcasting, Dunne responds: “Well, the – as far as the Federal Trade Commission, I mean, it’s a – automated – the use of automated dialing is prohibited. It’s a violation of the Telemarketing Sales Rule. But the thing is [] nobody ever admits to it and there’s no way to prove it.” *Id.* at 14-15. Later during this same conversation, after Zykan again expresses concern about getting into “trouble,” Dunne states: “Well, they can’t prove it. It’s impossible . . . Yeah, well, we haven’t got in trouble yet and we’ve got – my god, we’ve got 100 – we’ve got well over 100 campaigns running on any given day. . . . So, we knock the caller ID, they don’t know where it’s coming from or we have the removals. Yeah, we’ve never been in trouble and we never will get in trouble.” *Id.* at 27-28.
23. In his first conversation with Zykan, Dunne claims that he “can call everybody in the United States in about three hours.” *Id.* at 28.

Civil Investigative Demand (“CID”) to GoDaddy.com, Inc.

24. In October 2008, the FTC sent a CID to GoDaddy.com, Inc. Among other things, this CID requested information relating to the domain name “telcl.info.” This is the same domain name referenced above in paragraph 18. In its response, GoDaddy.com

identified Damian Kohlfeld as the registrant of the domain “telcl.info.” According to records produced by GoDaddy.com, Kohlfeld registered this domain on or about September 22, 2006 and provided a contact email address of “damiank@networkfoundations.com.” On or about September 23, 2008, Kohlfeld paid \$18.38 for a two year domain name renewal fee and he paid \$17.98 for a two-year private registration services fee.

CID to Wachovia Bank

25. In November 2008, the FTC sent a CID to Wachovia Bank, N.A. (“Wachovia”). The CID requested any information pertaining to corporate accounts held by Wachovia in the name of Voice Touch, Inc., or for which either James or Maureen Dunne were signatories. Wachovia produced responsive documents to the FTC relating to two separate corporate accounts in the name of Voice Touch. Based on Wachovia’s production, only one of these accounts is still active. Among other things, the account records contain the following information:
 - a. Maureen Dunne and James Dunne are authorized signatories on the active Voice Touch corporate account; and
 - b. Maureen Dunne’s position is listed as “President.”
26. The documents produced by Wachovia in response to the FTC’s CID show that since November 2006, James Dunne has withdrawn approximately \$1.1 million in cash from Voice Touch corporate accounts. In 2009, James Dunne has made approximately \$485,365 in cash withdrawals from Voice Touch corporate accounts.
27. The documents produced by Wachovia in response to the FTC’s CID show that between March 28, 2006 and January 5, 2008, Maureen Dunne withdrew approximately \$286,500 in cash from Voice Touch corporate accounts.

28. The documents produced by Wachovia in response to the FTC’s CID show that between November 24, 2008 and February 18, 2009, Voice Touch transferred approximately \$516,371 to an account titled to “Call Management” located at Provident Bank. This bank appears to be located in the country of Belize. For example, on or about February 17, 2009, Voice Touch initiated a \$96,227.66 wire transfer to Call Management. The wire transfer detail associated with this transaction indicates that the funds went to “Provident Bank & Trust of Belize Ltd” in Belize.
29. The documents produced by Wachovia in response to the FTC’s CID show that on or about November 25, 2008, Voice Touch transferred \$38,566.50 to an account at Bank of America titled to “Blackcoat Marketing Inc.”
30. As summarized in the following chart, the documents produced by Wachovia in response to the FTC’s CID show that in the past two years Voice Touch has received significant funds from at least three companies that appear to be engaged in the sale of extended automobile warranties:

Company	Amount Paid to Voice Touch	Date Range
Transcontinental	\$2,688,525	January 2008 - April 2009
Certified Warranty Services, LLC	\$259,835	November 2007 - April 2008
NAWS	\$6,013,500	March 2007 - January 2008

31. Between February 13, 2007 and March 26, 2009, Voice Touch wired approximately \$4,999,234 from its Wachovia accounts to an account at Harris Bank in the name of Network Foundations. These wire transfers to Network Foundations generally correspond with incoming payments by Voice Touch clients. On or about March 3, 2009, Transcontinental wired approximately \$158,132 into Voice Touch’s corporate account at Wachovia Bank. On or about March 4, 2009, Voice Touch wired \$75,000 to

Network Foundations' corporate account at Harris Bank. On or about March 9, 2009, Voice Touch received \$115,000 from Transcontinental. On or about March 10, 2009, Voice Touch transferred \$75,000 to Network Foundations.

CID to Bank of America

32. In December 2008, the FTC sent a CID to Bank of America requesting any information pertaining to corporate accounts held by Bank of America in the name of Voice Touch, Inc., or for which either James or Maureen Dunne were signatories. Bank of America produced responsive documents to the FTC relating to a corporate account in the name of Voice Touch. Among other things, these documents contain the following information:
- a. Maureen Dunne and James Dunne are the only two authorized signatories on this account.
 - b. Maureen Dunne's position is listed as "President."
 - c. James Dunne's position is listed as "Manager."

CID to Countrywide Bank

33. In December 2008, the FTC sent a CID to Countrywide Bank requesting any information pertaining to corporate accounts held by Countrywide Bank in the name of Voice Touch, Inc., or for which either James or Maureen Dunne were signatories. Countrywide Bank produced responsive documents to the FTC relating to a corporate account in the name of Voice Touch. Among other things, these documents contain the following information:
- a. Maureen Dunne is the only authorized signatory on this account.
 - b. Maureen Dunne's position is listed as "President."

Transcontinental Telemarketing Scripts and Other Marketing Materials

34. FTC staff requested and obtained copies of telemarketing scripts and returned postcards

sent to consumers, from the manager of a telemarketing call center not affiliated with Transcontinental. This individual told FTC staff that the scripts came from former Transcontinental employees who are now employed at the call center managed by this individual, and the returned postcards were mistakenly delivered to this individual. True and correct copies of these documents are attached hereto as **Menjivar Att. T.**

35. FTC staff requested and obtained a copy of Transcontinental's "Telesales User Guide: Training Manual, Vehicle Warranties," from an individual who told FTC staff that he formerly worked at a Transcontinental call center in Jacksonville, Florida. True and correct copies of this document, and a copy of the individual's most recent earnings statement, are attached hereto as **Menjivar Att. U.** Personal identifiable or sensitive information has been redacted.

Complaints Against Transcontinental

36. On May 12, 2009, I searched Consumer Sentinel ("Sentinel"), the FTC's database of consumer complaints, for complaints referring or relating to Transcontinental. The date range for my search was January 1, 2008 to May 12, 2009. My search retrieved approximately 120 complaints against Transcontinental.
37. On April 28, 2009, I retrieved a consumer complaint mailed to the FTC from a consumer who is identified in the letter as "H Barnes." According the date stamped on the envelope, the complaint was mailed to the FTC on or about May 15, 2008. Barnes enclosed a copy of the postcard that he received from Transcontinental stating "Land Rover Warranty Renewal Notice." Barnes stated in his complaint that when he contacted the number on the postcard, the person said that they "were indeed Land Rover." Subsequently, Barnes's complaint was filed with the FTC. True and correct copies of these documents and Barnes's Sentinel complaint are attached hereto as **Menjivar Att V.**

Personal identifiable or sensitive information has been redacted.

38. FTC staff requested and obtained complaints and other relevant documents relating to Transcontinental from the Better Business Bureau (“BBB”) of Southeast Florida. True and correct copies of documents sent by the BBB to the FTC are attached hereto as **Menjivar Att. W**. Personal identifiable or sensitive information has been redacted.
39. FTC staff requested and obtained complaints and other relevant documents relating to Transcontinental from various state attorney general offices, including the Consumer Protection Division of the Illinois Attorney General. True and correct copies of these documents are attached hereto as **Menjivar Att. X**. Personal identifiable or sensitive information has been redacted.

Methodology for Connecting Spoofed Telephone Numbers to Voice Touch Clients

40. Consumers who receive prerecorded telemarketing solicitations from Voice Touch often cannot identify the company on whose behalf the calls are made. Voice Touch clients are not identified in the prerecorded messages associated with these calls. Moreover, telephone numbers that appear on recipients’ caller ID displays are “spoofed” and do not correspond with actual numbers found on the clients’ Internet sites or other marketing and correspondence associated with the companies. Finally, as noted by a former employee of Transcontinental Warranty and confirmed by multiple consumers who have received Voice Touch telemarketing solicitations, sales representatives employed by Voice Touch clients are trained not to disclose the identity of their employer to consumers and to immediately hang up as soon as they sense that a consumer is not interested in purchasing an extended warranty. PX 3, Israel Dec. ¶¶ 11, 13 & 14. For these reasons, the total number of complaints on file with the FTC identifying Voice

Touch clients by name likely does not reflect the actual volume of complaints regarding calls placed by Voice Touch on behalf of these clients.

41. FTC staff have identified complaints associated with Voice Touch clients first through bank records showing payments made by certain extended service contract sellers. These companies are identified above in paragraph 30. Next, FTC staff have spoken to, and obtained sworn declarations from, consumers who have received prerecorded telephone solicitations sent on behalf of Voice Touch clients during the time period that Voice Touch has received wire transfers from these clients. In their declarations, these consumers generally describe receiving a prerecorded telemarketing solicitation stating that their automobile warranty has expired or was about to expire and instructing them to press “1” to speak to a sales representative.
42. These consumers further declare that after pressing “1” and being transferred to a sales representative, either the sales representative identified his or her employer by name or the consumer purchased an extended warranty from a company identified on their credit card statement as a known Voice Touch client. These consumers have told FTC staff that their telephones are equipped with caller ID and noted the number that appeared on their caller ID display when they received the solicitations referenced in their declarations.
43. FTC staff then searched Sentinel for complaints filed by consumers who reported receiving calls from the telephone numbers identified in the declarations described above. The results of this analysis, organized by Voice Touch client, follows.

**DNC Complaints Against Spoofed Telephone Numbers
Associated with Transcontinental**

44. As noted above in paragraph 30, Voice Touch received over \$2.6 million from Transcontinental from January 2008 to April 2009. Telephone numbers associated with

Transcontinental through consumer declarations obtained by FTC staff include:

Telephone number	Declarant(s)
561-784-9844	Potter (PX 19); Weegar (PX 21); Dempsey (PX 13); & O'Brien (PX 17)
321-504-7429	Papp (PX 18)
305-836-7371	Springer (PX 20)

45. In the course of the investigation, the FTC obtained a declaration from Mark Israel, a former employee of Transcontinental. Among other things, Israel provided copies of scripts that he was instructed to read while answering telephone calls transferred to the company's offices in Boca Raton, Florida. These scripts direct sales representatives to state the following: "GOOD (MORNING/AFTERNOON/EVENING) WARRANTY SERVICE CENTER, THIS IS _____ SPEAKING." PX 3, Israel Dec. Att. B.
46. On May 11, 2009, I searched Sentinel for complaints referring or relating to the telephone numbers identified above in paragraph 44. The results of my search are as follows:
- a. Between October 18, 2008 and May 12, 2009, the FTC received approximately 11,087 DNC complaints referring or relating to telephone number 561-784-9844. At least 120 of these complaints name "warranty service center" as the company responsible for these call.
 - b. Between February 4, 2008 and September 26, 2008, the FTC received approximately 3,051 DNC complaints referring or relating to telephone number 321-504-7429. At least 30 of these complaints name "warranty service center" as the company responsible for the call.
 - c. Between October 12, 2008 and May 12, 2009, the FTC received approximately

10,498 DNC complaints referring or relating to telephone number 305-836-7371.

At least 15 of these complaints name “warranty service center” as the company responsible for the call.

47. Using Sentinel, FTC staff generated a report showing the five telephone numbers associated with the most complaints. The date range for this search was October 1, 2003 to May 5, 2009. The telephone numbers 561-784-9844 and 305-836-7371 are numbers two and three on this list, respectively. A true and correct copy of the report is attached hereto as **Menjivar Att. Y**. The other three telephone numbers on the list have been redacted.
48. Using Sentinel, FTC staff generated a report showing the five telephone numbers associated with the most complaints. The date range for this search was from January 1, 2008 to May 6, 2009. The telephone numbers 561-784-9844 and 305-836-7371 are numbers one and two on this list, respectively. A true and correct copy of the report is attached hereto as **Menjivar Att. Z**. The other three telephone numbers on the list have been redacted.

**DNC Complaints Against Spoofed Telephone Numbers
Associated with Certified Warranty Services**

49. As noted above in paragraph 30, Voice Touch received approximately \$259,835 from Certified Warranty Services, LLC, from November 2007 to April 2008. FTC staff has obtained a declaration from a consumer who, on March 29, 2008, received a prerecorded telemarketing solicitation stating that his automobile warranty had expired or was about to expire and instructing him to press “1” to speak to be transferred to a sales representative. This consumer further declares that after pressing “1” and being transferred to a sales representative, the sales representative identified his or her

employer as Certified Warranty Services. The telephone number that appeared on the consumer's caller ID display was 305-758-9297. PX 14, Foss Dec. ¶ 5.

50. On May 12, 2009, I searched Sentinel for complaints referring or relating to the telephone number 305-758-9297. Between November 13, 2007 and April 24, 2008, the FTC received approximately 4,574 DNC complaints referring or relating to telephone number 305-758-9297. At least four of these complaints identify "Certified Warranty Services" as the company responsible for the call.

**DNC Complaints Against Spoofed Telephone Numbers
Associated with NAWS**

51. As noted above in paragraph 30, Voice Touch received over \$6 million from NAWS from March 2007 to January 2008.
52. In the course of the investigation, FTC staff has obtained a declaration from Victor Cart, the manager of Devin International, a tool rental company Kilgore, Texas. In his declaration, Cart states that from mid-2007 through the beginning of 2008, all of his company's landline and cell phones received "prerecorded telephone solicitations about extended auto warranties." PX 9, Cart Dec. ¶ 5. According to the caller ID display on the company's phone, these calls purportedly originated from 352-357-4151. *Id.* Cart later determined through Internet research and correspondence with NAWS, that these calls were being originated on behalf of NAWS by Voice Touch. *Id.* at ¶ 8.
53. On May 12, 2009, I searched Sentinel for complaints referring or relating to the telephone number 352-357-4151. From August 1, 2007 to February 1, 2008, the FTC received approximately 565 DNC complaints referring or relating to telephone number 352-357-4151. At least 38 of these complaints identify "Dealer Services" as the company responsible for the call. Based on information and belief, NAWS did business

during this time period as “Dealer Services.”

Total DNC Complaints Associated with Voice Touch Clients

54. The chart below is a summary of the total Do Not Call complaints referring or relating to the spoofed telephone numbers that I mentioned above.

Telephone Numbers	DNC Complaints
561-784-9844	11,087
321-836-7371	3,051
305-836-7371	10,498
305-758-9297	4,574
352-357-4151	565
Total:	29,775

Documents Obtained from NAWS

55. In the course of the investigation, former Voice Touch client, NAWS, which currently does business as US Fidelis, voluntarily produced certain documents to the FTC regarding Voice Touch, James Dunne, Network Foundations, and Damian Kohlfeld.
56. Documents produced by NAWS to the FTC include correspondence involving or referring to Damian Kohlfeld. True and correct copies of these documents are attached hereto as **Menjivar Att. AA**. These documents include:
- a. An email dated October 5, 2007 from James Dunne with the email address voicetouch@earthlink.net to Darain Atkinson with the email address datkinson@naws.com. The email from Dunne stated the following: “Damian the tech said he will overnight both servers on sat and zack should receive mon afternoon.” *Id.* at 1. Upon information and belief, “zack” is Zack Austin, the director of information technology for NAWS. *Id.*

- b. An email dated December 6, 2007 from James Dunne with the email address voicetouch@earthlink.net to Darain Atkinson with the email address datkinson@naws.com. The email from Dunne stated the following: “Damian has Guaranteed [sic] the new leads this week and will stay on top of making sure they are sent to be DNC’d and loaded for Mondays (sic) dials.” *Id.* at 2.
57. Documents produced by NAWs to the FTC include emails between NAWs employee Jerry Finley and James Dunne with the email address voicetouch@earthlink.net. In an email dated June 27, 2007, Finley asked Dunne whether he could provide “a ballpark \$ on blast emailing,” to which Dunne responded: “[I] will put out some calls for you on [T]hursday!” In another email dated October 8, 2007, Dunne thanks Finley for sending him a “fronter script.” This email from Dunne includes a signature block identifying Dunne as a “senior partner” of Voice Touch. A true and correct copy of these documents are attached hereto as **Menjivar Att. BB**.
58. Documents produced by NAWs to the FTC include emails indicating that prerecorded telemarketing solicitations initiated by Voice Touch on behalf of NAWs were the product of sequential dialing. Specifically, instead of, or in addition to, calling telephone numbers from a lead database, Voice Touch appeared to identify a block of telephone numbers associated with a particular area code and prefix and disseminated its prerecorded messages to every number in that area code and prefix. True and correct copies of these documents are attached hereto as **Menjivar Att. CC**. Personal identifiable or sensitive information has been redacted. These documents include:
- a. An email dated September 19, 2007 from Jerry Finley to James Dunne. The email from Finley stated the following: “We need 605-[XXX]-[XXXX], 605-[XXX]-[XXXX] and any number with 605 area code and [XXX] prefix removed

today....this is the South Dakota US district Attorney's office and all their extensions are being called today." *Id.* at 1 (ellipsis in original). The last seven digits of these telephone numbers have been redacted.

- b. An email dated October 5, 2007 from Jerry Finley to James Dunne forwarding a list of 26 telephone numbers belonging to a college in California that had been receiving NAWS robocalls. All 26 of the telephone numbers have an area code of "707." *Id.* at 2. The last seven digits of these telephone numbers have been redacted.
- c. A chain of email correspondence between Darain Atkinson, Jerry Finley, Zack Austin, Monica Sims, and Brenda Adams and representatives of Porchlight Mortgage Banking in California. This email chain, which Jerry Finley forwarded to James Dunne on October 26, 2007, included an October 19, 2007 email from Porchlight to Monica Sims at NAWS. The email contains 15 telephone numbers to be placed on NAWS's internal Do Not Call list. All 15 of these telephone numbers have an area code of "714." An October 26, 2007 email from Porchlight to Monica Sims at NAWS states: "In an effort to keep our productivity we had not only advised you via facsimile but also via telephone and email to remove our office numbers from your dialers (sic) database. Unfortunately we are STILL receiving calls from you[r] offices." Sims forwarded this email to several individuals, including Darain Atkinson and Zack Austin, stating: "ALL OF THE NUMBERS LISTED BELOW WERE ENTERED INTO THE DATA BASE TO BE REMOVED ON OCTOBER 19, 2007 . . . PLEASE CONTACT JIM DUNNE ABOUT THE NUMBERS LISTED BELOW." *Id.* at 3-5. The last seven digits of these telephone numbers have been redacted.

Do Not Call Registry

59. On May 12, 2009, using Sentinel, I performed an “Organization Accessing the Do Not Call Registry” search on Voice Touch. The Sentinel database results show that Voice Touch registered on January 24, 2007 as a telemarketer and service provider with Independent Access. The documents also show that Voice Touch registered and accessed five area codes. A true and correct copy of the Voice Touch Do Not Call Registration is attached hereto as **Menjivar Att. DD**. The organization SAN number has been redacted.
60. On May 12, 2009, using Sentinel, I performed an “Organization Accessing the Do Not Call Registry” search on Transcontinental. The Sentinel database results show that Transcontinental registered on November 19, 2008 as a seller. The documents also show that Transcontinental registered and accessed zero area codes. A true and correct copy of the Transcontinental Do Not Call Registration is attached hereto as **Menjivar Att. EE**.
61. On May 12, 2009, using Sentinel, I performed an “Organization Accessing the Do Not Call Registry” search on Transcontinental. The Sentinel database results show that Transcontinental again registered on April 27, 2009 as a telemarketer and service provider with access through clients. The documents show that Transcontinental registered and accessed zero area codes. The documents also show that Transcontinental has zero client accounts. A true and correct copy of the Transcontinental Do Not Call Registration is attached hereto as **Menjivar Att. FF**.
62. On May 12, 2009, using Sentinel, I performed an “Organization Accessing the Do Not Call Registry” search on TransAmerica Warranty, Inc. (“TransAmerica”). The Sentinel database results show that TransAmerica registered on May 29, 2007 as a telemarketer and service provider with Independent Access. The documents show that TransAmerica

registered and accessed zero area codes. A true and correct copy of the TransAmerica Do Not Call Registration is attached hereto as **Menjivar GG**.

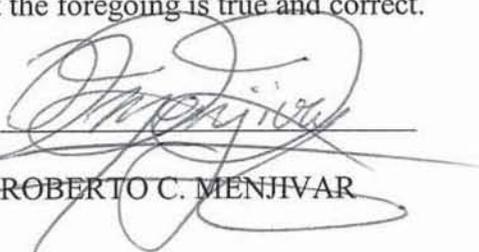
63. On May 12, 2009, using Sentinel, I performed an "Organization Accessing the Do Not Call Registry" on TransAmerica. The Sentinel database results show that TransAmerica again registered on May 30, 2007 as a telemarketer and service provider with Independent Access. The documents also show that TransAmerica registered and accessed 15 area codes. A true and correct copy of the TAW Do Not Call Registration is attached hereto as **Menjivar Att. HH**. The organization SAN number has been redacted.

Other NAWS-Related Documents

64. Attached hereto as **Menjivar Att. II** is true and correct copy of the complaint filed on or about March 6, 2008, against NAWS by the State of Missouri.
65. Attached hereto as **Menjivar Att. JJ** is a true and correct copy the Missouri Attorney General's March 6, 2008, news release located at <http://ago.mo.gov/newsreleases/2008/030608.htm>, which I printed on May 12, 2009.
66. Attached hereto as **Menjivar Att. KK** is a true and correct copy of a Verizon Wireless press release, dated April 28, 2009 located at <http://news.vzw.com/news/2009/04/pr2009-04-28.html>, which I printed on May 12, 2009.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: 5/13/2009


ROBERTO C. MENJIVAR

MID-STATE SERVICE, LTD

029902

REFERENCE NO	DESCRIPTION	INVOICE DATE	INVOICE AMOUNT	DISCOUNT TAKEN	AMOUNT PAID
JAN04		3/22/04	19,796.21		19,796.21
This is your Echostar Residual check for units active during January 2004. Visit our website - www.midstatedistributing.com - for your detailed information.					
CHECK DATE	CHECK NO.	PAYEE		DISCOUNTS TAKEN	CHECK AMOUNT
4/1/04	29902	CENTURY SATELLITES			\$19,796.21

LR2156LN1 PRINT MANAGEMENT PARTNERS INC 515-223-4800 FAX 515-221-1622

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EXHIBIT A

Echosphere Retailer Number 15896

**EHOSTAR SATELLITE L.L.C.
INCENTIVIZED RETAILER AGREEMENT**

This Agreement (the "Agreement") is made and effective as of this 1 day of March, 2004, by and between EchoStar Satellite L.L.C., formerly known as EchoStar Satellite Corporation, ("EchoStar") having a principal place of business at 9601 S. Meridian Blvd., Englewood, Colorado 80112, and Century Satellite having a principal place of business at 15896 FM 529 Suite 201 Houston, TX 77095 ("Retailer").

INTRODUCTION

- A. EchoStar is engaged, among other things, in the business of providing digital direct broadcast satellite (DBS) services under the name DISH Network.
- B. Retailer, acting as an independent contractor, desires to become authorized on a non-exclusive basis, to market, promote, and solicit orders for Programming (an "Authorized Retailer").
- C. EchoStar desires to appoint Retailer as an Authorized Retailer in accordance with and subject to the terms and conditions of this Agreement.

AGREEMENT

1. **REPRESENTATIONS AND WARRANTIES** The parties hereto make the following representations and warranties with the specific intent to induce the other party into entering into this Agreement and recognize that the other party would not enter into this Agreement but for the following representations and warranties:

1.1 Each party represents that the execution, delivery and performance of this Agreement have been duly authorized and that it has the full right, power and authority to execute, deliver and perform this Agreement.

1.2 Each party represents that the signatures hereon are genuine and the person signing on behalf of each party is authorized by the respective party to execute the Agreement on its behalf.

1.3 Retailer represents that (i) it is a valid and existing entity in compliance with all laws and regulations related to maintenance of its corporate or other business status; (ii) it is not currently insolvent; (iii) it is not violating any federal, state or local law or regulation; (iv) it has never engaged in any of the acts prohibited under Section 3.6, 3.7, 9.2, 9.3 or 9.4 below; (v) it has not engaged in any acts which would have resulted in automatic termination or be considered default or breach under any current or former retailer agreement with EchoStar or under any current or former Other Agreement; and (vi) it is not dependent upon EchoStar or its Affiliates for a major part of Retailer's business and that Retailer either sells or could sell other products or services in addition to EchoStar products or services that compete with EchoStar products or services.

1.4 EACH PARTY HERETO WARRANTS AND REPRESENTS THAT IT HAS READ THIS AGREEMENT IN ITS ENTIRETY AND THAT IT UNDERSTANDS FULLY EACH OF THE TERMS AND CONDITIONS SET FORTH HEREIN.

1.5 EACH PARTY HERETO WARRANTS AND REPRESENTS THAT IT HAS BEEN GIVEN THE OPPORTUNITY TO HAVE INDEPENDENT COUNSEL REVIEW THIS AGREEMENT PRIOR TO EXECUTION. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT EITHER THIS AGREEMENT HAS BEEN ACTUALLY REVIEWED BY ITS COUNSEL OR THAT SUCH PARTY HAS DECLINED TO HAVE ITS COUNSEL DO SO.

1.6 EACH PARTY HERETO REPRESENTS AND WARRANTS THAT IT IS NOT RELYING UPON ANY STATEMENTS OR REPRESENTATIONS NOT CONTAINED HEREIN AND THAT IT HAS NOT BEEN INDUCED INTO ENTERING THIS AGREEMENT BY ANY STATEMENTS, ACTS OR OMISSIONS NOT EXPRESSLY SET FORTH HEREIN.

1.7 EACH PARTY HERETO REPRESENTS AND WARRANTS THAT IT HAS NOT BEEN COERCED INTO ENTERING INTO THIS AGREEMENT AND THAT IT HAS ENTERED INTO THIS AGREEMENT OF ITS OWN FREE WILL AND FREE OF INFLUENCE OR DURESS.

1.8 RETAILER WARRANTS AND REPRESENTS THAT BEFORE IT WILL PARTICIPATE IN ANY PROMOTIONAL PROGRAM IT WILL CAREFULLY REVIEW THE TERMS OF THE PROGRAM AND ASSOCIATED BUSINESS RULES OR HAVE THEM REVIEWED BY INDEPENDENT COUNSEL.

EXHIBIT B

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2. **DEFINITIONS** In addition to the terms defined elsewhere in this Agreement, the following definitions shall apply to this Agreement:

2.1 "Affiliate" means any person or entity directly or indirectly controlling, controlled by or under common control with another person or entity.

2.2 "Business Rule" means any term, requirement, condition, condition precedent, process or procedure associated with a Promotional Program or otherwise identified as a Business Rule by EchoStar which is communicated to Retailer by EchoStar or an Affiliate of EchoStar either directly (including email) or through any method of mass communication reasonably directed to EchoStar's retailer base, including, without limitation, a "Charlie Chat", email, fax blast, or posting on EchoStar's retailer web site. Retailer agrees that EchoStar has the right to modify the Business Rules at any time and from time to time in its sole discretion for any reason, upon notice to Retailer.

2.3 "Certificate Program" means any Promotional Program offered by EchoStar wherein Retailer purchases a serialized certificate (a "Promotional Certificate") from EchoStar, any Affiliate of EchoStar, or a Third Party Manufacturer for resale to a consumer which, among other things, entitles such consumer to a DISH DBS System (or the use of such system, if the program involves leasing the equipment to the consumer) and installation.

2.4 "Chargeback" means EchoStar's right to reclaim Incentives to which Retailer is not entitled pursuant to the terms and conditions of this Agreement, any Promotional Program, or applicable Business Rules.

2.5 "DISH DBS System" means an MPEG-2 DVB compliant satellite receiver and related components (if any) packaged therewith, intended to be utilized for the reception of Programming delivered by satellite transponders owned and operated by EchoStar or its Affiliates, which is: (i) sold directly to Retailer by EchoStar or an EchoStar Affiliate under the "EchoStar" brand name or the brand name of an EchoStar Affiliate; or (ii) sold directly to Retailer by a Third Party Manufacturer pursuant to authorization granted by EchoStar under the brand name of such Third Party Manufacturer.

2.6 "EchoStar Subscriber" shall have the meaning set forth in Section 7.4.

2.7 "Eligible Programming" means the Programming packages designated by EchoStar as qualifying for the payment of Incentives under this Agreement, as set forth in the Business Rules, as such Business Rules may be modified in whole or in part at any time and for any reason in EchoStar's sole discretion, upon notice to Retailer.

2.8 "EFT" means the electronic transfer of funds from one financial institution to another.

2.9 "Incentives" mean the Monthly Incentives together with any Additional Incentives, as such terms are defined in Section 6, below.

2.10 "Programming" means the DISH Network video, audio, data and interactive programming services which EchoStar makes generally available to the public for viewing in Residential Locations, subject to any restrictions (geographic, blackout or otherwise) as EchoStar may impose on some or all such Programming services for any reason in its sole discretion. EchoStar reserves the right to change the Programming services offered and/or any restrictions applicable to such Programming services at any time and for any reason in EchoStar's sole discretion.

2.11 "Promotional Program" means: (i) a promotional offer, as determined by EchoStar, which Retailer may present to consumers in connection with Retailer's promotion and solicitation of orders for Programming; (ii) the Incentives, as determined by EchoStar, which Retailer may receive in connection with such promotional offer; and (iii) the Business Rules, as determined by EchoStar, setting forth the terms and conditions governing the promotional offer and corresponding Incentives. EchoStar reserves the right to discontinue any Promotional Program or change the Business Rules associated therewith at any time and for any reason in its sole discretion, upon notice to Retailer.

2.12 "Qualifying Residential Subscriber" means an individual at a Residential Location in the Territory who orders Eligible Programming, who timely pays for the Programming in full and who has not violated any of the terms and conditions set forth in the EchoStar Residential Customer Agreement, and who has never previously received any audio, video, data, or any other programming services from EchoStar or any Affiliate of EchoStar. A Qualifying Residential Subscriber shall not include any individual who would otherwise qualify, but whose equipment EchoStar, in its sole discretion, declines to activate for any reason.

2.13 "Residential Location" means a single family residential dwelling (i.e. single family houses, apartments, condominiums or other dwellings used primarily for residential purposes), located in the Territory; provided, however, in no case shall any satellite master antenna television system or private cable system in a residential multiple dwelling unit or any similar programming reception system (e.g., dormitories, etc.) be considered a Residential Location. EchoStar reserves the right to determine, in its sole discretion for any reason, whether a location constitutes a Residential Location, or is more appropriately considered a commercial or other non-residential location.

2.14 "Retailer Account" means the bank account, including account and ABA routing numbers, designated by Retailer in the manner reasonably prescribed by EchoStar, which Retailer may change from time to time by providing at least sixty (60) days prior written notice to EchoStar.

2.15 "Subscriber Account" means the account set up and maintained by EchoStar for a Qualifying Residential Subscriber who purchased a DISH DBS System from Retailer and for whom Eligible Programming has been activated by EchoStar and which account remains active and in good standing.

2.16 "Third Party Manufacturer" means a third party manufacturer authorized by EchoStar or any Affiliate of EchoStar to market, distribute and sell DISH DBS Systems under its own brand name.

3. **APPOINTMENT; TERRITORY**

3.1 **Appointment.** EchoStar appoints Retailer as a non-exclusive Authorized Retailer to promote and solicit orders for Programming, subject to all of the terms and conditions of this Agreement. The appointment set forth herein for the promotion of the DISH Network by Retailer shall apply to the same DBS service which may be operated by EchoStar or its Affiliates under a different name in the future. Retailer's authorization herein is limited to the solicitation of orders for Programming from, and the marketing, advertising and promotion of Programming to, consumers at Residential Locations unless EchoStar, in its sole discretion (which may be exercised for any reason), specifically agrees in writing to permit Retailer to solicit orders from, or promote Programming to, others.

3.2 **Territory.** Retailer's authorization hereunder, and any actions it undertakes in connection with, or in furtherance of, this Agreement, shall be limited solely to the area within the geographic boundaries of the United States and its territories and possessions (the "Territory").

3.3 **Acceptance.** Retailer accepts its appointment as an Authorized Retailer and agrees to use its reasonable commercial efforts to continuously and actively advertise, promote and market the Programming and to solicit orders therefore, subject to and in accordance with all of the terms and conditions of this Agreement. Retailer understands that it may hold itself out to the public as an Authorized Retailer of EchoStar only after fulfilling, and for so long as it continues to fulfill, all of the duties, obligations, and requirements contained in this Agreement and the Business Rules, and only during the Term of this Agreement.

3.4 **Non-Exclusivity.** Retailer acknowledges that: (i) nothing in this Agreement is intended to, nor shall it be construed as conferring any exclusive territory or any other exclusive rights to Retailer; (ii) EchoStar and its Affiliates make absolutely no promises, representations or warranties as to the amount of business or revenue that Retailer may expect to derive from participation in this Agreement or any Promotional Program; (iii) Retailer may not realize any business or revenue as result of its participation in this Agreement or any Promotional Program; (iv) nothing contained herein shall be construed as a guarantee of any minimum amount of Incentives or any minimum amount of other payments, income, revenue or other economic benefit in any form whatsoever; (v) EchoStar currently offers, and at any time in the future may offer in its sole discretion for any reason, others the opportunity to act as an Authorized Retailer or to solicit orders for Programming in the same geographic area in which Retailer is located and elsewhere; (vi) Echosphere L.L.C. and all other Affiliates of EchoStar shall have the right to distribute products and solicit orders for Programming throughout the Territory and the entire United States, and in competition with Retailer, without any obligation or liability to Retailer whatsoever, and without providing Retailer with any notice thereof; (vii) EchoStar and its Affiliates shall be entitled, among other things, to: (a) solicit orders for Programming, (b) sell, lease and otherwise transfer possession of DISH DBS Systems and Promotional Certificates, and (c) perform installation and maintenance services (directly and through subcontractors) for DISH DBS Systems and related accessories, in each case throughout the Territory and in competition with Retailer, without any obligation or liability to Retailer whatsoever, and without providing Retailer with any notice thereof; and (viii) EchoStar shall be free to cease or suspend provision of the Programming services, and shall incur no liability to Retailer by virtue of any such cessation or suspension.

3.5 **Purchase of DISH DBS Systems by Retailer from EchoStar.** In the event that Retailer orders any DISH DBS Systems or Promotional Certificates from Echosphere L.L.C. or any other Affiliate of EchoStar (collectively, "Echosphere" for purposes of this section), Retailer shall order such products by written purchase order ("Purchase Order") issued during the term of this Agreement. A Purchase Order shall be a binding commitment by Retailer. Any failure to confirm a Purchase Order shall not be deemed acceptance by Echosphere. Purchase Orders of Retailer shall state only the: (i) identity of goods; (ii) quantity of goods; (iii) purchase price of goods; and (iv) requested ship date of goods. Any additional terms stated in a Purchase Order shall not be binding upon Echosphere unless expressly agreed to in writing by Echosphere. In no event shall EchoStar or Echosphere be liable for any delay, or failure to fulfill, any Purchase Order (or any portion thereof), regardless of the cause of such delay or failure. In the event of any conflict between the terms of

a Purchase Order and the terms of this Agreement, the terms of this Agreement shall prevail. Echosphere shall be considered a third party beneficiary of Retailer's obligations under this Agreement. Retailer hereby acknowledges and agrees that EchoStar and its Affiliates have no obligation to re-purchase DISH DBS Systems or Promotional Certificates back from Retailer at any time for any reason.

3.6 Sale of DISH DBS Systems. Retailer agrees that as a condition precedent to eligibility to receive Incentives from EchoStar, it will not directly or indirectly sell, lease, or otherwise transfer possession of a DISH DBS System or Promotional Certificate to any person or entity whom Retailer knows or reasonably should know: (i) is not an end-user and/or intends to resell, lease or otherwise transfer it for use to another individual or entity; or (ii) intends to use it, allow others to use it, or to resell, lease or otherwise transfer it for use in any location other than a Residential Location; or (iii) intends to use it, or to allow others to use it, or to resell, lease or otherwise transfer it for use in Canada, Mexico or at any other location outside of the Territory; or (iv) intends to have, to allow others to have, or to resell, lease or otherwise transfer it to others who will have Programming authorized for it under a single DISH Network account that has or will have Programming authorized for multiple satellite receivers that are not all located in the same Residential Location and connected to the same phone line. It shall be Retailer's responsibility to investigate and determine whether any sale by Retailer would be in violation of this Section. In the event that Retailer directly or indirectly sells, leases or otherwise transfers possession of a DISH DBS System or Promotional Certificate to a person or entity who uses it, allows others to use it, or resells, leases or otherwise transfers it for use to permit the viewing of Programming in a non-Residential Location or any other area open to the public, then Retailer agrees to pay to EchoStar upon demand: (a) the difference between the amount actually received by EchoStar for the Programming authorized for the DISH DBS System and the full commercial rate for such Programming (regardless of whether EchoStar has or had commercial distribution rights for such Programming); and (b) the total amount of any admission charges or similar fees imposed for listening to or viewing such Programming (regardless of whether such charges and/or fees were imposed or collected by Retailer). In the event that Retailer directly or indirectly sells, leases or otherwise transfers possession of a DISH DBS System or Promotional Certificate to a person or entity who has, allows others to have, or resells, leases or otherwise transfers it to others who have Programming authorized for it under a single DISH Network account that at any time has Programming authorized for multiple DISH DBS Systems that are not all located in the same Residential Location and connected to the same phone line, and Retailer knew or reasonably should have known that the person or entity intended to have, allow others to have or resell, lease or otherwise transfer it to others who would have Programming authorized for the DISH DBS System under such an account, then Retailer agrees to pay to EchoStar upon demand, the difference between the amount actually received by EchoStar for the Programming authorized under the single account and the full retail price for such Programming had each DISH DBS System authorized under the single account been authorized under a separate DISH Network account. IN THE EVENT THAT RETAILER BREACHES ANY OF ITS OBLIGATIONS UNDER THIS SECTION 3.6, ECHOSTAR SHALL BE ENTITLED TO CHARGE BACK AT ANY TIME (EVEN AFTER THE TERMINATION OR EXPIRATION OF THIS AGREEMENT) THE INCENTIVES, IF ANY, PAID TO RETAILER BY ECHOSTAR WITH RESPECT TO ANY SUBSCRIBER ACCOUNT AFFECTED BY SUCH BREACH OR DEFAULT. IN THE EVENT RETAILER WISHES TO DISPUTE ANY SUCH CHARGEBACK, RETAILER SHALL FOLLOW THE DISPUTE RESOLUTION PROCEDURES SET FORTH IN SECTION 15 BELOW. ECHOSTAR'S CALCULATION OF AMOUNTS OWING TO ECHOSTAR FROM RETAILER UNDER THIS SECTION 3.6 SHALL BE BINDING ABSENT FRAUD, MALICE OR WILLFUL AND WANTON MISCONDUCT ON THE PART OF ECHOSTAR. The foregoing provisions of this Section 3.6 are without prejudice to any other rights and remedies that EchoStar and/or its Affiliates may have under this Agreement, at law, in equity or otherwise (all of which are hereby expressly reserved), and shall survive expiration or termination of this agreement for any reason whatsoever indefinitely (even if termination is due to a default or breach by EchoStar).

3.7 Pre-Activations. Retailer shall not directly or indirectly activate (a "Pre-activation") any DISH DBS System or DISH DBS receiver prior to installation of such DISH DBS System and/or receiver at a Residential Location.

3.8 Financing; Making Payments on Behalf of End-Users. Retailer shall not directly or indirectly provide financing for the purchase of any Programming or make any payment to EchoStar for Programming services or otherwise on behalf of any retail end-user of a DISH DBS System.

3.9 Installation Services. Retailer represents, warrants, covenants and agrees that all installation and after-sales services (collectively, "Services") performed by Retailer in connection with the sale or lease of DISH DBS Systems will be performed by Retailer in accordance with all applicable laws, codes and regulations, and subject to all of the terms, conditions, standards and guidelines set forth in the DISH Network Installation Manual (located on the retailer web site), as such terms, conditions, standards and specifications may be changed at any time and for any reason by DISH Network Service L.L.C. in its sole discretion, upon notice to Retailer.

3.10 Prior Retailer Agreement. IN THE EVENT THAT RETAILER PREVIOUSLY ENTERED INTO ANY AGREEMENT WITH ECHOSTAR RELATING TO THE MARKETING, PROMOTION, ADVERTISING OR SOLICITATION OF ORDERS FOR PROGRAMMING BY RETAILER AND THE PAYMENT OF CERTAIN AMOUNTS BY ECHOSTAR THEREFOR (A "PRIOR RETAILER AGREEMENT"), WHICH IS IN EFFECT (IN WHOLE OR IN PART) AS OF THE EFFECTIVE DATE OF THIS AGREEMENT, THEN UPON EXECUTION OF THIS AGREEMENT BY RETAILER AND ECHOSTAR: (I) THE PRIOR RETAILER AGREEMENT SHALL BE AUTOMATICALLY TERMINATED, EXCEPT THAT THE PROVISIONS (EXCLUDING ANY PROVISIONS RELATED TO THE PAYMENT OF COMMISSIONS OR INCENTIVES) IN THE PRIOR RETAILER

AGREEMENT WHICH EXPRESSLY SURVIVE, AND SUCH OTHER RIGHTS AND OBLIGATIONS THEREUNDER AS WOULD LOGICALLY BE EXPECTED TO SURVIVE TERMINATION OR EXPIRATION SHALL CONTINUE IN FULL FORCE AND EFFECT; AND (II) ALL COMMISSIONS OR OTHER PAYMENTS OF ANY TYPE DUE TO RETAILER UNDER THE PRIOR RETAILER AGREEMENT SHALL BE PAYABLE BY ECHOSTAR TO RETAILER AS INCENTIVES SOLELY IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT; AND (III) ALL RIGHTS AND OBLIGATIONS BETWEEN THE PARTIES SHALL BE GOVERNED BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, AND THE PRIOR RETAILER AGREEMENT SHALL BE OF NO FORCE OR EFFECT. IN FURTHERANCE OF, AND NOT IN LIMITATION OF, THE FOREGOING, ANY DISPUTE WHICH MAY HAVE ARISEN UNDER THE PRIOR RETAILER AGREEMENT SHALL BE RESOLVED IN ACCORDANCE WITH SECTION 15 BELOW. IN ACCORDANCE WITH SECTION 15.1, RETAILER SHALL HAVE NINETY (90) DAYS (OR THE SHORTEST PERIOD ALLOWED BY LAW IF MORE THAN 90 DAYS) FROM THE DATE OF THIS AGREEMENT TO NOTIFY ECHOSTAR OF ANY CLAIM THAT IT MAY HAVE AGAINST ECHOSTAR UNDER THE PRIOR RETAILER AGREEMENT. HOWEVER, NOTWITHSTANDING ANY TERMS OF THIS AGREEMENT, NOTHING CONTAINED IN THIS AGREEMENT WILL WAIVE ANY RIGHT RETAILER MAY HAVE IN THE CLAIMS BROUGHT IN THE FOLLOWING CLASS ACTION LAWSUITS IN THE EVENT THE FOLLOWING LAWSUITS ARE CERTIFIED: Case No. 00-CV-1989; Styled *John DeJong, d/b/a ANexwave, @ and Joe Kelly, d/b/a AKel-tronics, @ and Jaguar Technologies, Inc. v. EchoStar Satellite Corporation*, United States District Court, District of Colorado; Case No. 00-CV-3130, Styled *Air Communication & Satellite, Inc. et al. v. EchoStar Satellite Corporation*, In the District Court, Arapahoe County, Colorado; Case No. 500-CV-268, Styled *Satellite Dealers Supply, Inc. v. EchoStar Communications Corp.*, United States District Court, Eastern District of Texas. In the event that no Prior Retailer Agreement is in effect as of the effective date of this Agreement, Retailer shall only be eligible to receive Incentives for new Subscriber Accounts activated after the date of this Agreement, notwithstanding payment by EchoStar of any commissions to Retailer prior to the date of this Agreement. This Agreement shall not amend, modify, alter or change any terms or conditions of any Lease Plan Dealer Agreement, or any similar agreement relating to leasing, which is now existing or later made with EchoStar or any of its Affiliates.

4. PROGRAMMING

4.1 Programming. EchoStar shall determine, in its sole discretion for any reason, the Programming for which Retailer may solicit orders. EchoStar may expand, reduce or otherwise modify the content of any Programming packages or add or delete any Programming (either in a package or a-la-carte) at any time and for any reason in its sole discretion. Any changes shall be effective immediately upon notification by EchoStar, unless EchoStar notifies Retailer of a different effective date.

4.2 Changes. If at any time or for any reason EchoStar changes the content of any Programming package, Retailer's authority to solicit orders for the prior Programming package shall immediately cease.

5. PRICES. EchoStar shall determine the retail prices for Programming in its sole discretion. Retailer will only solicit orders for Programming at the retail prices set by EchoStar from time to time. EchoStar may increase, decrease or otherwise modify those prices at any time and for any reason in its sole discretion. Any price changes shall be effective immediately upon notification by EchoStar, unless EchoStar notifies Retailer of a different effective date. Retailer shall not represent that Programming may be purchased or obtained on any other terms except as authorized in writing by EchoStar.

6. INCENTIVES

6.1 Monthly Incentives

6.1.1 Definition; Terms. Subject to the terms and conditions of this Agreement and any applicable Business Rules, for each DISH DBS System or Promotional Certificate that during the Term of this Agreement: (i) is sold to Retailer by EchoStar or any of its Affiliates, or a Third Party Manufacturer; and (ii) is re-sold by such Retailer directly to a Qualifying Residential Subscriber; and (iii) results in the activation of Eligible Programming for a new Subscriber Account, Retailer may be eligible to receive a monthly incentive (the "Monthly Incentive"). The amount of such Monthly Incentive together with payment terms and other applicable terms and conditions shall be set forth in Business Rules which shall be distributed by EchoStar from time to time in accordance with Section 2.2, above. EchoStar in its sole discretion shall determine whether a particular EchoStar Subscriber is a new Subscriber Account eligible for the payment of Incentives hereunder. ECHOSTAR'S CALCULATION AND PAYMENT OF MONTHLY INCENTIVES SHALL BE PRESUMED CONCLUSIVELY AND IRREBUTABLY CORRECT ABSENT A TIMELY NOTICE OF CLAIM BY RETAILER PURSUANT TO SECTION 15.1.

6.1.2 Charge Back on Monthly Incentives. IN THE EVENT THAT RETAILER IS PAID A MONTHLY INCENTIVE TO WHICH IT IS NOT ENTITLED PURSUANT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT OR ANY PROMOTIONAL PROGRAM OR APPLICABLE BUSINESS RULES, ECHOSTAR SHALL HAVE THE RIGHT TO CHARGE BACK SUCH MONTHLY INCENTIVE PAID TO RETAILER. ECHOSTAR'S CALCULATION AND ASSESSMENT OF ANY CHARGEBACK SHALL BE PRESUMED CONCLUSIVELY AND IRREBUTABLY CORRECT ABSENT A TIMELY NOTICE OF CLAIM BY RETAILER PURSUANT TO SECTION 15.1. ECHOSTAR'S DETERMINATION THAT A CHARGE BACK IS PROPER, SHALL BE CONTROLLING, ABSENT FRAUD, MALICE OR WANTON AND WILLFUL MISCONDUCT ON THE

PART OF ECHOSTAR. THE PROVISIONS OF THIS SECTION 6.1.2 SHALL SURVIVE EXPIRATION OR TERMINATION OF THIS AGREEMENT INDEFINITELY (EVEN IF TERMINATION IS DUE TO A DEFAULT OR BREACH BY ECHOSTAR).

6.2 **Additional Incentives.**

6.2.1 **Definition; Terms.** During the Term of this Agreement, Retailer may be eligible to participate in and receive incentives other than Monthly Incentives including, but not limited to, activation fee payments, flex payments, equipment discounts, and free professional installation payments ("Additional Incentives") under such Promotional Programs as EchoStar may make available to Retailer in its sole discretion from time to time. The terms and conditions, including without limitation, eligibility requirements, governing each Additional Incentive shall be set forth in Business Rules which shall be distributed or otherwise made available by EchoStar from time to time in accordance with Section 2.2 above. RETAILER ACKNOWLEDGES AND AGREES THAT: (I) UNDER NO CIRCUMSTANCES SHALL ECHOSTAR HAVE AT ANY TIME ANY OBLIGATION TO OFFER ADDITIONAL INCENTIVES TO RETAILER, OR IF ADDITIONAL INCENTIVES ARE OFFERED TO OTHERS, TO ALTER OR AMEND THE BUSINESS RULES TO PERMIT RETAILER TO BE ELIGIBLE TO RECEIVE THEM; (II) IF ECHOSTAR OFFERS ANY ADDITIONAL INCENTIVES TO RETAILER THROUGH ANY PROMOTIONAL PROGRAM, RETAILER SHALL ONLY BE ELIGIBLE TO RECEIVE THE ADDITIONAL INCENTIVES IF AND TO THE EXTENT THAT IT MEETS ALL OF THE QUALIFICATION CRITERIA AND OTHER TERMS AND CONDITIONS SET FORTH IN THE APPLICABLE BUSINESS RULES AND THIS AGREEMENT; (III) UNLESS EXPRESSLY SET FORTH TO THE CONTRARY UNDER THE TERMS AND CONDITIONS OF THE RELEVANT PROMOTIONAL PROGRAM, ADDITIONAL INCENTIVES SHALL ONLY BE PAID TO RETAILER WITH RESPECT TO DISH DBS SYSTEMS OR PROMOTIONAL CERTIFICATES THAT: (A) ARE SOLD TO RETAILER BY ECHOSTAR OR ANY OF ITS AFFILIATES, OR A THIRD PARTY MANUFACTURER; (B) ARE RE-SOLD BY SUCH RETAILER DIRECTLY TO A QUALIFYING RESIDENTIAL SUBSCRIBER; AND (C) RESULT IN THE ACTIVATION OF ELIGIBLE PROGRAMMING FOR A NEW SUBSCRIBER ACCOUNT. ECHOSTAR IN ITS SOLE DISCRETION SHALL DETERMINE WHETHER A PARTICULAR ECHOSTAR SUBSCRIBER IS A NEW SUBSCRIBER ACCOUNT ELIGIBLE FOR THE PAYMENT OF INCENTIVES HEREUNDER. RETAILER ACKNOWLEDGES AND AGREES THAT IF IT CHOOSES TO PARTICIPATE IN ANY PROMOTIONAL PROGRAM IT WILL CAREFULLY REVIEW AND ADHERE TO ALL THE TERMS AND CONDITIONS SET FORTH IN THE BUSINESS RULES RELATED THERETO. FURTHERMORE, RETAILER'S PARTICIPATION IN ANY PROMOTIONAL PROGRAM OR RECEIPT OF ADDITIONAL INCENTIVES THEREUNDER SHALL SERVE AS RETAILER'S ACKNOWLEDGEMENT OF THE TERMS AND CONDITIONS SET FORTH IN THE RELEVANT BUSINESS RULES AND RETAILER'S AGREEMENT TO BE BOUND THERETO. ECHOSTAR'S CALCULATION AND PAYMENT OF ADDITIONAL INCENTIVES SHALL BE PRESUMED CONCLUSIVELY AND IRREBUTABLY CORRECT ABSENT A TIMELY NOTICE OF CLAIM BY RETAILER PURSUANT TO SECTION 15.1.

6.2.2 **Charge Backs on Additional Incentives.** IN THE EVENT THAT RETAILER IS PAID AN ADDITIONAL INCENTIVE TO WHICH IT IS NOT ENTITLED PURSUANT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT OR ANY PROMOTIONAL PROGRAM OR APPLICABLE BUSINESS RULES, ECHOSTAR SHALL HAVE THE RIGHT TO CHARGE BACK SUCH ADDITIONAL INCENTIVE PAID TO RETAILER. ECHOSTAR'S CALCULATION AND ASSESSMENT OF ANY CHARGEBACK SHALL BE PRESUMED CONCLUSIVELY AND IRREBUTABLY CORRECT ABSENT A TIMELY NOTICE OF CLAIM BY RETAILER PURSUANT TO SECTION 15.1. ECHOSTAR'S DETERMINATION THAT A CHARGE BACK IS PROPER, SHALL BE CONTROLLING, ABSENT FRAUD, MALICE OR WANTON AND WILLFUL MISCONDUCT ON THE PART OF ECHOSTAR. THE PROVISIONS OF THIS SECTION 6.2.2 SHALL SURVIVE EXPIRATION OR TERMINATION OF THIS AGREEMENT INDEFINITELY (EVEN IF TERMINATION IS DUE TO A DEFAULT OR BREACH BY ECHOSTAR).

6.3 **Payment by EFT.** Subject to the terms of this Section, all Incentives paid to Retailer hereunder shall be made by EFT.

6.3.1 **Electronic Funds Transfer.** Until Retailer provides EchoStar with the Retailer Account information in the manner prescribed by EchoStar ("EFT Instructions"), or in the event that Retailer elects to receive payments by check, EchoStar shall pay Incentives to Retailer by check and Retailer will be assessed EchoStar's standard processing fee, which may be changed by EchoStar at any time and for any reason in its sole discretion upon notice to Retailer. For a period of approximately thirty (30) days after EchoStar receives initial EFT Instructions from Retailer, EchoStar will make all payments of Incentives to Retailer hereunder by check, and mail the same free of charge.

6.3.2 **Reliance on Retailer Account Information.** With respect to Retailer's EFT Instructions, and any purported changes or modifications thereof by Retailer, EchoStar may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, and may assume the validity and accuracy of any statement or assertion contained in such writing or instrument and may assume that any person purporting to give any such writing, notice, advice, or instruction in connection with the provisions hereof has been duly authorized by Retailer to do so.

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6.3.3 **EchoStar EFT Liability Limitation.** Retailer agrees that in no event shall EchoStar have any liability under this Agreement for any Incentives not received by Retailer as a result of an error in any way attributable to: (i) any bank or financial institution; (ii) Retailer; or (iii) any other person, entity or circumstance outside of EchoStar's direct control. The provisions of this Section 6.3.3 shall survive expiration or termination of this Agreement, for any reason whatsoever, indefinitely (even if termination is due to a default or breach by EchoStar).

6.4 **Statements.** EchoStar shall make available to Retailer, in an electronic format determined by EchoStar in its sole discretion, periodic statements reflecting the Monthly Incentives and Additional Incentives (if any) payable to Retailer as well as any chargebacks assessed against Retailer. Retailer acknowledges that EchoStar is not required to provide Retailer with any additional information, including but not limited to communications between EchoStar and any EchoStar Subscriber or any Subscriber Account information.

6.5 **Exceptions.** Notwithstanding anything to the contrary set forth herein:

6.5.1 Retailer shall not be entitled to either Monthly Incentives (at anytime) or Additional Incentives (to the extent the relevant chargeback period set forth in the Business Rules has not expired) with respect to any Subscriber Account for which: (i) the Eligible Programming has been cancelled by anyone; (ii) payment in full for the Eligible Programming has not been timely received by EchoStar in accordance with the terms and conditions of the then current EchoStar Residential Customer Agreement; (iii) a credit or refund has been issued by EchoStar for any reason (EchoStar shall have the discretion to issue a credit or refund in its sole judgment); (iv) the subscriber would otherwise be a Qualifying Residential Subscriber, but is already receiving—or previously received at any time—any of the Programming, or any other audio, video, data or other programming services from EchoStar or any of its Affiliates on the date of the order; (v) the Subscriber Account is otherwise terminated, disconnected or deactivated for any reason, without limitation; or (vi) the Qualifying Residential Subscriber alleges that Retailer committed fraud or any other deceptive act or practice.

6.5.2 Retailer shall not be entitled to any Incentives with respect to the activation by EchoStar of a DISH DBS System, unless all of the individual components comprising the relevant DISH DBS Systems (i.e., receivers, dishes and LNBFs) are confirmed by EchoStar as having been purchased by Retailer directly from either (i) Echosphere L.L.C. or other Affiliate of EchoStar; or (ii) a Third Party Manufacturer, or the DISH DBS System is delivered pursuant to a Promotional Certificate that is confirmed by EchoStar as having been purchased by Retailer directly from either (i) Echosphere L.L.C. or other Affiliate of EchoStar; or (ii) a Third Party Manufacturer. Retailer acknowledges and agrees that EchoStar shall not be required to pay Incentives to Retailer in connection with a Promotional Certificate or DISH DBS System purchased by Retailer directly from a Third party Manufacturer, unless and until the Third Party Manufacturer provides EchoStar with accurate information required by EchoStar to be able to pay such Incentives to Retailer including, at a minimum: (a) the serial number of the Promotional Certificate or DISH DBS System sold by the Third Party Manufacturer to Retailer; and (b) the name and address, and other appropriate identifying information of Retailer.

6.6 **Suspension and Termination of Incentives.**

6.6.1 **Suspension.** In addition to any other rights and remedies available, EchoStar shall not be required to pay any Incentives to Retailer which would otherwise be due to Retailer during any period in which Retailer is in breach or default of this Agreement, the Trademark License Agreement (Attachment A) or any Other Agreement (as defined in Section 6.8 below), and EchoStar shall have no liability to Retailer as a result of such suspension of payment. Specifically, and without limitation of the foregoing, Retailer shall have no right at any time to recoup any Incentives not paid during a period of breach or default. The foregoing provisions of this Section 6.6.1 may be exercised without terminating this Agreement and are without prejudice to any other rights and remedies that EchoStar and/or its Affiliates may have under this Agreement, at law, in equity or otherwise. The provisions of this Section 6.6.1 shall survive expiration or termination of this Agreement, for any reason whatsoever, indefinitely (even if termination is due to a default or breach by EchoStar).

6.6.2 **Termination.** In the event this Agreement or any Other Agreement (as defined in Section 6.8, below) expires or is terminated for any reason whatsoever, EchoStar shall have the right, in addition to any other rights and remedies it may have, to terminate immediately all payments of Incentives then presently due and owing, or thereafter due, to Retailer under this Agreement.

6.7 **Non-Incentivized Activations by EchoStar.** In the event that Retailer for any reason does not qualify for an Incentive with respect to any Qualifying Residential Subscriber or any DISH DBS System, EchoStar shall be entitled to activate Programming for that Qualifying Residential Subscriber without payment of any Incentive to Retailer, even if Retailer solicited the Qualifying Residential Subscriber to order Programming from EchoStar.

6.8 **Offsets.** In no event shall Retailer offset any Programming payment which might be collected by Retailer, or any other amounts due to EchoStar or any of its Affiliates from Retailer for any reason, against any Incentives owed to Retailer by EchoStar or any other sums owed to Retailer by EchoStar or any of its Affiliates. In the event that the Incentives paid by EchoStar to Retailer exceed the amount to which Retailer was entitled, or if Retailer is indebted to EchoStar or its Affiliates under Section 13 below or for any

other reason, Retailer acknowledges and agrees that EchoStar and its Affiliates shall have the right, but not the obligation, to offset any such amounts due to EchoStar or its Affiliates from Retailer for any reason against any Incentives or other money otherwise due to Retailer from EchoStar or any of its Affiliates. Further, should one or more contracts now or hereafter exist between EchoStar and/or an Affiliate of EchoStar on the one hand and Retailer and/or an Affiliate of Retailer on the other hand, or if EchoStar or any such Affiliate is holding funds or equipment to be paid or disbursed to Retailer pursuant to business dealings between the parties not reflected in any contract (all such other contracts and business dealings with EchoStar and/or any Affiliate are herein collectively referred to as the "Other Agreements"), EchoStar or such Affiliate may, but shall have no obligation to, deduct from any amounts due or to become due to Retailer under this Agreement any sums which Retailer owes to EchoStar or such Affiliate, whether or not then due arising out of this Agreement or the Other Agreements, as well as any and all amounts for which EchoStar or such Affiliate may become liable to third parties by reason of Retailer's acts in performing, or failing to perform, Retailer's obligations under this Agreement or any of the Other Agreements. Further, EchoStar may, but shall have no obligation to, withhold such sums from any monies due or to become due to Retailer hereunder as EchoStar, in its sole discretion and for any reason, deems necessary to protect EchoStar or any Affiliate from any loss, damage, or expense relating to or arising out of Retailer's actions or performance hereunder, or in response to any claim or threatened claim of which EchoStar becomes aware concerning Retailer or the performance of Retailer's duties hereunder. EchoStar's right to money due and to become due hereunder shall not be subject to any defense (except payment), offset, counterclaim, or recoupment of Retailer whatsoever, including, but not limited to, any which might arise from a breach of this Agreement by EchoStar or any of its Affiliates. The provisions of this Section 6.8 shall survive expiration or termination of this Agreement, for any reason whatsoever, indefinitely (even if termination is due to a default or breach by EchoStar).

6.9 **Collection of Programming Fees.** Retailer acknowledges and agrees that, except for the installation of DISH DBS Systems which may be provided by Retailer, under no circumstances shall Retailer collect any payment for Programming or any other money due to EchoStar and/or any of EchoStar's Affiliates directly from any EchoStar Subscriber or other person, and all Programming fees will be billed directly to EchoStar Subscribers by EchoStar. In the event that, notwithstanding Retailer's best efforts to comply with this requirement, any EchoStar Subscriber or other person forwards any payment to Retailer rather than to EchoStar directly, Retailer shall immediately forward the payment, together with any applicable sales or similar taxes, to EchoStar without deduction or offset of any kind, and shall instruct the EchoStar Subscriber or other person that all future payments for Programming must be made to EchoStar directly.

6.10 **Sole Incentives.** Retailer acknowledges and agrees that the Incentives payable pursuant to this Agreement and any applicable Business Rules constitute the sole amounts payable by EchoStar to Retailer in connection with this Agreement.

6.11 **No Admission.** No payment to Retailer under this Agreement, whether in full or in part, shall be deemed to operate as EchoStar's acceptance, waiver or admission that Retailer has complied with any provision of this Agreement or the requirements of any Promotional Program including, without limitation, any Business Rules related thereto. The parties agree that at all times (including but not limited to in any arbitration or court proceeding) it shall remain Retailer's burden to prove eligibility for receipt of any Incentive (including, without limitation, performance of any conditions precedent thereto) or that any chargeback was incorrect.

6.12 **Acknowledgement.** Retailer hereby acknowledges and agrees that the Incentives paid to Retailer under this Agreement do not represent deferred compensation in any form whatsoever and are not being paid to Retailer with respect to the procurement of EchoStar Subscribers or the activation of EchoStar Subscriber Accounts, but rather are being paid to Retailer as an incentive to market, promote, and solicit orders for Programming from future subscribers and to provide continuing service to subscribers after initial activation.

6.13 **Assignment of Right to Payment.** Retailer does not have the power or the right to assign any payments, or its right to receive any payments, that may be due to Retailer under this Agreement. Any such assignment (whether express or by operation of law) shall be void and unenforceable. Any such attempted assignment shall immediately discontinue Retailer's right to future payments under this Agreement.

7. **ORDERS.**

7.1 Retailer agrees to use its reasonable commercial efforts to promote and enhance EchoStar's business, reputation and goodwill. Retailer shall not use any independent contractors, Affiliates or sub-agents to fulfill its obligations hereunder without EchoStar's specific prior written consent, which consent may be withheld in EchoStar's sole judgment for any reason whatsoever. In the event EchoStar does grant consent to Retailer to use persons not employed by Retailer to perform activities contemplated hereunder, Retailer shall be responsible for the acts and omissions of such persons under this Agreement to the same extent it is responsible for the acts and omissions of its own employees.

7.2 Retailer shall not sell Programming under any circumstances. All sales of Programming are transactions solely between EchoStar and EchoStar Subscribers. Retailer shall promptly forward to EchoStar all orders for Programming in the manner prescribed by EchoStar from time to time. Retailer understands that EchoStar shall have the right, in its sole discretion and for any reason, to accept or reject, in whole or in part, all orders for the Programming. Retailer also agrees that it shall not condition, tie or

otherwise bundle any purchase of Programming with the purchase of other services or products other than as specifically agreed to in writing by EchoStar in advance.

7.3 Retailer shall comply with each Business Rule, including without limitation all Business Rules which govern or are applicable to any Promotional Program in which Retailer elects to participate. Retailer shall disclose to each prospective EchoStar Subscriber the terms as are relevant to the Promotional Program in which the prospective EchoStar Subscriber is interested as well as any other terms as set forth in any applicable Business Rule. Furthermore, Retailer shall take all actions and refrain from taking any action, as reasonably requested by EchoStar in connection with the marketing, advertisement, promotion and/or solicitation of orders for Programming and sale of equipment and Retailer shall cooperate by supplying EchoStar with information relating to those actions as EchoStar reasonably requests. Failure to adhere to any Business Rules may result in disciplinary action up to and including termination and any other remedy provided in this Agreement.

7.4 Retailer hereby acknowledges and agrees that the relationship, contractual or otherwise, between EchoStar (and/or any of its Affiliates) and any consumer that purchases Programming services or other products and services from EchoStar and/or any of its Affiliates (an "EchoStar Subscriber") is, as between EchoStar and Retailer, for the sole and exclusive benefit of EchoStar and that EchoStar may conduct such relationship in any manner that it sees fit, in its sole discretion for any reason, without incurring any liability to Retailer. In furtherance (but not limitation) of the foregoing, Retailer acknowledges and agrees that Retailer is a not a third-party beneficiary of any agreement that EchoStar or any of its Affiliates may have with any EchoStar Subscriber, and that, under no circumstances, shall Retailer have any claim or cause of action against EchoStar or any Affiliate of EchoStar for any action taken by EchoStar and/or any of its Affiliates with regard to any EchoStar Subscriber. Retailer further acknowledges and agrees that all records created or maintained by, or on behalf of, EchoStar relating to any EchoStar Subscriber are the sole and exclusive property of EchoStar and EchoStar shall not have any obligation whatsoever to give or allow Retailer access to such information, even if authorized or requested by such EchoStar Subscriber. The provisions of this Section 7.4 shall survive expiration or termination of this Agreement for any reason whatsoever indefinitely (even if termination is due to a default or breach by EchoStar).

8. **TRADEMARK LICENSE AGREEMENT.** Retailer shall sign the Trademark License Agreement, in the form attached as Attachment A hereto, which agreement is hereby incorporated by reference in its entirety.

9. **CONDUCT OF BUSINESS.**

9.1 **Compliance with Laws.** Retailer shall comply with all applicable governmental statutes, laws, rules, regulations, ordinances, codes, directives, and orders (whether federal, state, municipal, or otherwise) and all amendments thereto, now enacted or hereafter promulgated, in force during the Term (hereinafter "Laws"), and Retailer is solely responsible for its compliance with all Laws which apply to its obligations under this Agreement.

9.2 **Signal Theft.** Retailer shall not directly or indirectly: (i) engage in any signal theft, piracy or similar activities; (ii) engage in any unauthorized reception, transmission, publication, use, display or similar activities with respect to Programming; (iii) use a single DISH Network account for the purpose of authorizing Programming for multiple DISH DBS Systems that are not all located in the same Residential Location and connected to the same phone line; (iv) alter any DISH DBS Systems or "Smart Cards", or any other equipment compatible with programming delivered by EchoStar or any of its Affiliates to be capable of signal theft (or for any other reason without the express written consent of EchoStar); (v) manufacture, import, offer to the public, sell provide or otherwise traffic in any technology, product, service, or device which is primarily designed or produced for the purpose of, or is marketed for use in, or has a limited commercially significant purpose other than, assisting in or facilitating signal theft or other piracy; or (vi) aid any others in engaging in, or attempting to engage in, any of the above described activities. Retailer shall immediately notify EchoStar if it becomes aware of any such activity by any person or entity.

9.3 **Hardware and Programming Export and Sale Restrictions.** In addition to, and not in limitation of, the Territory restrictions contained in this Agreement, Retailer hereby acknowledges that the U.S. Department of State and/or the U.S. Department of Commerce may in the future assert jurisdiction over DISH DBS Systems, and that DISH DBS Systems and Programming may not currently be sold outside of the Territory. Retailer represents and warrants that it will not directly or indirectly arrange for or participate in the export or sale of DISH DBS Systems or Programming, in whole or in part, outside of the Territory, and agrees that Retailer will take all reasonable and adequate steps to prevent the export or sale of DISH DBS Systems and Programming outside of the Territory by others who purchase from Retailer and who might reasonably be expected to export or sell them outside the Territory.

9.4 **Bounty Programs; Subscriber Information.** Retailer acknowledges that it is in the best interest of both EchoStar and Retailer for EchoStar Subscribers to be long-term customers of EchoStar and/or its Affiliates. Retailer acknowledges that churning of EchoStar Subscribers is detrimental to EchoStar and negatively affects EchoStar's ability to offer Monthly Incentives and/or Additional Incentives. Retailer acknowledges that for any Promotional Program to be viable, EchoStar Subscribers must be long-term subscribers to DISH Network. Therefore, Retailer agrees that, during the Term and for a period of five (5) years following the expiration or termination thereof for any reason whatsoever, Retailer and its Affiliates will not directly or indirectly operate, offer to any other person or entity, participate in, or assist any other person or entity to participate in, any promotion or program offered by any person or entity other than EchoStar or any of its Affiliates which provides for the delivery of an economic incentive or other benefit to Retailer, an

EchoStar Subscriber or any third party that is tied or connected to the solicitation of existing EchoStar Subscribers to cancel their EchoStar service and/or switch to a service offered by any other multi-channel video programming service provider (hereinafter a "Bounty Program"). Furthermore, Retailer agrees that, during the Term and for a period of five (5) years following the expiration or termination thereof for any reason whatsoever, Retailer and its Affiliates will not directly or indirectly produce, place, display or use any advertising or marketing material that explicitly references DISH Network, EchoStar, an Affiliate of EchoStar or EchoStar Subscribers and attempts to persuade EchoStar Subscribers to cancel their EchoStar service and/or switch to a service offered by any other multi-channel video programming service provider. In addition to and without limitation of the foregoing, Retailer acknowledges and agrees that the names, addresses and other identifying information of EchoStar Subscribers ("Subscriber Information") are proprietary to EchoStar and that Subscriber Information shall be treated with the highest degree of confidentiality by Retailer. During the Term and a period of five (5) years following the expiration or termination of this Agreement, Retailer will not, without the express prior written consent of EchoStar, which EchoStar may withhold in its sole discretion and for any reason, directly or indirectly: (i) make use of any list of past or current EchoStar Subscribers (whether developed by Retailer, obtained from EchoStar or obtained from any other source); (ii) use any Subscriber Information for the direct or indirect benefit of any individual or entity, other than EchoStar; or (iii) reveal any Subscriber Information to any third party for any reason, provided, however, that nothing herein shall prohibit Retailer from utilizing its own list of persons who have purchased any products or services from Retailer (but not a discrete portion thereof identifying only EchoStar Subscribers) for its general business operations if such operations are unrelated to the delivery of audio, video or data programming services or the provision of the hardware necessary to receive such services. Nothing in this Agreement shall preclude Retailer from receiving payments from another multi-channel video programming service provider in connection with the sale of that service provider's programming services to consumers who are not EchoStar Subscribers. The provisions of this Section 9.4 shall survive expiration or termination of this Agreement, for any reason whatsoever, for five (5) years (even if termination is due to a default or breach by EchoStar).

9.5 **Remedies.** Retailer agrees that any breach of its obligations set forth in this Section 9 will cause substantial and irreparable harm and injury to EchoStar for which monetary damages alone would be an inadequate remedy, and which damages are difficult to accurately measure. Accordingly, Retailer agrees that EchoStar shall have the right, in addition to any other remedies available, to obtain immediate injunctive relief (without the necessity of posting or filing a bond or other security) to restrain the threatened or actual violation hereof by Retailer, its employees or agents, as well as other equitable relief allowed by the federal and state courts. The provisions of this Section shall survive expiration or termination of this Agreement indefinitely (even if termination is due to a default or breach by EchoStar).

9.6 **Economic Benefits Derived Held in Trust.** In the event that Retailer derives an economic benefit, in any form, from a violation of its obligations under this Section 9, it is hereby agreed that such economic benefit is the property of EchoStar and that Retailer shall deliver the cash value of the economic benefit to EchoStar immediately upon receipt of the economic benefit. It is further agreed that Retailer shall hold such economic benefit in trust for the benefit of EchoStar until such time as its cash value is delivered to EchoStar. The foregoing is agreed to without prejudice to EchoStar to exercise any other rights and remedies it may have, including without limitation, the right to terminate this Agreement and seek damages or other legal or equitable relief. The provisions of this Section shall survive expiration or termination of this Agreement indefinitely (even if termination is due to a default or breach by EchoStar).

9.7 **Sales and Use Tax.** Any transactions between Retailer and consumers for the purchase of DISH DBS Systems and related equipment are transactions entered into solely and exclusively between Retailer and the consumer. Although EchoStar may from time to time incentivize Retailer to offer consumers free or discounted DISH DBS Systems and related equipment, EchoStar does not acquire or retain title in such DISH DBS Systems and related equipment. Retailer, and not EchoStar, is solely responsible for Retailer's investigation of and compliance with all Laws concerning sales and use taxes applicable to any equipment transactions between Retailer and consumers.

10. **TERM AND TERMINATION.**

10.1 **Term.** This Agreement shall commence on the date of execution by both parties and shall continue until December 31, 2004 (the "Term") unless earlier terminated by either party in accordance with the terms and conditions of this Agreement. This Agreement is not automatically renewable and neither party hereto shall be under any obligation whatsoever to offer or to accept an agreement to renew or replace this Agreement upon its expiration. **RETAILER RECOGNIZES THAT THIS AGREEMENT MAY BE TERMINATED PRIOR TO THE EXPIRATION OF THE TERM AND THAT NO REPRESENTATIONS HAVE BEEN MADE TO RETAILER THAT RETAILER WILL REMAIN AN AUTHORIZED RETAILER DURING THE ENTIRE TERM OR THAT THE AGREEMENT WILL NOT BE TERMINATED PRIOR TO EXPIRATION OF THE TERM PURSUANT TO SECTIONS 10.2, 10.3, 10.4 OR 10.5 BELOW.**

10.2 **Termination by Either Party Without Cause.** Either party may, in its sole discretion, terminate this Agreement for its convenience (without cause) by giving the other party no less than sixty (60) days prior written notice, except that EchoStar may not terminate Retailer without cause pursuant to this Section 10.2 during the first twelve calendar months of this Agreement if immediately prior to executing this Agreement, Retailer was an Authorized Retailer in good standing and not in breach or default under a Prior Retailer Agreement. EchoStar acknowledges and agrees that Retailer may choose to sell products or programming which compete

with EchoStar products, programming or services and that EchoStar cannot require Retailer to continue as an Authorized Retailer. Retailer acknowledges and agrees that it cannot require that EchoStar allow Retailer to remain an Authorized Retailer regardless of whether or not any other retailer is allowed to remain an Authorized Retailer.

10.3 Termination By Either Party Upon Default. This Agreement may be terminated by a party (the "Affected Party"), if the other party (the "Other Party") has failed to cure any Default (as defined below) within twenty (20) days of receipt of a written notice of such Default from the Affected Party. For the purposes of this Agreement a Default shall occur when the Other Party: (i) fails to pay any amount to either party or its Affiliates when due; (ii) fails to perform any obligation or breaches any representation, warranty or covenant in this Agreement, or the Trademark License Agreement (Attachment A) (regardless of whether breach or default of such obligation, representation, warranty or covenant is designated as giving rise to a termination right); (iii) becomes insolvent, or voluntary or involuntary bankruptcy, insolvency or similar proceedings are instituted against it; (iv) fails to maintain operations as a going business; (v) ceases to continuously and actively market and promote Programming; (vi) makes any representation or promise on behalf of the Affected Party inconsistent with the representations or promises that the Affected Party has specifically authorized.

10.4 Automatic Termination. This Agreement shall terminate automatically should any of the following occur, unless EchoStar notifies Retailer to the contrary in writing: (i) Retailer, or any officer, director, substantial shareholder or principal of the Retailer is convicted in a court of competent jurisdiction of any criminal offenses greater than a Class C Misdemeanor; (ii) Retailer fails to comply with any federal, state or local law or regulation; (iii) Retailer engages in any practice, related to the business conducted by the Retailer in connection with this Agreement, which is determined to be an illegal, deceptive or unfair trade practice in violation of any applicable federal, state or local law or regulation; (iv) Retailer falsifies any records or reports required hereunder or under any Business Rule; (v) the Trademark License Agreement (Attachment A) or any Other Agreement (as defined in Section 6.8 above) terminate for any reason; (vi) any actual or alleged fraud, misrepresentation, or illegal action of any sort by Retailer; (vii) Retailer fraudulently receives, or attempts to receive, an incentive or payment to which it is not entitled under this or any Other Agreement (as defined in Section 6.8 above); (viii) Retailer fraudulently receives, or attempts to receive, an Incentive or payment by misrepresenting any information concerning a prior EchoStar Subscriber to make that person or entity appear to be a new EchoStar Subscriber; (ix) Retailer fails to activate the applicable minimum number of new subscribers (the "New Subscriber Minimum") set forth in any applicable Business Rules; (x) any of the representations or warranties made by Retailer in this Agreement are false; (xi) Retailer is in breach or default of its obligations under Section 3.6, 3.7, 3.8, 3.9, 6.13, 9.2, 9.3, 9.4, or 9.7; or (xii) pursuant to Section 17.4.

10.5 Termination of Agreement. The parties hereto agree that if this Agreement terminates for any reason: (i) Retailer shall immediately discontinue the marketing, promotion, and solicitation of orders for Programming, and immediately cease to represent and/or imply to any person or entity that Retailer is an Authorized Retailer of EchoStar; (ii) Retailer shall immediately discontinue all use of the trademarks associated or included in any way whatsoever with the Programming, including, without limitation, DISH; (iii) Retailer shall deliver to EchoStar, or destroy, at EchoStar's option, all tangible things of every kind (excluding DISH DBS Systems) in Retailer's possession or control that bear any of the trademarks; (iv) Retailer shall upon request by EchoStar, certify in writing to EchoStar that such delivery or destruction has taken place; and (v) Retailer shall pay all sums due EchoStar under this Agreement, or any Other Agreement, within thirty (30) days of the date of termination.

11. INDEPENDENT CONTRACTOR. The relationship of the parties hereto is that of independent contractors. Retailer shall conduct its business as an independent contractor, and all persons employed in the conduct of such business shall be Retailer's employees only, and not employees or agents of EchoStar or its Affiliates. Retailer shall prominently state its business name, address and phone number in all communications with the public, including, without limitation, marketing materials, flyers, print ads, television or radio spots, web sites, emails, invoices, sales slips, and the like. Notwithstanding anything in this Agreement to the contrary, Retailer (including without limitation its officers, directors, agents and employees) shall not, under any circumstances, hold itself out to the public or represent that it is an agent, employee or Affiliate of EchoStar or any EchoStar Affiliate. In furtherance of (and without limiting) the foregoing, in no event shall Retailer use EchoStar's name or the name of any EchoStar Affiliate in any manner which would tend to imply that Retailer is an Affiliate of EchoStar or that Retailer is an agent or employee of EchoStar or one of its Affiliates or that Retailer is acting or is authorized to act on behalf of EchoStar or one of its Affiliates. This Agreement does not constitute any joint venture or partnership. Retailer represents that it is not dependent on EchoStar for a major part of its business. It is further understood and agreed that Retailer has no right or authority to make any representation, promise or agreement or take any action on behalf of EchoStar or an EchoStar Affiliate.

12. LIMITATION OF LIABILITY. The provisions of this Section 12 shall survive expiration or termination of this Agreement indefinitely (even if termination is due to a default or breach by EchoStar).

12.1 Upon termination of this Agreement for any reason set forth herein, Retailer shall have no right to require EchoStar to continue to allow Retailer to act as an Authorized Retailer to solicit orders on behalf of EchoStar. Retailer agrees that in the event of termination of this Agreement for any reason, no amounts spent in its fulfillment will be recoverable from EchoStar or any of its Affiliates by Retailer.

12.2 IN NO EVENT SHALL PROJECTIONS OR FORECASTS MADE BY EITHER PARTY BE BINDING AS COMMITMENTS OR PROMISES. IN NO EVENT SHALL ECHOSTAR OR ANY AFFILIATE OF ECHOSTAR BE LIABLE FOR

ANY EXEMPLARY, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES TO RETAILER (WHETHER FORESEEABLE OR NOT), INCLUDING WITHOUT LIMITATION ANY PAYMENT FOR LOST BUSINESS, FUTURE PROFITS, LOSS OF GOODWILL, REIMBURSEMENT FOR EXPENDITURES OR INVESTMENTS MADE OR COMMITMENTS ENTERED INTO, CREATION OF CLIENTELE, ADVERTISING COSTS, TERMINATION OF EMPLOYEES OR EMPLOYEES SALARIES, OVERHEAD OR FACILITIES INCURRED OR ACQUIRED BASED UPON THE BUSINESS DERIVED OR ANTICIPATED UNDER THIS AGREEMENT, CLAIMS UNDER DEALER TERMINATION, PROTECTION, NON-RENEWAL OR SIMILAR LAWS, FOR ANY CAUSE WHATSOEVER WHETHER OR NOT CAUSED BY NEGLIGENCE.

12.3 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF ECHOSTAR AND ITS AFFILIATES UNDER THIS AGREEMENT EXCEED THE AMOUNT PAID TO RETAILER BY ECHOSTAR UNDER THE TERMS OF THIS AGREEMENT.

13. **INDEMNIFICATION.** Retailer shall indemnify, defend and hold EchoStar 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 "EchoStar Group") harmless from and against, any and all costs, losses, liabilities, damages, lawsuits, judgments, claims, actions, penalties, fines and expenses (including, without limitation, interest, penalties, reasonable attorneys' fees and all monies paid in the investigation, defense or settlement of any or all of the foregoing) ("Claims"), that arise out of, or are incurred in connection with: (i) Retailer's performance or failure of performance under this Agreement and any direct or indirect results thereof, including but not limited to Retailer's sale and installation of DISH DBS Systems; (ii) Retailer's lawful or unlawful acts or omissions (or those of any of Retailer's employees or agents, whether or not such acts are within the scope of employment of such employees or agents) relating to the sale, marketing, advertisement, promotion or distribution of Programming, Promotional Certificates and/or DISH DBS Systems and related equipment; (iii) the failure of Retailer to comply with any provision of this Agreement or any Business Rule; (iv) the breach of any of Retailer's representations or warranties contained herein; (v) all purchases, contracts, debts and/or obligations made by Retailer; (vi) the failure of Retailer to comply with, or any actual or alleged violation of, any applicable laws, statute, ordinance, governmental administrative order, rule or regulation; (vii) any claim brought by Retailer's employees or agents for compensation and/or damages arising out of the expiration or termination of this Agreement; or (viii) any claim of pirating, infringement or imitation of the logos, trademarks or service marks of programming providers (except with respect to any marketing materials supplied to Retailer by EchoStar). In the event of any claim for indemnification by the EchoStar Group under this Section 13, the EchoStar Group shall be entitled to representation by counsel of its own choosing, at Retailer's sole cost and expense. The EchoStar Group shall have the right to the exclusive conduct of all negotiations, litigation, settlements and other proceedings arising from any such claim and Retailer shall, at its own cost and expense, render all assistance requested by EchoStar in connection with any such negotiation, litigation, settlement or other proceeding. Each indemnity obligation herein shall be in addition to and not in limitation of any other indemnity obligation set forth herein. The provisions of this Section 13 shall survive expiration or termination of this Agreement indefinitely (even if termination is due to a default or breach by EchoStar).

14. **CONFIDENTIALITY.** Except as otherwise set forth in Section 9.4, at all times during the term of this Agreement and for a period of three (3) years thereafter, Retailer and its employees will maintain, in confidence, the terms and provisions of this Agreement, the terms and provisions of any and all Business Rules and Promotional Programs, as well as all data, summaries, reports, communications or information of all kinds, whether oral or written, acquired, devised or developed in any manner from EchoStar's personnel or files, or as a direct or indirect result of Retailer's actions or performance under this Agreement, and Retailer represents that it has not and will not reveal the same to any persons not employed by Retailer, except: (i) at the written direction of EchoStar; (ii) to the extent necessary to comply with law, the valid order of a court of competent jurisdiction or the valid order or requirement of a governmental agency or any successor agency thereto, in which event Retailer shall notify EchoStar of the information in advance, prior to making any disclosure, and shall seek confidential treatment of such information; (iii) as part of its normal reporting or review procedure to its parent company, its auditors and its attorneys, provided such parent company, auditors and attorneys agree to be bound by the provisions of this paragraph; or (iv) to the extent necessary to permit the performance of obligations under this Agreement.

15. **DISPUTE RESOLUTION.**

Retailer acknowledges that EchoStar deals with thousands of Retailers and that hundreds of thousands of Incentive payments are made annually. Retailer acknowledges that any delay in notifying EchoStar of any alleged shortage or non payment, allegedly incorrect chargeback, or any other claim that may result in EchoStar's liability to Retailer for damages may impede EchoStar's ability to fully and timely investigate any such claim by Retailer. Retailer agrees that it is in each party's best interest to give EchoStar control over claims that have to be investigated and to allow EchoStar to investigate any such claim at the earliest possible moment as well as maintain an orderly method for handling Retailer claims. Accordingly, Retailer agrees to immediately inspect and review the statements described in Section 6.4 to determine any claims or disputes the Retailer believes exist and, in the event of any claim or dispute, to follow the procedures set forth below. Retailer also agrees to follow the below claims procedures for all other claims that may result in EchoStar's liability to Retailer for damages.

15.1 Claims for Breach or Default. IN THE EVENT OF AN OCCURRENCE THAT RENDERS, OR MIGHT RENDER, ECHOSTAR LIABLE TO RETAILER FOR ANY DAMAGES OR INJUNCTIVE RELIEF AS A RESULT OF ANY ALLEGED BREACH OR DEFAULT OF THIS AGREEMENT, RETAILER SHALL GIVE WRITTEN NOTICE OF SUCH OCCURRENCE AS SOON AS PRACTICABLE TO ECHOSTAR (A "NOTICE OF CLAIM"). IN NO EVENT SHALL ANY NOTICE OF CLAIM BE PROVIDED LATER THAN NINETY (90) DAYS AFTER THE DATE OF THE RELEVANT OCCURRENCE, OR THE SHORTEST PERIOD PERMITTED UNDER APPLICABLE LAW (IN THE EVENT THAT SUCH PERIOD IS IN EXCESS OF THE APPLICABLE PERIOD SET FORTH ABOVE). THE NOTICE OF CLAIM SHALL STATE: (A) THE DATE, TIME AND NATURE OF THE OCCURRENCE; (B) THE TOTAL AMOUNT CLAIMED BY RETAILER, IF ANY, IN CONNECTION WITH SUCH OCCURRENCE AND THE BASIS FOR ANY AMOUNT CLAIMED, AND (C) IDENTIFICATION OF ALL DOCUMENTS AND OTHER INFORMATION IN RETAILER'S CONTROL OR POSSESSION RELATING TO SUCH OCCURRENCE. RETAILER MAY SUBMIT A NOTICE OF CLAIM CONCERNING INCENTIVE PAYMENTS THROUGH ECHOSTAR'S RETAILER WEBSITE (<http://retailer.echostar.com>) IN ACCORDANCE WITH THE NOTICE OF CLAIM BUSINESS RULES. RETAILER MAY SUBMIT A NOTICE OF CLAIM CONCERNING ANY OTHER OCCURRENCE VIA ELECTRONIC MAIL TO executiveresolution@echostar.com WITH THE SUBJECT LINE "NOTICE OF CLAIM." AFTER SUBMITTING A NOTICE OF CLAIM, RETAILER SHALL PROVIDE ECHOSTAR WITH ANY AND ALL ADDITIONAL INFORMATION REQUESTED BY ECHOSTAR WITHIN THIRTY (30) DAYS AFTER RECEIPT OF ECHOSTAR'S REQUEST. ECHOSTAR SHALL BE ENTITLED TO HAVE ACCESS TO RETAILER'S BOOKS AND RECORDS DURING ITS INVESTIGATION OF RETAILER'S CLAIM. FAILURE TO STRICTLY COMPLY WITH THE PROVISIONS OF THIS SECTION 15.1 WITH RESPECT TO A PARTICULAR OCCURRENCE THAT RENDERS, OR MIGHT RENDER, ECHOSTAR IN BREACH OR DEFAULT OF THIS AGREEMENT AND LIABLE TO RETAILER FOR DAMAGES, SHALL CONSTITUTE A WAIVER BY RETAILER WITH RESPECT TO THE RELEVANT OCCURRENCE, INCLUDING ANY DAMAGES RELATED THERETO.

15.2 Mediation. The parties agree to submit any and all disputes, controversies or claims not otherwise barred or resolved under Section 15.1 or exempted under Section 15.4, which may arise between Retailer and/or any of its Affiliates, on the one hand, and EchoStar and/or any of its Affiliates, on the other hand, including but not limited to any and all disputes, controversies, and claims arising in connection with this Agreement including, without limitation, all disputes, controversies or claims related to: (i) the execution of this Agreement; (ii) the interpretation of this Agreement; (iii) a party's performance or failure to perform hereunder; (iv) the termination of this Agreement; and (v) any rights Retailer may have under dealer termination or non-renewal laws (collectively "Disputes"), to mandatory non-binding mediation (the "Mediation") in front of a single mediator. Either party may initiate a mediation by giving written notice to the other party describing the Dispute (a "Notice of Mediation"). The Notice of Mediation shall include (1) a statement of the initiating party's position and a summary of arguments supporting that position, and (2) the name and title of the executive who will represent that party and of any other persons who will accompany the executive. The Mediation must be initiated within one (1) year of the event(s) giving rise to the Dispute. The Mediation shall take place in the city and County of Denver, Colorado at a mutually agreeable time and location before a mediator chosen by mutual agreement of the parties. Each party shall participate through a representative with full settlement authority and shall bear its own costs and expenses and one-half of the costs and expenses of the mediator. Any such Mediation must be concluded within 60 days of the Notice of Mediation. Nothing contained herein shall limit or restrict the rights of either party and/or its Affiliates to file a Notice of Arbitration and/or bring a request for injunctive relief against the other party and/or its Affiliates for either party's and/or its Affiliates' violations of Sections 3.2, 3.6, 3.7, 3.8, 5, 6.9, 7.2, 7.3, 9.1, 9.2, 9.3, 9.4, 11, and 14 or any provisions of any Other Agreement (as defined in Section 6.8).

15.3 Arbitration. Except as set forth in Section 15.4, below, any and all disputes, controversies or claims between Retailer and/or any of its Affiliates, on the one hand, and EchoStar and/or any of its Affiliates, on the other hand, including without limitation any and all disputes, controversies or claims arising out of or in connection with this Agreement, including but not limited to the validity of section 15.3, the circumstances concerning the execution of this Agreement, and allegations of fraud in the inducement, or which relate to the parties' relationship with each other or either party's compliance with any state or federal law, which are not settled through negotiation, the claim process above, or the mediation process set forth above, shall be resolved solely and exclusively by binding arbitration in accordance with both the substantive and procedural laws of Title 9 of the U.S. Code ("Federal Arbitration Act") and the Commercial Arbitration Rules of the American Arbitration Association. In the event of any conflict between the Federal Arbitration Act and the Commercial Arbitration Rules of the American Arbitration Association, the Federal Arbitration Act will control. The Arbitration must be initiated within ninety (90) days from the final day of mediation, or 150 days from the Notice of Mediation in the event Mediation is not concluded within 60 days of the Notice of Mediation, and shall be initiated by written notice from the initiating party to the other party stating the initiating party's intent to initiate arbitration ("Notice of Arbitration"). The Arbitration shall be conducted in the City and County of Denver, Colorado by a panel of three arbitrators who shall be selected as follows: (i) one arbitrator shall be selected by the claimant(s) within 30 days of sending the Notice of Arbitration; (ii) one arbitrator shall be selected by the respondent(s) within 30 days of the claimant(s) notifying respondent of the identity of claimant's arbitrator; and (iii) the third arbitrator shall be selected by the arbitrators chosen by the claimant(s) and the respondent(s) within 30 days of their appointment. The decision of the arbitrators shall be final and binding on the parties and any award of the arbitrators may be entered and enforced as a final judgment in any state or Federal court of competent jurisdiction in the United States. The parties agree that, in no event, shall the arbitrators' decision include a recovery under any theory of liability, or award in any amount, not expressly allowed under this Agreement, any Promotional Program or applicable Business Rules. In furtherance and without limitation of the foregoing, any award made by the arbitrators shall be within the limitations set forth in Section 12. The cost of any arbitration hereunder, including without limitation the cost of the record or transcripts thereof, if any, administrative fees, and all other fees involved, shall be paid by the party(ies) determined

by the arbitrators to not be the prevailing party(ies), or otherwise allocated in an equitable manner as determined by the arbitrators. NEITHER PARTY HERETO NOR ITS AFFILIATES MAY BRING ANY DEMAND FOR ARBITRATION AGAINST THE OTHER PARTY AND/OR ITS AFFILIATES IF IT AND/OR ITS AFFILIATES HAVE: (i) FAILED TO FULLY COMPLY WITH THE PROCEDURES SET FORTH IN SECTIONS 15.1 AND 15.2 provided, however, that nothing contained herein shall limit or restrict the rights of either party and/or its Affiliates to file a Notice of Arbitration and/or bring a request for injunctive relief against the other party and/or its Affiliates for either party's and/or its Affiliates' violations of Sections 3.2, 3.6, 3.7, 3.8, 5, 6.9, 7.2, 7.3, 9.1, 9.2, 9.3, 9.4, 11, and 14 or any provisions of any Other Agreement (as defined in Section 6.8).

15.4 Exceptions. Notwithstanding the foregoing, the request by either party for preliminary or permanent injunctive relief, whether prohibitive or mandatory, shall not be subject to mediation or arbitration and may be adjudicated solely and exclusively in the United States District Court for the District of Colorado or in the appropriate state court of competent jurisdiction located in Arapahoe County, Colorado pursuant to Section 15.5, below. Furthermore, notwithstanding anything to the contrary in this Agreement, either party and/or its Affiliates may, at any time without regard for the time limitations or restrictions set forth above and without regard for Section 15.2, file a Notice of Arbitration and/or bring a request for injunctive relief against either party and/or its Affiliates for either party's and/or its Affiliates' violations of Sections 3.2, 3.6, 3.7, 3.8, 5, 6.9, 7.2, 7.3, 9.1, 9.2, 9.3, 9.4, 11, and 14 or any of the provisions of any Other Agreement (as defined in Section 6.8).

15.5 Choice of Law; Consent to Jurisdiction. The relationship between the parties and their present and future Affiliates, including without limitation all disputes, controversies or claims, whether arising in contract, tort, or under statute, 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 provisions. In the event a lawsuit is brought for injunctive relief pursuant to sections 15.2, 15.3, or 15.4 above, such lawsuit 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 all Colorado State Courts for the purposes set forth in this Section 15 and waive, fully and completely, any right to dismiss and/or transfer any action pursuant to Title 28 U.S.C. Sections 1404 or 1406 (or any successor statute). In the event 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 Arapahoe County, State of Colorado.

15.6 Survival. The provisions of this Section 15 shall survive expiration or termination of this Agreement indefinitely (even if termination is due to a default or breach by EchoStar).

16. INSURANCE.

16.1 Retailer shall, at its sole cost and expense, procure and maintain throughout the Term of this Agreement the following insurance coverages:

16.1.1 Workers' Compensation or similar employee benefit act coverage with statutory limits as prescribed by the laws of any state in which Retailer conducts business operations in connection with this Agreement and Employers' Liability coverage with limits and a deductible that are reasonable and adequate for businesses involved in the sale, installation, service and repair of consumer electronics.

16.1.2 Commercial General Liability coverage including, without limitation, coverage for Premises/Operations, Product/Completed Operations, Blanket Contractual Liability, Independent Contractors, Broad Form Property Damage, and Personal/Advertising Injury with limits and a deductible that are reasonable and adequate for businesses involved in the sale, installation, service and repair of consumer electronics.

16.1.3 Commercial Automobile Liability coverage which includes coverage for all owned, hired, and non-owned vehicles with limits and a deductible that are reasonable and adequate for businesses involved in the sale, installation, service and repair of consumer electronics.

16.2 All such policies and coverages shall be primary and non-contributory, issued by insurers, licensed to do business in any state in which Retailer conducts business operations in connection with this Agreement, and endorsed to provide EchoStar at least 30-days prior notification of cancellation or material change in coverage.

17. **MISCELLANEOUS.**

17.1 **Waiver.** Except as otherwise set forth to the contrary in Section 15.1, the failure of any 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. All rights and remedies reserved to either party shall be cumulative and shall not be in limitation of any other right or remedy which such party may have at law or in equity.

17.2 **Successor Interests; No Assignment by Retailer; Third Party beneficiaries.** This Agreement is binding upon the heirs, legal representatives, successors and permitted assigns of EchoStar and Retailer. In addition to, and not in limitation of the prohibition against assignment of payments set forth in Section 6.13, above, neither party shall assign this Agreement without the prior written consent of the other party, except that EchoStar may assign this Agreement to an Affiliate in whole or in part at any time without the consent of Retailer. Because this Agreement is made by EchoStar in reliance on the financial, business and personal reputation of Retailer and its ownership and management, any merger, reorganization or consolidation of Retailer shall be deemed an assignment and if any person not a substantial stockholder of Retailer (someone with less than a 25% interest) as of the date of this Agreement becomes a substantial stockholder of Retailer (equal to, or greater than a 25% interest), that shall be considered an assignment requiring EchoStar's consent hereunder. The provisions of this Agreement are for the exclusive benefit of the parties hereto, EchoStar's Affiliates and their heirs, legal representatives, successors and permitted assigns, and nothing in this Agreement, express or implied, is intended, or shall be deemed or construed, to confer upon any third party (other than as expressly set forth for Affiliates of EchoStar) any rights, benefits, duties, obligations, remedies or interests of any nature or kind whatsoever under or by reason of this Agreement.

17.3 **Construction and Interpretation.** Retailer and EchoStar 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 or the Business Rules, any amendments or addendums hereof or Exhibits hereto.

17.4 **Severability.** The parties agree that each provision contained herein is material to each party's decision to enter into this agreement and therefore, this Agreement shall automatically terminate upon the issuance of a final judgment holding that any one or more of the provisions contained herein, or the application thereof to any person, entity, or circumstance, for any reason is invalid, illegal, or unenforceable in any respect, except for any provisions that this Agreement expressly states shall survive expiration or termination of this Agreement indefinitely (even if termination is due to a default or breach by EchoStar).

17.5 **Entire Agreement.** This Agreement, together with any documents and exhibits given or delivered pursuant to this Agreement, constitutes the entire agreement between the parties to this Agreement. Except as expressly provided by this Agreement, no party shall be bound by any communications between them on the subject matter of this Agreement unless the communication is (a) in writing, (b) bears a date contemporaneous with or subsequent to the date of this Agreement, and (c) is signed by all parties to this Agreement. On the date this Agreement becomes effective as provided herein, all prior agreements (with the exception of the Business Rules, Other Agreements as defined in Section 6.8, and any previous Exclusive Bounty Hunter Agreement) or understandings between the parties shall be null and void. The parties specifically acknowledge there are no unwritten side agreements or oral agreements between the parties which alter, amend, modify or supplement this Agreement. Any provision of this Agreement which logically would be expected to survive termination or expiration, shall survive for a reasonable time period under the circumstances, whether or not specifically provided in this Agreement (even if termination is due to a default or breach by EchoStar).

17.6 **Compliance with Law.** The parties shall comply with, and agree that this Agreement is subject to, all applicable federal, state, and local laws, rules and regulations, and all amendments thereto, now enacted or hereafter promulgated in force during the term of this Agreement.

17.7 **Force Majeure.** Notwithstanding anything to the contrary in this Agreement, neither party shall be liable to the other for failure to fulfill its obligations hereunder if such failure is caused by or arises out of an act of force majeure including acts of God, war, riot, natural disaster, technical failure (including the failure of all or part of the communications satellite, or transponders on which the Programming is delivered to Qualifying Residential Subscribers, or of the related uplinking or other equipment) or any other reason beyond the reasonable control of the party whose performance is prevented during the period of such occurrence.

17.8 **Remedies Cumulative.** It is agreed that the rights and remedies herein provided in case of default or breach by Retailer of this Agreement are cumulative and shall not affect in any manner any other remedies that EchoStar may have by reason of such default or breach by Retailer. The exercise of any right or remedy herein provided shall be without prejudice to the right to exercise any other right or remedy provided herein, at law, or in equity.

17.9 **Records and Audit Rights.** During the Term of this Agreement and for a period of three (3) years thereafter, Retailer shall keep and maintain at its principal place of business complete and accurate records and books of account in connection with its performance under this Agreement. Such books and records shall be in sufficient detail to show all information necessary to support Retailer's claim, request or entitlement to any payments from EchoStar. EchoStar shall have the right, upon two (2) days prior written notice, to review, audit and make copies of Retailer's books and records for the purpose of determining Retailer's compliance with its duties and obligations under this Agreement (an "Audit"). EchoStar shall be entitled to conduct an Audit regardless of the existence of

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any claim, dispute, controversy, mediation, arbitration or litigation between the parties. In the event Retailer refuses to allow EchoStar to conduct an Audit, Retailer acknowledges that EchoStar shall be entitled to obtain immediate relief in the form of specific performance from either the panel of arbitrators (if arbitration has been commenced pursuant to Section 15, above) or a court of competent jurisdiction. Any audit conducted by EchoStar shall be conducted by EchoStar or its representative(s) at Retailer's offices during normal business hours. If an Audit reveals that Retailer has miscalculated any item bearing upon the Incentives paid to Retailer resulting in an overpayment of Incentives by EchoStar, Retailer agrees to: (i) repay to EchoStar the amount of any overpayment made together with interest thereon at the highest rate allowed by law computed from the date of the overpayment; and (ii) pay all reasonable costs and expenses, including reasonable attorney's fees and accountants fees incurred by EchoStar in connection with its Audit and with enforcing the collection of such amounts. ~~The provisions of this Section are without prejudice to any other rights and remedies that EchoStar and/or its Affiliates may have under this Agreement, at law, in equity or otherwise (all of which are hereby expressly reserved), and shall survive expiration or termination of this agreement for any reason whatsoever indefinitely (even if termination is due to a default or breach by EchoStar).~~

17.10 Notices. Except as otherwise provided in section 15.1, all notices to be given to EchoStar pursuant to this Agreement shall be in writing, signed by the Retailer, and sent by: (i) first class certified mail, postage prepaid; or (ii) overnight courier service, charges prepaid, to EchoStar, attention Mary Davidson, or current Director of Retail Services at the address listed on the first page of this Agreement with a copy to David K. Moskowitz, General Counsel at the same address, or such other address(es) as EchoStar may designate in writing to Retailer in accordance with this Section. Such notice shall be deemed given upon its receipt. Except as set forth in Section 6.2, all notices to be given to Retailer pursuant to this Agreement shall be in writing and sent by: (i) first class certified mail, postage prepaid; or (ii) overnight courier service, charges prepaid to Retailer at the address listed on the first page of this Agreement or such other address as Retailer may designate in writing delivered to EchoStar in accordance with this Section; or (iii) with the exception of notices given pursuant to Sections 10, 13 or 15, any method of mass communication reasonably directed to EchoStar's retailer base, including, without limitation, a fax blast, email or posting on EchoStar's retailer web site. Such notice shall be deemed given upon receipt in the case of first class mail or overnight courier service, fax blast or email and upon posting in the case of posting on EchoStar's retailer web site. It shall be Retailer's sole responsibility to keep itself informed of all notices, changes, or other information set forth in any fax blast, Charlie Chat or on EchoStar's retailer web site.

17.11 Attorneys' Fees In the event of any suit, action or arbitration between Retailer and/or any of its Affiliates, on the one hand, and EchoStar and/or any of its Affiliates, on the other hand, including but not limited to any and all suits, actions or arbitrations to enforce this Agreement, any Business Rules, any Promotional Program or any provisions thereof, the prevailing party shall be entitled to recover its costs, expenses and reasonable attorneys' fees, at arbitration, at trial and on appeal, in addition to all other sums allowed by law. The provisions of this Section shall survive expiration or termination of this Agreement indefinitely (even if termination is due to a default or breach by EchoStar).

17.12 Modifications Retailer acknowledges that EchoStar competes in the multi-channel video distribution market, which is highly competitive, fluid and volatile and that EchoStar must make changes to its marketing, promotion and sales of products from time to time to stay competitive. Therefore, Retailer agrees that EchoStar may, at any time and for any reason in its sole discretion, change or modify Incentives, Incentive schedules, Incentive structures, Promotional Programs, Business Rules, payment terms, or the chargeback rules associated therewith, upon notice to Retailer, without the need for any further consent, written or otherwise, from Retailer. IF ANY SUCH MODIFICATION OR CHANGE IS UNACCEPTABLE TO RETAILER, RETAILER'S ONLY RECOURSE IS TO TERMINATE THIS AGREEMENT. RETAILER'S CONTINUED PERFORMANCE UNDER THIS AGREEMENT FOLLOWING RECEIPT OF NOTICE OF A CHANGE OR MODIFICATION WILL CONSTITUTE RETAILER'S BINDING ACCEPTANCE OF THE CHANGE OR MODIFICATION. Except for such changes, and any other changes identified in this Agreement, any Promotional Program, Business Rules, or Other Agreement (as defined in Section 6.8) which may be made by either party in its sole discretion, any modification to this Agreement must be in writing and signed by both parties.

17.13 Interstate Commerce The parties acknowledge that the transactions contemplated by this Agreement involve interstate commerce.

17.14 General Provisions. The exhibits attached hereto are fully incorporated into this Agreement.

RETAILER AND ECHOSTAR HEREBY REPRESENT, WARRANT, ACKNOWLEDGE AND AGREE THAT: (A) THEIR INDEPENDENT COUNSEL HAS REVIEWED, OR THEY HAVE BEEN GIVEN A REASONABLE OPPORTUNITY FOR THEIR INDEPENDENT COUNSEL TO REVIEW (BUT DECLINED SUCH REVIEW), THIS AGREEMENT; (B) THE TERMS AND CONDITIONS OF THIS AGREEMENT, AND EACH AND EVERY PARAGRAPH AND EVERY PART HEREOF, HAVE BEEN COMPLETELY AND CAREFULLY READ BY, AND EXPLAINED TO, THE PARTIES; (C) THE TERMS AND CONDITIONS OF THIS AGREEMENT ARE FULLY AND COMPLETELY UNDERSTOOD BY EACH PARTY AND EACH PARTY IS COGNIZANT OF ALL OF SUCH TERMS

AND CONDITIONS AND THE EFFECT OF EACH AND ALL OF SUCH TERMS AND CONDITIONS; (D) THIS AGREEMENT IS MADE AND ENTERED INTO VOLUNTARILY BY EACH PARTY, FREE OF UNDUE INFLUENCE, COERCION, DURESS, MENACE OR FRAUD OF ANY KIND WHATSOEVER, AND HAS BEEN EXECUTED BY EACH PARTY OF THEIR OWN FREE WILL.

IN WITNESS WHEREOF, the parties hereto have signed and/or electronically accepted, this Agreement by their duly authorized representatives as of the date first written above.

ECHOSTAR SATELLITE L.L.C.

By: EchoStar DBS Corporation, its sole member

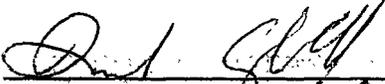
By: _____
Name:
Title:

RETAILER

midstate

Retailer Number: 4706411

Retailer Company Name: Century Satellite
Street Address: 15440 FM 529 Suite 201
City, State, Zip Code: Houston, TX 77095
(Please Print)

By: 
Name (Please Print): David Campbell
Title (Please Print): president



ATTACHMENT A

TRADEMARK LICENSE AGREEMENT

THIS TRADEMARK LICENSE AGREEMENT (the "Agreement") is made and effective as of the 1 day of March, 2004, by and between EchoStar Satellite L.L.C., formerly known as EchoStar Satellite Corporation ("ESLLC"), having a place of business at 9601 S. Meridian Blvd., Englewood, Colorado 80112, and Century Satellite, having a place of business at 15840 Fm 529, Suite 201, Houston, TX 77095 ("Licensee").

- A. ESLLC conducts business in worldwide locations as, among other things, a provider of direct broadcast satellite-delivered, multi-channel, digital video, audio and data services ("Programming"); and
- B. Licensee conducts business as, among other things, a retailer of satellite television products and services; and
- C. Licensee desires to be permitted to use the EchoStar trademarks, service marks and trade names set forth in Exhibit I hereto, which may be amended at any time and from time to time in ESLLC's sole discretion for any reason or no reason (the "Trademarks"), as ESLLC, in its sole discretion for any reason or no reason, may authorize, from time to time, under a non-exclusive license, to promote and solicit orders for DISH Network Programming.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. ESLLC hereby grants to Licensee a non-exclusive, non-transferable, revocable license (the "License") to use the Trademarks and such other trademarks as ESLLC may from time to time expressly in writing permit Licensee to use during the term of this Agreement, and no other term or license whatsoever, solely to promote the retail sale of ESLLC satellite television programming and the hardware necessary to receive such programming in its local advertising and promotional materials and at its business locations. Licensee shall have no right to use the logos, service marks or trademarks (whether in typewritten, stylized or any other form) of any programming providers, other than the logos, service marks and trademarks of programming providers that are contained in the advertising and promotional material provided to Licensee by ESLLC. No such materials shall indicate that any agreement of agency, partnership, joint venture, franchise or exclusive or non-exclusive distributorship exists between Licensee and ESLLC, unless ESLLC and Licensee enter into a separate written agreement permitting Licensee to do so. Notwithstanding the above, Licensee shall provide to ESLLC, at least thirty (30) days prior to first use, an example of any advertising or promotional materials in which Licensee intends to use any Trademarks or any such other trademarks (whether in typewritten, stylized or any other form), which use has not, within the past twelve months, been approved by ESLLC in exactly the manner intended for use. ESLLC may reject and prohibit Licensee from using such materials, in its sole discretion for any reason or no reason. If Licensee is required to, but fails to provide ESLLC with proposed advertising or promotional materials at least thirty (30) days prior to first use, ESLLC shall have just cause to immediately terminate this Agreement by providing written notice to Licensee to that effect. This Agreement is not intended, nor shall it be construed, as creating any agreement of agency, partnership, joint venture, franchise or of exclusive or non-exclusive distributor, or as creating any obligation on the part of ESLLC to enter into any such agreement with Licensee. Further, this Agreement is not intended, nor shall it be construed, as providing any rights to Licensee to purchase or sell products or programming manufactured and/or distributed by ESLLC. Licensee expressly recognizes and agrees that any goodwill now existing or hereafter created through any sales by Licensee of products or programming manufactured and/or distributed by ESLLC, shall inure to ESLLC's sole benefit. This License shall be effective until terminated by either party in accordance with the terms of this Agreement, or until termination of the Incentivized Retailer Agreement to which this Agreement is attached for any reason whatsoever.

2. The License granted by ESLLC is granted to Licensee only. Licensee has no authority to transfer or grant any sublicense to any other entity or individual for any reason, and if Licensee does so, such action shall terminate this Agreement, at ESLLC's option, at any time thereafter. Licensee shall immediately cease using Trademarks in typewritten, stylized or any other form upon termination or expiration of this Agreement for any reason whatsoever. Upon expiration or termination of this Agreement for any reason whatsoever, at ESLLC's option Licensee shall immediately destroy or deliver to ESLLC any and all advertising and promotional materials in Licensee's possession with Trademarks (whether in typewritten, stylized or any other form) on them. If ESLLC requests destruction of advertising and promotional materials, Licensee shall promptly execute an affidavit representing at a minimum that such materials were destroyed, and the date and means of destruction.

3. Licensee expressly recognizes and acknowledges that this License, as well as any past use of the Trademarks in any manner whatsoever by Licensee (including but not limited to use on signs, business cards, or in advertisements) or in any form whatsoever by Licensee (including but not limited to typewritten or stylized form), shall not confer upon Licensee any proprietary rights or interest to any Trademarks including, but not limited to any existing or future goodwill in the Trademarks. All goodwill in the Trademarks shall inure to ESLLC's sole benefit. Further, Licensee waives any and all past, present, or future claims it has or might have to the Trademarks (whether in typewritten, stylized or any other form) and acknowledges that as between ESLLC and Licensee, ESLLC has the exclusive rights to own and use the Trademarks (whether in typewritten, stylized or any other form), and that ESLLC retains full ownership of the Trademarks (whether in typewritten, stylized or any other form) notwithstanding the License granted herein. While Licensee has no right or authority to do so, in the event that Licensee has previously, or in the future reserves, files, or registers any of the Trademarks of ESLLC (whether in typewritten, stylized or any other form) or registers any domain name which includes all or any portion of the Trademarks of ESLLC, Licensee agrees to

notify ESLLC immediately, and immediately upon request of ESLLC, to assign any and all interest to ESLLC that is obtained through the reservation, filing, or registration of the Trademarks in the U.S. or any foreign jurisdiction or through the registration of any domain name, and hereby acknowledges that any such reservation, filing, or registration of the Trademarks or domain name which includes all or any portion of the Trademarks, whenever occurring, shall be on behalf of and for the sole benefit of ESLLC, and Licensee waives all claims or rights to any compensation whatsoever therefore. Licensee's obligations in this paragraph shall survive the expiration or termination (for any reason whatsoever) of this Agreement indefinitely.

4. Furthermore, Licensee agrees not to hold itself out as DISH Network, ESLLC or any related or affiliated entity. To avoid any confusion in this respect, Licensee agrees not to use either (i) the formative "DISH" in combination with the formative "NET", or (ii) the formative "ECHO" as part of its business name. Furthermore, Licensee agrees not to register any domain name which contains either (a) the formative "DISH" in combination with the formative "NET", or (b) the formative "ECHO" and Licensee further agrees to immediately transfer to ESLLC, upon ESLLC's request, any such domain names which it has registered. Licensee's failure to comply with the provisions of this Section 4 shall constitute a material breach of this Agreement.

5. Nothing in this Agreement shall be construed to bar ESLLC from protecting its right to the exclusive use of its Trademarks (whether in typewritten, stylized or any other form) against infringement thereof by any party or parties, including Licensee, either during the term of this Agreement or following any expiration or termination of Licensee's right to use the Trademarks pursuant to this Agreement for any reason whatsoever. Licensee will promptly and fully advise ESLLC of any use of any mark that may appear to infringe the Trademarks (whether in typewritten, stylized or any other form). Licensee will also fully cooperate with ESLLC in defense and protection of the Trademarks (whether in typewritten, stylized or any other form), at ESLLC's expense. Similarly, nothing in this Agreement shall be construed to require that ESLLC take any action to protect the Trademarks in any instance, and ESLLC shall not be liable to Licensee in any manner whatsoever for failure to take any such action.

6. (a) This Agreement shall continue for a period of time equal to the term of the Incentivized Retailer Agreement to which this Agreement is attached, unless terminated earlier for a reason provided herein. In addition to any provisions of this Agreement that survive termination or expiration of this Agreement by their term, any provision of this Agreement which logically would be expected to survive termination for any reason whatsoever or expiration, shall survive for a reasonable time period under the circumstances, whether or not specifically provided in this Agreement.

(b) This Agreement may be terminated by a party (the "Affected Party") in the event that the other party (the "Other Party") defaults on any obligation or breaches any representation, warranty or covenant in this Agreement (regardless of whether breach or default of such obligation, representation, warranty or covenant is designated as giving rise to a termination right), and such default or breach, if curable, is not cured within twenty (20) days of receipt of written notice from the Affected Party. The parties agree that all obligations, representations, warranties and covenants contained in this Agreement, whether or not specifically designated as such, are material to the agreement of the parties to enter into and continue this Agreement.

(c) This Agreement shall terminate automatically upon termination of the Incentivized Retailer Agreement to which this Agreement is attached for any reason whatsoever and upon termination of any Other Agreement (as defined in Section 6.8 of the Incentivized Retailer Agreement to which this Agreement is attached) for any reason, unless EchoStar notifies Licensee to the contrary in writing.

7. The relationship between the parties including all disputes and claims, whether arising in contract, tort, or under statute, shall be governed by and construed in accordance with the laws of the State of Colorado without giving any effect to its conflict of law provisions. Licensee and EchoStar acknowledge and agree that they and their counsel have reviewed, or have been given a reasonable opportunity to review, this Agreement and 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 or any amendments of Exhibits hereto.

Any and all disputes arising out of, or in connection with, the interpretation, performance or the nonperformance of this Agreement or any and all disputes arising out of, or in connection with, transactions in any way related to this Agreement and/or the relationship for any reason whatsoever between the parties (including but not limited to the termination of this Agreement or the relationship and Licensee's rights thereunder or disputes under rights granted pursuant to statutes or common law, including those in the state in which Licensee is located) shall be litigated solely and exclusively before the United States District Court for the District of Colorado. The parties consent to the *in personam* jurisdiction of said court for the purposes of any such litigation, and waive, fully and completely, any right to dismiss and/or transfer any action pursuant to 28 U.S.C.S. 1404 or 1406 (or any successor statute). In the event the United States District Court for the District of Colorado does not have subject matter jurisdiction of said matter, then such matter shall be litigated solely and exclusively before the appropriate state court of competent jurisdiction located in Arapahoe County, State of Colorado.

8. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have signed and/or electronically accepted, this Agreement by their duly authorized representatives as of the date first written above.

ECHOSTAR SATELLITE L.L.C.

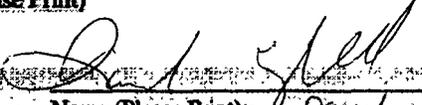
By: EchoStar DBS Corporation, its sole member

By: _____
Name:
Title:

LICENSEE *m.d.state*

Retailer Number: 4706411

Retailer Company Name: Century Satellite
Street Address: 15442 FM 529 Suite 201
City, State, Zip Code: Houston, TX 77095
(Please Print)

By: 
Name (Please Print): David Campbell
Title (Please Print): president

ML

**RECREATIONAL SPORTS & IMPORTS, INC.
AUTHORIZED RETAILER AGREEMENT**

This Agreement including exhibits attached hereto and documents incorporated by reference herein (collectively the "Agreement") is made and effective as of the 2 day of February, 2004, by and between Recreational Sports & Imports, Inc., ("RS&I") and its Affiliates (as herein defined), having a principal place of business at 2436 N. Woodruff Ave., Idaho Falls, ID 83401, and Century Satellite Inc ("Retailer"), having a principal place of business at 1594 Fm 525 Suite 201 Abilene, TX 77095.

INTRODUCTION

WHEREAS, RS&I, having entered into an agreement with EchoStar Satellite L.L.C. and Echosphere Corporation (collectively "EchoStar") and having been appointed as an Authorized EchoStar Distributor ("Authorized Distributor") to establish and maintain a network of Retailers, among other things, to direct and support Retailers in the Territory (as herein defined) with respect to the distribution and selling of satellite receivers, marketing, promotion and solicitation of Orders for Programming by authorized Retailers; and;

WHEREAS, EchoStar is engaged, among other things, in the business of marketing, distributing and selling satellite receivers, which for purposes of this Agreement shall be deemed to mean standalone consumer electronics devices, and related components packaged therewith intended to be utilized solely for the reception of video, audio and data programming for satellite transponders owned, leased and/or operated by Affiliates of EchoStar DISH DBS Systems, and providing digital direct broadcast satellite (DBS) services under the name "DISH Network" (including without limitation personal television/digital video recorder services and in-home service plans); and

WHEREAS, Retailer, acting as an independent contractor, desires to purchase DISH DBS Systems (as defined herein) from RS&I and become authorized on a non-exclusive basis, to market, promote, and solicit orders for Programming (an "Authorized Retailer") in the territory specified and in accordance with and subject to the terms and conditions of this Agreement;

NOW, THEREFORE, RS&I desires to appoint Retailer as an Authorized Retailer in accordance with and subject to the terms and conditions of this Agreement. In consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. **DEFINITIONS.** In addition to the capitalized terms defined elsewhere in this Agreement, the following definitions shall apply to this Agreement:

1.1 "Affiliate" means any person or entity directly or indirectly controlling, controlled by or under common control with another person or entity, including but not limited to their successors and respective assigns.

1.2 "Bulk Programming" means the Programming that EchoStar makes generally available for viewing in Guest Properties and bulk-billed MDU Properties, in each case assuming 100% penetration, subject to any restrictions (geographic, blackout, or otherwise) as EchoStar may impose on some or all such programming in its sole discretion. EchoStar reserves the right to change the Bulk Programming services offered and/or any restrictions applicable to such Bulk Programming services at any time and from time to time in its sole discretion for any reason or no reason.

1.3 "Business Rule(s)" means any term, requirement, condition, condition precedent, process or procedure associated with a Promotional Program or otherwise identified as a Business Rule by RS&I or EchoStar which is communicated to Retailer by RS&I or EchoStar or an Affiliate of EchoStar either directly (including email) or through any method of mass communication reasonably directed to RS&I's retailer base, including, without limitation, a "Charlie Chat", email, fax blast, or posting on RS&I's or EchoStar's retailer web site. Retailer agrees that RS&I and/or EchoStar has the right to modify the Business Rules at any time and from time to time in their sole discretion for any reason, upon notice to Retailer.

1.4 "Commercial Location" shall mean a Public Commercial Location and/or a Private Commercial Location, as those terms are defined below.

1.5 "Chargeback" means RS&I's right to reclaim Incentives pursuant to the terms and conditions of this Agreement, any Promotional Program, or applicable Business Rules.

1.6 "Commercial Programming" means the Programming that EchoStar makes generally available for viewing in

EXHIBIT C

Commercial Locations subject to any restrictions (geographic, blackout, or otherwise) as EchoStar may impose on some or all such programming services in its sole discretion. EchoStar reserves the right to change the Commercial Programming services offered and/or any restrictions applicable to such Commercial Programming services at any time and from time to time in its sole discretion for any reason or no reason.

1.7 "DISH DBS System" means a satellite receiver, which for purposes of this Agreement shall mean a single standalone and related components (if any) packaged therewith, intended to be utilized solely for the reception of Programming delivered by satellite transponders owned, leased and/or otherwise operated by EchoStar and/or its Affiliates, which is sold directly to Retailer by RS&I under the "EchoStar" brand name or the brand name of an EchoStar Affiliate with all such DISH DBS System sales confirmed by the tracking of bar code and serial number.

1.8 "DISH Network Subscriber" shall have the meaning as set forth in Section 9.5.

1.9 "Eligible Programming" means the Programming packages designated by EchoStar as qualifying for the payment of Incentives under this Agreement, as set forth in the Incentive Schedule attached as Exhibit B hereto, as such Incentive Schedule may be modified in whole or in part at any time and in EchoStar's sole discretion, upon notice to Retailer by EchoStar or RS&I.

1.10 "EFT" means the electronic transfer of funds from one financial institution to another.

1.11 "Guest Property" means a hotel, motel, hospital, other healthcare facility, or any other similar type of facility located in the Territory that regularly permits overnight or otherwise short-term stays by individuals. Notwithstanding the foregoing, EchoStar reserves the right to determine from time to time, in its sole discretion for any reason or no reason, whether a location constitutes a Guest Property, or is more appropriately considered another type of location.

1.12 "Incentives" mean the amounts paid to Retailer by RS&I for an EchoStar qualifying DISH Network Subscriber and Eligible Programming as set forth in the Incentive Schedule attached as Exhibit B, and as such terms are defined in Section 6.

1.13 "Institutional/Residential Location" means a property located in the Territory that displays Programming in a non-public, common viewing area within a property that is owned or operated by a government or commercial entity, in which employees are being provided residential living accommodations to facilitate the requirements of their job responsibilities. For example, non-public, common viewing areas within fire stations, oil rigs and coast guard stations are typically Institutional/Residential Locations. Notwithstanding the foregoing, EchoStar reserves the right to determine from time to time, in its sole discretion for any reason or no reason, whether a location constitutes an Institutional/Residential Location, or is more appropriately considered another type of location.

1.14 "MDU Property" means a dormitory, apartment building, condominium complex, retirement community, or other type of multifamily living establishment located in the Territory that affords residents living quarters. Notwithstanding the foregoing, EchoStar reserves the right to determine from time to time, in its sole discretion for any reason or no reason, whether a location constitutes an MDU Property (and, if so, what type of MDU Property, e.g., bulk-billed or other) or is more appropriately considered another type of location.

1.15 "Non-Incentivized Retailer Agreement" means a Non-Incentivized Retailer Agreement in the form attached as Exhibit C hereto, as such Non-Incentivized Retailer Agreement may change at any time and from time to time and from retailer to retailer in EchoStar's sole judgment and as provided to Retailer by RS&I.

1.16 "Order" shall mean an activated order for certain Programming which, in complete accordance with all the terms of this Agreement, a Retailer solicits from a DISH Network Subscriber, under the direction of and with the support of RS&I, and which EchoStar, in its sole judgment, accepts and activates through authorization of a DISH DBS System.

1.17 "Other Agreement(s)" shall mean any (i) contract among Retailer and RS&I and/or any of RS&I's Affiliates, (ii) any business dealings that are not reflected in any contract, but pursuant to which RS&I and/or any of its Affiliates is holding funds or equipment to be paid or disbursed to Retailer, and (iii) any agreement between EchoStar and/or any of its Affiliates.

1.18 "Private Commercial Location" means a place of business located in the Territory that may be accessible to the public, and is not classified within the hospitality industry. For example, office reception areas or waiting rooms and the private offices of attorneys, doctors/dentists, and other business professionals are typically Private Commercial Locations. Notwithstanding the foregoing, EchoStar reserves the right to determine from time to time, in its sole discretion for any reason or no reason, whether a location constitutes a Private Commercial Location, or is more appropriately considered a Residential Location, Public Commercial Location, or other type of location.

1.19 "Products" means any DISH DBS System or secondary or stand-alone satellite receivers and any related accessories that are listed in RS&I's then current price schedule, as such may be changed at any time and from time to time in RS&I's sole judgment upon notice to Retailer.

1.20 "Programming" means the DISH Network video, audio, data and interactive programming services which EchoStar makes generally available to the public for viewing.

1.21 "Promotional Certificate" means a serialized certificate provided as part of Promotional Program (as herein defined) offered by EchoStar and available for purchase through Retailer from RS&I, for resale to a consumer which, among other things, entitles such consumer to a DISH DBS System (or the use of such system, if the program involves leasing the equipment to the consumer) and installation.

1.22 "Promotional Program" means: (i) a promotional offer, as determined by EchoStar, which Retailer may present to consumers in connection with Retailer's marketing, promotion and solicitation of orders for Programming; and (ii) the Business Rules, as determined by EchoStar, setting forth the terms and conditions governing the promotional offer. EchoStar reserves the right to discontinue any Promotional Program or change the Business Rules associated therewith at any time and from time to time in its sole discretion for any reason or no reason, upon notice to Retailer.

1.23 "Residential Location" means a single family residential dwelling (i.e. single family houses, apartments, condominiums or other dwellings used primarily for residential purposes); provided, however, in no case shall any satellite master antenna television system or private cable system in a residential multiple dwelling unit or any similar programming reception system (e.g., dormitories, etc.) be considered a Residential Location. EchoStar reserves the right to determine, in its sole discretion, whether a location constitutes a Residential Location, or is more appropriately considered a commercial or other non-residential location.

1.24 "Residential Programming" means the Programming that EchoStar makes generally available for viewing in Residential Locations and Institutional/Residential Locations subject to any restrictions (geographic, blackout, or otherwise) as EchoStar may impose on some or all such programming services in its sole discretion. EchoStar reserves the right to change the Residential Programming services offered and/or any restrictions applicable to such Residential Programming services at any time and from time to time in its sole discretion for any reason or no reason.

1.25 "Retailer" means and shall be limited to persons or entities acting as independent contractors who are located in the Territory, as herein defined, and: (i) market, promote and solicit Orders for Programming on behalf of RS&I, on a non-exclusive basis, to and from DISH Network Subscribers in the Territory; and (ii) have entered into a Retailer Agreement with RS&I; and (iii) have entered into a Non-Incentivized Retailer Agreement with EchoStar Satellite Corporation.

1.26 "Retailer Account" means the bank account, including account and ABA routing numbers, designated by Retailer in the manner prescribed RS&I may change from time to time by providing at least ten (10) days prior written notice to RS&I.

1.27 "Subscriber Account" means the account set up and maintained by EchoStar for a DISH Network Subscriber who purchased a DISH DBS System from a Retailer and for whom Eligible Programming has been activated by EchoStar and which account remains active and in good standing.

1.28 "Territory" shall mean the geographic area set forth in Exhibit A hereto, subject to the provisions of Section 7.3.1, but shall in no event include any area or location that is outside of the geographic boundaries of the United States, its territories, possessions or commonwealths.

1.29 "Unit" means: (i) for hospitals and other healthcare facilities located in the Territory, each television on the premises, (ii) for hotels, motels, and all other Guest Properties in the Territory, each room in the Guest Property, and (iii) for bulk-billed MDU Properties, each separate living quarters.

2. **REPRESENTATIONS AND WARRANTIES.** The parties hereto make the following representations and warranties with the specific intent to induce the other party into entering into this Agreement and recognize that the other party would not enter into this Agreement but for the following representations and warranties:

2.1 Each party represents that the execution, delivery and performance of this Agreement have been duly authorized and that it has the full right, power and authority to execute, deliver and perform this Agreement.

2.2 Each party represents that the signatures hereon are genuine and the person signing on behalf of each party is authorized by the respective party to execute the Agreement on its behalf.

2.3 Retailer represents that (i) it is a valid and existing entity in compliance with all laws and regulations related to maintenance of its corporate or other business status; (ii) it is not currently insolvent; (iii) it is not violating any federal, state or local law or regulation; (iv) it has never engaged in any of the acts prohibited under Sections 3.6, 3.7, 3.8, 9.2, 9.3 or 9.4 below; (v) neither it nor any of its Affiliates have engaged in any acts which would have resulted in automatic termination or be considered default or breach under any current or former agreement between RS&I or EchoStar and/or any of its Affiliates; and (vi) it is not dependent upon RS&I or

EchoStar or its Affiliates for a major part of Retailer's business and that Retailer either sells or could sell other products or services in addition to EchoStar products or services that compete with EchoStar products or services.

2.4 EACH PARTY HERETO WARRANTS AND REPRESENTS THAT IT HAS READ THIS AGREEMENT IN ITS ENTIRETY AND THAT IT UNDERSTANDS FULLY EACH OF THE TERMS AND CONDITIONS SET FORTH HEREIN.

2.5 EACH PARTY HERETO WARRANTS AND REPRESENTS THAT IT HAS BEEN GIVEN THE OPPORTUNITY TO HAVE INDEPENDENT COUNSEL REVIEW THIS AGREEMENT PRIOR TO EXECUTION. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT EITHER THIS AGREEMENT HAS BEEN ACTUALLY REVIEWED BY ITS COUNSEL OR THAT SUCH PARTY HAS DECLINED TO HAVE ITS COUNSEL DO SO.

2.6 EACH PARTY HERETO REPRESENTS AND WARRANTS THAT IT IS NOT RELYING UPON ANY STATEMENTS OR REPRESENTATIONS NOT CONTAINED HEREIN AND THAT IT HAS NOT BEEN INDUCED INTO ENTERING THIS AGREEMENT BY ANY STATEMENTS, ACTS OR OMISSIONS NOT EXPRESSLY SET FORTH HEREIN.

2.7 EACH PARTY HERETO REPRESENTS AND WARRANTS THAT IT HAS NOT BEEN COERCED INTO ENTERING INTO THIS AGREEMENT AND THAT IT HAS ENTERED INTO THIS AGREEMENT OF ITS OWN FREE WILL AND FREE OF INFLUENCE OR DURESS.

3. APPOINTMENT OF RETAILER.

3.1 Appointment. RS&I has been appointed as a non-exclusive Authorized Distributor to direct and support Retailers in the Territory with respect to, among other things, the distribution and selling of EchoStar DBS satellite equipment, marketing, promotion and solicitation of Orders for Programming, subject to and in accordance with all of the terms and conditions of this Agreement and all Business Rules (which are hereby incorporated by reference in their entirety). The appointment set forth herein for the promotion of the DISH Network by Retailer shall apply to the same DBS service which may be operated by EchoStar or its Affiliates under a different name in the future. Retailer's authorization herein is limited to (i) the solicitation of orders for Residential Programming from, and the marketing, advertising and promotion of Residential Programming to, consumers at Residential Locations, Institutional/Residential Locations and non-bulk-billed MDUs, (ii) the solicitation of orders for Commercial Programming from, and the marketing, advertising and promotion of Commercial Programming to, commercial enterprises at Commercial Locations, and (iii) the solicitation of orders for Bulk Programming from, and the marketing, advertising and promotion of Programming to, commercial enterprises providing programming on a bulk-basis, assuming 100% penetration, to Guest Properties and bulk-billed MDU Properties.

3.2 Acceptance. Retailer hereby accepts its appointment as an Authorized Retailer, subject to and in accordance with all of the terms and conditions of this Agreement. Retailer understands that it may hold itself out to the public as an Authorized Retailer of RS&I only after fulfilling, and for so long as it continues to fulfill, all of the requirements in this Agreement, and only during the Term of this Agreement.

3.3 Promotion and Solicitation of Orders.

3.3.1 RS&I agrees to use its best efforts to direct and support Retailers in the Territory with the marketing, promotion and solicitation of Orders to and from DISH Network Subscribers in the Territory.

3.3.2 RS&I agrees to use its best efforts to direct and support Retailers in the Territory with the marketing and promotion of, and participation in, any and all promotions and incentive programs that EchoStar makes available to RS&I for Retailers benefit in its sole judgment at any time and from time to time.

3.3.3 RS&I will not sell, lease or otherwise transfer DISH DBS Systems to any person or entity who does not have a valid Non-Incentivized Retailer Agreement with EchoStar in full force and effect without EchoStar's prior written consent, which consent may be withheld in EchoStar's sole discretion. RS&I agrees to provide EchoStar with all assistance requested by EchoStar to cause a particular retailer to enter into a Non-Incentivized Retailer Agreement and Retailer agrees to provide its consent that RS&I may provide to EchoStar any such assistance requested. Notwithstanding the foregoing, Retailer acknowledges and agrees that EchoStar may refuse to sign or otherwise enter into any Non-Incentivized Retailer Agreement, as EchoStar may determine in its sole discretion, without any liability to EchoStar or RS&I whatsoever for such refusal.

3.4 Non-Exclusivity. Retailer hereby acknowledges and agrees that: (i) nothing in this Agreement is intended to, nor shall it be construed as, conferring any exclusive territory or any other exclusive rights upon Retailer; (ii) RS&I and its Affiliates make absolutely no promises, representations or warranties as to the potential amount of business or revenue that Retailer may expect to derive from participation in this Agreement; (iii) Retailer may not realize any business or revenue as result of its participation in this Agreement or any Promotional Program; (iv) nothing contained herein shall be construed as a guarantee of any minimum number of Incentives or any minimum amount of other compensation, payments, income, revenue or other economic benefit in any form whatsoever; and (v) EchoStar and RS&I currently offers, and/or at any time in the future may offer, other retailers the opportunity to act as an Authorized

Retailer or to solicit orders for Programming in the same geographic area in which Retailer is located and elsewhere.

3.5 Purchase of DISH DBS Systems by Retailer. In no event shall RS&I or any of its Affiliates be liable for any delay, or failure to fulfill, any purchase or order for a DBS System submitted by Retailer to RS&I, regardless of the cause of such delay or failure. Retailer hereby acknowledges and agrees that neither RS&I or EchoStar and their Affiliates have any obligation to re-purchase DISH DBS Systems or Promotional Certificates sold to Retailers at any time for any reason.

3.6 Sale of DISH DBS Systems. Retailer agrees that it will not directly or indirectly sell, lease or otherwise transfer possession of a DISH DBS System to any person or entity who Retailer knows or reasonably should have known: (i) intends to use it, to allow others to use it, or to resell, lease or otherwise transfer it for use in any location other than a Residential Location; (ii) intends to use it, to allow others to use it, or to resell, lease or otherwise transfer it for use in Canada, Mexico or at any other location outside of the United States, Puerto Rico and the U.S. Virgin Islands; or (iii) intends to have, to allow others to have, or to resell, lease or otherwise transfer it to others who will have Programming authorized for it under a single DISH Network account that has or will have Programming authorized for multiple satellite receivers that are not all located in the same Residential Location, Institutional/Residential Location, Unit of an MDU Property (except for Bulk Programming, in which case such multiple satellite receivers must all be located in the same MDU Property), Guest Property or Commercial Location, as the case may be, and connected to the same phone line. It shall be Retailer's responsibility to investigate and determine whether any sale by Retailer would be in violation of this Section. In the event that Retailer directly or indirectly sells, leases or otherwise transfers possession of a DISH DBS System or Promotional Certificate to a person or entity who uses it, allows others to use it, or resells, leases or otherwise transfers it for use, to permit the viewing of Residential Programming at a location other than a Residential Location, then Retailer agrees to pay to RS&I upon demand: (a) the difference between the amount actually received by EchoStar for the Programming authorized for the DISH DBS System and the full commercial rate for such Programming (regardless of whether EchoStar has or had commercial distribution rights for such Programming); and (b) the total amount of any admission charges or similar fees imposed for listening to or viewing such Programming (regardless of whether such charges and/or fees were imposed or collected by Retailer). In the event that Retailer directly or indirectly sells, leases or otherwise transfers possession of a DISH DBS System or Promotional Certificate to a person or entity who has, allows others to have, or resells, leases or otherwise transfers it to others who have, Programming authorized for it under a single DISH Network account that at any time has Programming activated for multiple DISH DBS Systems that are not all located in the same Residential Location, Institutional/Residential Location, Unit of an MDU Property (except for Bulk Programming, in which case such multiple satellite receivers must all be located in the same MDU Property), Guest Property or Commercial Location, as the case may be, and connected to the same phone line, and Retailer knew or reasonably should have known that the person or entity intended to have, allow others to have or resell, lease or otherwise transfer it to others who would have Programming authorized for the DISH DBS System under such an account, then Retailer agrees to pay to EchoStar upon demand, the difference between the amount actually received by EchoStar for the Programming authorized under the single account and the full retail price for such Programming had each DISH DBS System authorized under the single account been authorized under a separate DISH Network account. The foregoing provisions of this Section 3.6 are without prejudice to any other rights and remedies that RS&I or EchoStar and its Affiliates may have under this Agreement, at law, in equity or otherwise (all of which are hereby expressly reserved), and shall survive expiration or termination of this agreement for any reason whatsoever indefinitely (even if termination is due to a default or breach by EchoStar).

3.7 Pre-Activations. Retailer shall not directly or indirectly activate any DISH DBS System prior to installation of such DISH DBS System at a Residential Location (a "Pre-Activation"), nor shall Retailer directly or indirectly sell, lease or otherwise transfer possession of a DISH DBS System to any person or entity who Retailer knows or reasonably should have known intends to Pre-Activate it.

3.8 Financing; Making Payments on Behalf of End-Users. Retailer shall not directly or indirectly provide financing for the purchase of any Programming or make any payment to EchoStar for Programming services or otherwise on behalf of any end-user of any DISH DBS System, nor shall Retailer directly or indirectly sell, lease or otherwise transfer possession of a DISH DBS System to any person or entity who Retailer knows or reasonably should have known intends to provide financing for the purchase of any Programming or make any payment to EchoStar for Programming services or otherwise on behalf of the end-user of such DISH DBS System.

3.9 MDU Property / Guest Properties. Retailer shall ensure that no Guest Property or bulk-billed MDU Property engages directly or indirectly in: (a) the reselling of Bulk Programming (i.e. the property cannot charge more for the Bulk Programming than they pay to EchoStar); (b) the retransmission or rebroadcast of any Programming, except with the express written consent of EchoStar which EchoStar may withhold in its sole discretion for any reason or no reason; or (c) modifying, adding to, or deleting from any of the Bulk Programming. Retailer shall promptly notify EchoStar if it is aware of or suspects a change in the number of Units at any Guest Property or bulk-billed MDU Property subscribing to Bulk Programming. Retailer understands and agrees that Commercial Locations, bulk-billed MDU Properties, and Guest Properties may require the purchase of DISH DBS Systems invoiced under pricing specific to non-residential accounts, as further described in applicable Business Rules, and adjustable at any time and from time to time in EchoStar's sole discretion for any reason or no reason.

3.10 Prior Retailer Agreements. In the event that Retailer previously entered into any Retailer or Dealer Agreements (collectively, "Prior Retailer Agreements") with RS&I relating to the marketing, promotion, advertising or solicitation of orders for

Programming by Retailer, which is in effect (in whole or in part) as of the effective date of this Agreement, then upon execution of this Agreement by Retailer: (i) the Prior Retailer Agreement shall be automatically terminated, except that the provisions in the Prior Retailer Agreement which expressly survive, and such other rights and obligations thereunder as would logically be expected to survive termination or expiration shall continue in full force and effect; and (ii) except as set forth in Section 3.10, all rights and obligations between the parties shall be governed by the terms and conditions of this Agreement, and the Prior Retailer Agreement shall be of no force or effect. In furtherance of, and not in limitation of, the foregoing, any dispute which may have arisen under the Prior Retailer Agreement shall be resolved in accordance with the prior agreement.

3.10.1 Retailer shall hold RS&I harmless for any disputes or claims arising from a Prior Retailer Agreement between EchoStar and Retailer.

4. **PROGRAMMING.** EchoStar, in its sole judgment, shall determine the Programming for which Retailers in the Territory, under the direction of and with the support of RS&I, may solicit Orders. EchoStar and RS&I will provide direction to the Retailers concerning the Retailers' obligation to solicit Orders for Programming in the packages set by EchoStar from time to time. The initial Programming for which Retailers may solicit Orders is set forth in Business Rules. EchoStar may expand, reduce or otherwise modify Business Rules and the content of any packages at any time and from time to time in its sole judgment upon notice to RS&I. Any changes shall be effective (and Business Rules shall be deemed so modified) immediately upon notification to Retailer by RS&I, unless EchoStar or RS&I notifies Retailer of a different effective date. If at any time or for any reason EchoStar changes the content of any Programming package, Retailers' authorization to solicit Orders for the prior Programming package shall immediately cease.

5. **PRICES.** EchoStar, in its sole judgment, shall determine the retail prices at which Retailers in the Territory, under the direction of and with the support of RS&I, may solicit Orders for Programming. RS&I will provide direction to the Retailers concerning the Retailers' obligation to solicit Orders for Programming at the retail prices set by EchoStar from time to time. The initial retail prices for the Programming are as set forth in Business Rules. EchoStar may increase, decrease or otherwise modify Business Rules and the retail prices for Programming at any time and from time to time in its sole judgment upon notice to RS&I. Any changes shall be effective (and Business Rules shall be deemed so modified) immediately upon notification to Retailer by RS&I, unless EchoStar or RS&I notifies RS&I of a different effective date. If at any time or for any reason EchoStar changes the retail price of any Programming, Retailers' authorization to solicit Orders for Programming at the prior retail price shall immediately cease.

6. **INCENTIVES.** In consideration of RS&I's continuing efforts to direct and support Retailers in the Territory with respect to the marketing, promotion and solicitation of Orders for Programming by such Retailers and RS&I's continuing efforts to direct and support Retailers in the Territory with such Retailers' continuing service of DISH Network Subscribers after initial activation, Retailer may be eligible to receive the Incentives set forth below:

6.1 **Calculation.** Subject to the terms and conditions of this Agreement (including without limitation the Exhibits attached hereto) and any applicable Business Rules, for each DISH DBS System or Promotional Certificate that during the Term of this Agreement: (i) is sold by RS&I directly to a Retailer; (ii) is re-sold by such Retailer directly to a DISH Network Subscriber, Retailer may be eligible to receive an Incentive, in accordance with the Incentive Schedule attached hereto as Exhibit B. RS&I and EchoStar expressly reserve the right to change the Incentive Schedule in their sole discretion. EchoStar in its sole judgment shall determine whether a particular DISH Network Subscriber is a new Subscriber Account eligible for the payment of Incentives hereunder. ECHOSTAR'S CALCULATION AND PAYMENT OF MONTHLY INCENTIVES SHALL BE PRESUMED CONCLUSIVELY AND IRREFUTABLY CORRECT ABSENT A TIMELY NOTICE OF CLAIM BY RETAILER PURSUANT TO SECTION 17.1.

6.2 **Charge Back on Monthly Incentives.** IN THE EVENT THAT RETAILER IS PAID A MONTHLY INCENTIVE TO WHICH IT IS NOT ENTITLED PURSUANT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT OR ANY PROMOTIONAL PROGRAM OR APPLICABLE BUSINESS RULES, RS&I SHALL HAVE THE RIGHT TO CHARGE BACK SUCH MONTHLY INCENTIVE PAID TO RETAILER. ECHOSTAR'S CALCULATION AND ASSESSMENT OF ANY CHARGEBACK SHALL BE PRESUMED CONCLUSIVELY AND IRREFUTABLY CORRECT ABSENT A TIMELY NOTICE OF CLAIM BY RETAILER TO RS&I PURSUANT TO SECTION 17.1. FOLLOWING RS&I'S NOTIFICATION OF RETAILER'S CLAIM TO ECHOSTAR, ECHOSTAR'S DETERMINATION THAT A CHARGE BACK IS PROPER SHALL BE CONTROLLING, ABSENT FRAUD, MALICE OR WANTON AND WILLFUL MISCONDUCT ON THE PART OF ECHOSTAR. THE PROVISIONS OF THIS SECTION 6.2 SHALL SURVIVE EXPIRATION OR TERMINATION OF THIS AGREEMENT INDEFINITELY.

6.3 **Payment Terms.** Subject to the terms and conditions of this Agreement (including without limitation the Exhibits attached hereto), commencing with the first full calendar month in which a new Subscriber Account receives Eligible Programming, and for sixty (60) months thereafter in which the Subscriber Account receives Eligible Programming during the entire month, Retailer shall be entitled to a Monthly Incentive. Each Monthly Incentive payment shall be made by EchoStar to RS&I approximately forty five (45) days following the last day of each calendar month for which a Monthly Incentive is owed to RS&I (on or about the fifteenth day of each month). Subject to the terms and conditions of this Agreement, Retailer shall continue to receive a Monthly Incentive on or about the fifteenth day of each month for so long, and only so long, as Retailer continues to be an active, Authorized Retailer in good standing, and RS&I continues to be an Authorized Distributor. Notwithstanding anything to the contrary set forth herein, in no event shall any Notice of Claim relating to any alleged failure to pay any Incentives due and owing hereunder or any other amounts due and owing from RS&I

and/or its Affiliates, on the one hand, to Retailer and/or its Affiliates, on the other hand, or relating to any charge back of Incentives be provided later than thirty (30) days after the date that the relevant payment should have been made or the date that the relevant charge back occurred, as applicable, or later than thirty (30) days after expiration or termination of this Agreement for any reason whatsoever, whichever is earlier, or the shortest period permitted under applicable law (in the event that such period is in excess of the applicable period set forth above).

6.4 Non-Incentivized Activations. In the event that Retailer for any reason does not qualify for compensation from RS&I under this Agreement, or is otherwise not compensated by RS&I with respect to the activation of Programming for any consumer or any DISH DBS System, EchoStar shall be entitled to activate Programming for that consumer without payment of any incentive or other form of compensation to Retailer, even if Retailer solicited the consumer to order Programming from EchoStar.

6.4.1 IN THE EVENT THAT ECHOSTAR FOR ANY REASON DOES NOT COMPENSATE RS&I FOR THE ACTIVATION OF PROGRAMMING, FOR ANY CONSUMER OR ANY DISH DBS SYSTEM, RS&I SHALL NOT BE LIABLE TO COMPENSATE RETAILER FOR ANY RELATED PAYMENTS. ECHOSTAR, IN ITS SOLE DISCRETION SHALL DETERMINE WHETHER A PARTICULAR DISH NETWORK SUBSCRIBER IS A NEW SUBSCRIBER ACCOUNT AND ELIGIBLE FOR PAYMENT FROM RS&I.

6.5 Payment. Subject to the terms of this Section, all Incentives paid to Retailer hereunder shall be made by EFT

6.5.1 Electronic Funds Transfer. Retailer shall provide RS&I with their Retailer Account information and any changes thereto ("EFT Instructions"), in the manner prescribed by RS&I. RS&I may charge Retailer its reasonable costs, if any, incurred in initiating an electronic funds transfer. Until Retailer provides RS&I with EFT Instruction, or in the event that Retailer elects to receive payments by check, RS&I shall pay Incentives to Retailer by check on such dates as determined by RS&I.

6.5.2 Reliance on Retailer Account Information. With respect to Retailer's EFT Instructions, and any purported Retailer Account changes or modifications thereof, RS&I may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, and may assume the validity and accuracy of any statement or assertion contained in such writing or instrument and may assume that any person purporting to give any such writing, notice, advice, or instruction in connection with the provisions hereof has been duly authorized by Retailer to do so.

6.5.3 RS&I EFT Liability Limitation. Retailer agrees that in no event shall RS&I have any liability under this Agreement for any Incentives not received by Retailer as a result of an error in any way attributable to: (i) any bank or financial institution; (ii) Retailer; or (iii) any other person or entity outside of RS&I's direct control.

6.5.4 Incentive Statements. RS&I shall make available to Retailer, in an electronic format determined by RS&I in its sole discretion, periodic statements reflecting the Incentives (if any) paid to Retailer as well as any Chargebacks assessed against Retailer. Such information shall be available to Retailer upon RS&I's receipt of such Incentive information provided by EchoStar. Retailer acknowledges that RS&I may be unable and is not required to provide Retailer with any additional information, including but not limited to communications between EchoStar and any DISH Network Subscriber or any regarding any DISH Network Subscriber information.

6.6 Payment Exceptions. Notwithstanding anything to the contrary set forth herein:

6.6.2 Retailer shall not be entitled to any Incentives with respect to any Subscriber Account for which: (i) the Eligible Programming has been cancelled; (ii) payment in full for the Eligible Programming has not been timely received by EchoStar in accordance with the terms and conditions of the then current EchoStar Residential Customer Service Agreement; (iii) a credit or refund has been issued by EchoStar for any reason (EchoStar shall have the discretion to issue a credit or refund in its sole judgment); (iv) the subscriber would otherwise be a DISH Network Subscriber, but is already receiving – or previously received at any time - any of the Programming, or any other audio, video, data or other programming services from EchoStar or any of its Affiliates on the date of the Order; (v) the Subscriber Account is otherwise terminated, disconnected or deactivated for any reason whatsoever; (vi) the DISH Network Subscriber alleges that their Retailer committed fraud or any other deceptive act or practice; or (vii) EchoStar has, for any reason, failed to pay RS&I for any Incentives.

6.6.3 Retailer shall not be entitled to any Incentives with respect to the activation by EchoStar of a DISH DBS System, unless all of the individual components comprising the relevant DISH DBS System (i.e., receivers, dishes and LNBFs) are confirmed by EchoStar as having been purchased by Retailer directly from RS&I, or the DISH DBS System is delivered pursuant to a Promotional Certificate that is confirmed by EchoStar as having been purchased by Retailer directly from RS&I. Retailer acknowledges and agrees that RS&I shall not be required to pay Incentives to Retailer in connection with DISH DBS Systems purchased by Retailer directly from EchoStar Corporation or any other Affiliates of EchoStar. Retailer must provide RS&I with accurate information required by EchoStar to be able to pay such Incentives to Retailer including, at a minimum: (a) the serial number of the Promotional Certificate or DISH DBS System sold by RS&I to Retailer; and (b) the name and address, and other appropriate identifying information of RS&I.

6.6.4 Retailer agrees and acknowledges, for the purposes of this Agreement, a Retailer shall be deemed to have "gone out of business" as determined by RS&I and/or EchoStar if Retailer has: (i) failed to sell any DISH DBS Systems that have resulted in the activation of Eligible Programming for a new Subscriber Account for a period of one hundred and eighty (180) consecutive days; (ii) become insolvent, or voluntary or involuntary bankruptcy, insolvency or similar proceedings have been instituted against the Retailer; (iii) for more than twenty (20) consecutive days, failed to maintain operations as an on-going business; (iv) for more than twenty (20) consecutive days, ceased to actively market and promote DISH DBS Receivers; or (v) failed to renew, or lost due to suspension, cancellation or revocation, for a period of fifteen (15) days or more, of any license, permit or similar document or authority required by law or governmental authority having jurisdiction, that is necessary in carrying out the intent of this Agreement or to maintain its corporate or other business status, as in effect as of the effective date of this Agreement.

6.7 Books and Records; Audit Rights.

6.7.1 During the Term and for a period of two (2) years after the expiration or termination thereof for any reason whatsoever, Retailer shall maintain books and records relating to its activities on behalf of RS&I and EchoStar and shall keep them at Retailer's principal place of business. Retailer agrees to keep complete and accurate books and records relating to: (i) the performance of its duties and obligations under this Agreement; (ii) the payment of incentives, co-op payments and all other payments of any type made to Retailer by RS&I or any of its Affiliates; (iii) all payments of any type made by Retailer to RS&I or any of its Affiliates; and (iv) all incentives and other amounts paid by RS&I or any of its Affiliates to Retailers, including without limitation all additional incentives passed through from RS&I to Retailers. From time to time during the term of this Agreement, RS&I shall have the right to, upon two (2) business days prior notice to Retailer to audit Retailer's books and records relating to the performance of this Agreement and shall have reasonable access to Retailer's personnel during reasonable business hours and without unreasonable disruption to Retailer's business. RS&I shall allow Retailer to review and comment on the findings of any audit and shall discuss the resolution of any discrepancies with Retailer, provided however that the adequacy of any resolution shall be determined by EchoStar and/or RS&I in their reasonable discretion.

6.7.2 Prior to RS&I selling DISH DBS Systems, to any particular Retailer, RS&I must verify that Retailer has a valid Non-Incentivized Retailer Agreement in full force and effect with EchoStar and RS&I must have received a Retailer Order Entry ("OE") number and Retailer Accounts Payable ("AP") number from EchoStar. In addition, RS&I will not enter into any supplementary agreements (written, oral or otherwise) with Retailer relating to the payment of Incentives to Retailer by RS&I or relating in any manner whatsoever to the subject matter of this Agreement, unless the form and substance of such agreements have been pre-approved by EchoStar in writing.

6.8 Suspension, Termination and Expiration of Incentives.

6.8.1 Suspension. In addition to any other rights and remedies available, RS&I shall not be required to pay any Incentives to Retailer which would otherwise be due to Retailer during any period in which Retailer is in breach or default of this Agreement or any Other Agreement, and RS&I shall have no liability to Retailer as a result of such suspension of payment. Specifically, and without limitation of the foregoing, Retailer shall have no right at any time to recoup any Incentives not paid during a period of breach or default. The foregoing provisions of this Section 6.8.1 may be exercised without terminating the Agreement and are without prejudice to any other rights and remedies that RS&I or EchoStar and/or its Affiliates may have at law, in equity or otherwise. The provisions of the Section 6.8.1 shall survive expiration or termination of this Agreement for any reason whatsoever indefinitely (even if termination is due to a default or breach by EchoStar).

6.8.2 Termination and Expiration. In the event this Agreement or any Other Agreement expires or is terminated for any reason whatsoever, RS&I shall have the right, in addition to any other rights and remedies it may have, to terminate immediately all payments of Incentives then presently, or thereafter, due and owing to Retailer under this Agreement, in addition to any other rights and remedies available to RS&I or EchoStar, upon the occurrence of any of the following events:

- (a) this Agreement is terminated for any reason whatsoever;
- (b) this Agreement expires and Retailer is in breach or default of this Agreement at the time of such expiration;
- (c) breach by Retailer of the Confidentiality provisions contained in Section 16 below, during the Term or after expiration or termination of this Agreement for any reason whatsoever;
- (d) Retailer has ceased to actively market and promote DISH DBS service in strict accordance with the terms and conditions of this Agreement for more than twenty (20) consecutive days; or
- (e) any Other Agreement is terminated for any reason whatsoever.

6.8.3 Retailers. Following expiration or termination of the Authorized Distributor Agreement between EchoStar and RS&I, with respect to Retailers who have earned Incentives under RS&I's Incentive structure prior to expiration or termination of this Agreement for any reason whatsoever that are payable after the date of such expiration or termination, EchoStar shall

have the option (exercisable in its sole judgment), but not the obligation, to: (1) commence paying Incentives directly to such Retailers; provided that, in the event that EchoStar exercises such option, EchoStar will only pay Incentives directly to Retailers who sign an Incentivized retailer agreement acceptable to EchoStar in its sole judgment (an "Incentivized Retailer Agreement") and such Incentives will be paid pursuant to the terms and conditions set forth in the relevant Incentivized Retailer Agreement; or (2) continue to pay such Retailers' portion of Incentives to RS&I and, in the event that EchoStar exercises such option, RS&I hereby covenants and agrees to pass all such amounts through to the relevant Retailers as herein define and in accordance with Section 6.8. In the event that EchoStar elects to commence paying incentives directly to such Retailers or to continue to pay such Retailers' portion of Incentives to RS&I, RS&I agrees to cooperate fully with EchoStar and provide all information, data or records reasonably requested by EchoStar in order to make such payments directly to Retailers or to pay such Retailers' portion of Incentives to RS&I, as the case may be.

6.8.4 **Offsets.** In the event that the Incentives paid by RS&I to Retailer exceed the amount to which Retailer was entitled, or if Retailer is indebted to RS&I or its Affiliates for any other reason (including without limitation for any chargebacks permitted hereunder), Retailer acknowledges and agrees that RS&I and its Affiliates shall have the right, but not the obligation, to offset any such amounts due to RS&I or its Affiliates from Retailer for any reason against any Incentives or other money otherwise due to Retailer from RS&I or any of its Affiliates. Further, should one or more contracts now or hereafter exist among RS&I and/or any of its Affiliates on the one hand and Retailer on the other hand, or if RS&I and/or any of its Affiliates is holding funds or equipment to be paid or disbursed to Retailer pursuant to business dealings between the parties not reflected in any Other Agreements, RS&I and/or any of its Affiliates may, but shall have no obligation to, deduct from any amounts due or to become due to Retailer under this Agreement any sums which Retailer owes to RS&I and/or any of its Affiliates, whether or not then due arising out of this Agreement or the Other Agreements, as well as any and all amounts for which RS&I and/or any of its Affiliates may become liable to third parties by reason of Retailer's acts in performing, or failing to perform, Retailer's obligations under this Agreement or any of the Other Agreements. Further, RS&I may, but shall have no obligation to, withhold such sums from any monies due or to become due to Retailer hereunder as RS&I, in its sole judgment, deems necessary to protect RS&I and/or any of its Affiliates from any loss, damage, or expense relating to or arising out of Retailer's performance hereunder, or in response to any claim or threatened claim of which RS&I becomes aware concerning Retailer or the performance of Retailer's duties hereunder. RS&I's right to money due and to become due hereunder shall not be subject to any defense (except payment), offset, counterclaim, or recoupment of Retailer whatsoever, including, but not limited to, any which might arise from a breach of this Agreement by RS&I or any of its Affiliates. The provisions of this Section 6.8 shall survive expiration or earlier termination of this Agreement or any Other Agreement for any reason whatsoever indefinitely (even if termination of this Section 6.8 is due to a default or breach by RS&I or EchoStar).

6.8.5 **Recovery of Outstanding Amounts.** EchoStar's calculation of Incentives and RS&I's offset amounts shall be binding absent manifest error. Within five (5) days after expiration or termination of this Agreement for any reason whatsoever, Retailer shall pay to RS&I all amounts owing from Retailer to RS&I and its Affiliates.

6.9 **Collection of Programming and Other Fees.** Retailer acknowledges and agrees that, except for the installation of DISH DBS Systems which may be provided by a Retailer, under no circumstance shall Retailer be allowed to collect any payment for Programming or any other amounts due to EchoStar and/or any of its Affiliates directly from any DISH Network Subscriber or other person (including, without limitation, a Retailer or its employees), and all Programming fees will be billed directly to DISH Network Subscribers by EchoStar. In the event that, notwithstanding Retailer's best efforts to comply with this requirement, any DISH Network Subscriber or other person forwards any such payment to Retailer rather than to EchoStar directly, Retailer shall immediately forward the payment, together with any applicable sales or similar taxes, to EchoStar without deduction or offset of any kind, and shall instruct the DISH Network Subscriber or other person that all future payments must be made to EchoStar directly.

6.10 **Sole Compensation.** Retailer acknowledges and agrees that the Incentives payable pursuant to this Agreement constitute the sole incentives and other fees payable by RS&I to Retailer, with respect to Retailers' solicitation of Orders for Programming, and for any other audio, video, data or other programming services or other Products and services (including without limitation personal television/digital video recorder services and in-home service plans) provided by EchoStar or any of its Affiliates and in connection with such Retailers' continuing service of DISH Network Subscribers after initial activation.

6.11 **No Admission.** No payment to Retailer under this Agreement, whether in full or in part, shall be deemed as RS&I's acceptance or admission that Retailer has complied with any provisions of this Agreement. The parties agree that at all times (including but not limited to in any arbitration or court proceeding) it shall remain Retailer's burden to prove eligibility for receipt of any Incentive (including, without limitation, performance of any conditions precedent thereto) or that any Chargeback was incorrect.

6.12 **Payment of Incentives to Retailers.**

6.12.1 Distributor acknowledges and agrees that it is solely responsible for paying Incentives to Retailers except as expressly set forth in Section 6.8.3. In no event, and under no circumstances, shall Retailers require EchoStar to pay Incentives to, or otherwise compensate, Retailers. Retailer acknowledges and agrees that no payments shall ever be due or owing to retailers from EchoStar in connection with: (a) DISH DBS Systems purchased by Retailers directly from RS&I; (b) the marketing, promotion or solicitation of Orders for Programming or for any other audio, video, data or other programming services or other products and services (including without limitation personal television/digital video recorder services and in-home service plans) provided by EchoStar or any

of its Affiliates by Retailers; (c) the continuing service of DISH Network Subscribers after initial activation by Retailers; or (d) the performance of installation and/or maintenance services for DISH DBS Systems and related accessories by Retailers. Retailer further acknowledges and agrees that any and all payments to be made to Retailers in connection with: (a) such DISH DBS Systems; (b) the marketing, promotion or solicitation of Orders for Programming, and for any other audio, video, data or other programming services or other products and services (including without limitation personal television/digital video recorder services and in-home service plans) provided by EchoStar or any of its Affiliates; (c) the continuing service of DISH Network Subscribers after initial activation; and (d) the performance of installation and/or maintenance services for DISH DBS Systems and related accessories shall be made exclusively by RS&I to Retailer, pursuant to the terms of agreements, if any, negotiated between Retailer and RS&I, and that Retailer shall look exclusively to RS&I for such payments.

6.12.2 Notwithstanding the foregoing, EchoStar shall have the option (exercisable in its sole judgment at any time), but not the obligation, to commence paying Incentives directly to Retailer; provided that, in the event that EchoStar exercises such option, EchoStar will only pay Incentives directly to Retailer who signs an Incentivized Retailer Agreement acceptable to EchoStar in its sole judgment pursuant to the terms and conditions set forth in the relevant Incentivized Retailer Agreement. In the event that EchoStar elects to commence paying incentives directly to RS&I's Retailers, RS&I agrees to cooperate with EchoStar and provide all information, data or records reasonably requested by EchoStar in order to make such payments directly to Retailer.

6.13 Assignment of Right to Payment Retailer does not have the power or the right to assign any payments, or its right to receive any payments that may be due to Retailer under this Agreement. Any such assignment (whether express or by operation of law) shall be void and unenforceable. Any such attempted assignment shall immediately discontinue Retailer's right to future payments under this Agreement.

6.14 Taxes. Any and all payments required to be made by Retailer to RS&I under this Agreement are exclusive of any tax, levy or similar governmental charge ("Taxes") that may be assessed against Retailer by any jurisdiction. In the event that, under the laws of any jurisdiction, Retailer is required to withhold Taxes on any such payment (with the exception for income Taxes assessed against RS&I or any Affiliate thereof), the amount of the payment will be automatically increased so that the amount actually remitted to RS&I, as the case may be, net of all Taxes, equals the amount invoiced or otherwise due. Retailer shall forthwith pay any amounts deducted or withheld from such payments to the relevant taxing or other authority in accordance with applicable law.

Z. RETAILER PURCHASES, TERMS, ORDERS, SHIPMENTS.

7.1 Payment. Retailer shall perform all its financial obligations to RS&I and/or its Affiliates on a timely basis, and all payments for Products shall be made prior to or upon delivery of shipment in U.S. dollars by certified funds, wire transfer or by guarantee from a third party floor-plan financing source acceptable to RS&I and/or its Affiliates, in its sole judgment. From time to time, RS&I, in its sole judgment, may extend credit to Retailer in such amounts and on such terms and conditions as RS&I determines, in its sole judgment. RS&I and/or its Affiliates reserve the right to withdraw or vary the amount of credit prospectively and to change the terms and conditions thereof. Unless otherwise expressly provided, no extension of credit shall extend the due date of any payment. Retailer hereby grants RS&I and/or its Affiliates a first priority security interest in any Products that Retailer purchases pursuant to such credit, and Retailer shall execute such financing statements and other instruments as RS&I shall require at any time, and from time to time, to protect RS&I's interest in such Products.

7.2 Default or Insecurity. In the event that Retailer defaults in any payment due RS&I and/or its Affiliates, or Retailer violates any term or condition of this Agreement or of any credit extended by RS&I to Retailer, or in the event that RS&I, in its sole judgment, at any time deems Retailer's financial condition inadequate to warrant further shipments, RS&I and/or its Affiliates reserves the right to cancel any order or delay any shipment to Retailer, to require payment for each shipment prior to shipment or delivery, and/or to require payment of all unpaid balances prior to any shipment and payment for that shipment.

7.3 Shipments. RS&I and/or its Affiliates will use its best and most reasonable efforts to make shipments of Products by the dates specified upon receipt of orders accepted from Retailer. All deliveries are contingent on RS&I's and/or its Affiliates' receiving timely shipment of necessary materials from EchoStar.

7.3.1 RS&I and/or its Affiliates will only ship Products to Retailer's locations in the Territory, or to Retailer's headquarters provided it is located in the Territory, and always on the condition that Distributor will only direct Products to be shipped to an authorized location in the Territory for Retailer's distribution to within the Territory serviced by Retailer's branch.

7.4 Cancellations and Modifications. All Retailer returns or Product shipment refusals may be subject to any restocking or COD fees as determined by RS&I and/or its Affiliates, in their sole judgment.

7.5 Echosphere Limited Warranty. Notwithstanding anything to the contrary set forth herein, Echosphere makes no warranty of Products other than the written "Limited Warranty" accompanying the Products at the time of delivery of each order and may modify this Limited Warranty at any time, in its sole judgment. RS&I shall not modify or extend, or permit any Retailer or any employee or agent of either to modify or extend, the terms or conditions of EchoStar's warranty in any way. This shall not preclude Retailers from giving

their own warranties of Products or offering their own agreements for servicing Products. Retailer shall notify RS&I and/or EchoStar promptly of any manufacturing defects in Products. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, THE WARRANTY GIVEN BY ECHOSTAR ABOVE IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE. IN NO EVENT SHALL ECHOSTAR BE LIABLE FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE) ARISING OUT OF OR IN CONNECTION WITH THE SALE, USE OR PERFORMANCE OF ANY PRODUCTS AND BASED UPON BREACH OF WARRANTY OR CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY.

7.6 Warranty Display. Whenever Retailer displays Products to the public, Retailer is required to display, at all times and in close proximity to such Products, a copy of the current Limited Warranty from EchoStar pertaining to the Products or a sign or poster containing the same, as required by regulation of the Federal Trade Commission or other applicable law. Retailer shall buy from RS&I copies of the current Limited Warranty and signs or posters of the warranty, in such quantities and at such times as necessary to enable the Retailers to fulfill their obligations under this Agreement.

8. **PROMOTIONAL PROGRAMS.** Retailer shall be eligible to participate in and use its best efforts to support, and be bound by all of the terms and conditions of (and all of such terms and conditions are hereby incorporated by reference in their entirety), such additional marketing promotions as RS&I may make available to Retailer in its sole judgment and as specifically authorized by EchoStar, from time to time. Retailer acknowledges and agrees that: (i) under no circumstances shall RS&I have at any time any obligation to offer any additional marketing promotions to Retailer, or in the event that additional marketing promotions are offered to others, to permit Retailer to be eligible to participate in them; (ii) RS&I and/or EchoStar may, in its sole judgment, add, discontinue, substitute, modify or otherwise alter any or all of the terms of any additional marketing promotions; (iii) in the event that RS&I offers any additional marketing promotions to Retailer, Retailer shall only be eligible to participate in such additional marketing promotions if and to the extent that it meets all of the qualification criteria and other terms and conditions as RS&I may establish in its sole judgment. In the event of any conflict or inconsistency between the terms of such additional marketing promotions and the terms of this Agreement, the terms and conditions of this Agreement shall control. Failure to adhere to any Business Rules related to any marketing promotion may result in disciplinary action up to and including termination and any other remedy provided in this Agreement.

9. CONDUCT OF BUSINESS.

9.1 Business Ethics. Retailer shall not engage in any activity or business transaction which could be considered unethical, as determined by EchoStar in accordance with prevailing business standards, or damaging to RS&I's or EchoStar's image or goodwill in any way. Retailer shall under no circumstances take action which could be considered disparaging to RS&I or EchoStar. Retailer shall comply with all applicable governmental statutes, laws, rules, regulations, ordinances, codes, directives, and orders (whether federal, state, municipal, or otherwise), and all amendments thereto, now enacted or hereafter promulgated, in force during the Term ("Laws"), and Retailer is solely responsible for its compliance with all Laws which apply to its obligations under this Agreement.

9.2 Signal Theft. Retailer shall not directly or indirectly: (i) engage in any signal theft, piracy or similar activities; (ii) engage in any unauthorized reception, transmission, publication, use, display or similar activities with respect to Programming; (iii) use a single DISH Network account for the purpose of authorizing Programming for multiple satellite receivers that are not all located in the same Residential Location, Institutional/Residential Location, Unit of an MDU Property (except for Bulk Programming, in which case such multiple satellite receivers must all be located in the same MDU Property), Guest Property or Commercial Location, as the case may be, and connected to the same phone line; (iv) alter any DISH DBS Systems or smart cards, or any other equipment compatible with programming delivered by EchoStar or any of its Affiliates to be capable of signal theft (or for any other reason without the express written consent of EchoStar); (v) manufacture, import, offer to the public, sell provide or otherwise traffic in any technology, product, service, or device which is primarily designed or produced for the purpose of, or is marketed for use in, or has a limited commercially significant purpose other than, assisting in or facilitating signal theft or other piracy; or (vi) aid any others in engaging in, or attempting to engage in, any of the above described activities. Retailer shall immediately notify EchoStar if it becomes aware of any such activity by any person or entity. The provisions of this Section 9.2 shall survive expiration or termination of this Agreement (for any reason whatsoever) indefinitely.

9.3 Hardware and Programming Export and Sale Restrictions. In addition to, and not in limitation of, the Territory restrictions contained in this Agreement, Retailer hereby acknowledges that the U.S. Department of State and/or the U.S. Department of Commerce may in the future assert jurisdiction over DISH DBS Systems, and that DISH DBS Systems and Programming may not currently be sold outside of the U.S., Puerto Rico and the U.S. Virgin Islands. Retailer represents and warrants that it will not directly or indirectly arrange for or participate in the export or sale of DISH DBS Systems or Programming, in whole or in part, outside of the United States, Puerto Rico and the U.S. Virgin Islands, and agrees that Retailer will take all reasonable and adequate steps to prevent the export or sale of DISH DBS Systems and Programming outside of the United States, Puerto Rico and the U.S. Virgin Islands by others who purchase, lease or otherwise receive DISH DBS Systems from Retailer and who might reasonably be expected to export or sell them outside the United States, Puerto Rico and the U.S. Virgin Islands.

9.3.1 Retailer acknowledges and understands that U.S. export laws relating to DISH DBS Systems may change

from time to time in the future. Retailer acknowledges and agrees that it is Retailer's sole responsibility to be and remain informed of all U.S. laws relating to the export of DISH DBS Systems outside of the U.S. and that RS&I or EchoStar and its Affiliates have absolutely no obligation to update Retailer regarding the status of U.S. export laws or any other U.S. laws relating to the export of DISH DBS Systems or any other products outside of the U.S. Retailer is strictly prohibited from violating any U.S. law relating to the export of DISH DBS Systems outside of the U.S. Should Retailer export DISH DBS Systems outside of the U.S. in violation of this Agreement and/or U.S. law, this Agreement shall automatically terminate.

9.4 Programming. Retailers shall not sell Programming under any circumstances. All sales of Programming are transactions solely between EchoStar and DISH Network Subscribers. Retailers shall not condition, tie or otherwise bundle any purchase of Programming with the purchase of other products or services other than as specifically agreed to in writing by EchoStar and RS&I in advance. Retailers will promptly forward to EchoStar all Orders for Programming in the manner prescribed by EchoStar from time to time. Retailer understands that EchoStar shall have the right, in its sole judgment, to accept or reject, in whole or in part, all Orders for Programming.

9.5 Subscriber Information. All consumers who subscribe to Programming and/or receive other services incidental, connected or related thereto or who purchase, lease or otherwise obtain the hardware necessary to receive any such Programming and/or services ("DISH Network Subscribers") shall be deemed customers of EchoStar for all purposes relating to programming services, including without limitation video, audio and data services and other services incidental, connected or related thereto, ("Services") and the hardware necessary to receive such services ("Hardware"). Retailer acknowledges and agrees that the names, addresses and other identifying information of DISH Network Subscribers ("Subscriber Information") are, as between Retailer and EchoStar, with respect to the delivery of Services and the provision of Hardware, proprietary to EchoStar, and shall be treated with the highest degree of confidentiality by Retailer. Retailer shall not directly or indirectly: (i) make use of any list of past or current DISH Network Subscribers (whether developed by Retailer or obtained from EchoStar or another source), (ii) use any Subscriber Information for the direct or indirect benefit of any individual or entity other than EchoStar, (iii) use any Subscriber Information for the purpose of soliciting, or permit any others to solicit, subscribers to subscribe to any Services offered by anyone other than EchoStar, or (iv) reveal any Subscriber Information to any third party for any reason without the express prior written consent of EchoStar, which EchoStar may withhold in its sole and absolute judgment; provided, however, that nothing shall prohibit Retailer from utilizing its own customer list (but not a discrete portion thereof identifying any DISH Network Subscribers) for its general business operations unrelated to the delivery of the Services or the provision of Hardware. The provisions of this Section 9.5 shall survive expiration or termination of this Agreement (for any reason whatsoever) for five (5) years.

9.6 Quotas. RS&I reserves the right to require Retailer produce a minimum number of qualified Subscriber Accounts per month (hereinafter "Quota(s)"). RS&I shall utilize the size of Retailer's market, competition and other factors, to determine Retailer's quarterly and annual activation Quota requirements during the Term of this Agreement.

9.6.1 In the event that Retailer fails to achieve an established Quota requirement for two consecutive calendar quarters or any calendar year, RS&I shall have the option, in its sole judgment, to take any of the following measures: (i) impose additional requirements on Retailer which, if not achieved or adhered to, would result in termination of Retailer, and/or (ii) take such further action up to and including immediate termination of this Agreement as RS&I, in its sole judgment, deems appropriate. Failure by RS&I to take any action in response to Retailer's failure to achieve the qualified Subscriber Account Quota requirement for any quarter or calendar year shall not preclude any subsequent action by RS&I, or be deemed a waiver by RS&I of its right to take any action.

10. BOUNTY PROGRAMS. Retailer acknowledges that it is in the best interest of RS&I, EchoStar, and Retailer for DISH Network Subscribers to be long-term customers of EchoStar and/or its Affiliates. Retailer acknowledges that churning of DISH Network Subscribers is detrimental to EchoStar. Retailer acknowledges that for any Promotional Program to be viable, DISH Network Subscribers must be long-term subscribers to DISH Network. Therefore, Retailer agrees that, during the Term and for a period of five (5) years following the expiration or termination thereof for any reason whatsoever, Retailer and its Affiliates will not directly or indirectly in any manner whatsoever operate, offer to any other person or entity, participate in, or assist any other person or entity to participate in, any promotion or program offered by any person or entity other than EchoStar or any of its Affiliates (including without limit Retailer or any of its Affiliates) which directly or indirectly provides for the delivery of an economic incentive or other benefit to Retailer, DISH Network Subscribers or any other any person or entity in any form directly or indirectly in connection with the direct or indirect solicitation of customers of EchoStar or any other DBS provider or customers of any DTH satellite programming service provider, for any purpose whatsoever (including, without limitation, in connection with such person or entity directly or indirectly assisting in the process of attempting to cause a customer of EchoStar or any other DBS provider or a customer of any DTH programming service provider to become a subscriber to any other programming service provider). In addition to and without limit of the other, Retailer agrees that, during the Term and for a period of five (5) years following the expiration or termination thereof for any reason whatsoever, Retailer and its Affiliates will not directly or indirectly produce, place, display or use any advertising or marketing material that explicitly references DISH Network, EchoStar, an Affiliate of EchoStar or DISH Network Subscribers and attempts to persuade DISH Network Subscribers to cancel their EchoStar service and/or switch to a service offered by any other multi-channel video programming service provider. The provisions of this Section 10 shall survive expiration or termination of this Agreement (for any reason whatsoever) for five (5) years. Further during the Term and for a period of five (5) years following the expiration or termination thereof for any reason whatsoever, Retailer shall not convert, or directly or indirectly assist any other person or entity who Retailer actually knew or reasonably

should have known intended to convert, any DISH Network Subscriber to the services of any other DBS provider or the services of any DTH programming service provider or MVPD. For the avoidance of doubt, Retailer would not be in breach of this Section 10 if after the Term it sold a receiver capable of receiving the services of any other DBS provider or the services of any DTH programming service provider or MVPD to a retailer, which receiver was then sold by the retailer to an DISH Network Subscriber; provided that Retailer did not know or have reason to know at the time Retailer sold such receiver to the retailer that the retailer intended to use such receiver to convert an DISH Network Subscriber.

11. INSURANCE. Retailer shall, at its sole cost and expense, procure and maintain throughout the Term of this Agreement the following insurance coverages:

11.1 Workers' Compensation or similar employee benefit act coverage with statutory limits as prescribed by the laws of all states in which Retailer conducts business operations in connection with this Agreement and Employers' Liability coverage with limits and a deductible that are reasonable and adequate for businesses involved in the sale, installation, service and repair of consumer electronics.

11.2 Commercial General Liability coverage including, without limitation, coverage for Premises/Operations, Product/Completed Operations, Blanket Contractual Liability, Independent Contractors, Broad Form Property Damage, and Personal/Advertising Injury with limits and a deductible that are reasonable and adequate for businesses involved in the sale, installation, service and repair of consumer electronics.

11.3 Commercial Automobile Liability coverage which includes coverage for all owned, hired, and non-owned vehicles with limits and a deductible that are reasonable and adequate for businesses involved in the sale, installation, service and repair of consumer electronics.

11.4 Retailer shall provide to RS&I proof of all coverages required herein upon immediate request. All such policies and coverages shall be primary and non-contributory, issued by insurers, licensed to do business in all states in which Retailer conducts business operations in connection with this Agreement, and shall be endorsed to provide RS&I and EchoStar at least 30-days prior notification of cancellation or material change in coverage and shall name RS&I and EchoStar as an additional insured.

12. TERM AND TERMINATION.

12.1 Term. This Agreement shall commence on the date first set forth above and shall continue through December 31, 2005 (the "Term") unless earlier terminated by either party in accordance with the terms and conditions of this Agreement. This Agreement is not automatically renewable and neither party hereto shall be under any obligation whatsoever to offer or to accept an agreement to renew or replace this Agreement upon its expiration. Except as expressly provided to the contrary in this Agreement, any obligations of the parties arising prior to expiration or termination of this Agreement for any reason whatsoever shall survive expiration or termination and continue in full force and effect. The acceptance of any Order, from, or the sale of any DISH DBS Systems to, Distributor after the expiration or termination of this Agreement for any reason whatsoever shall not be construed as a renewal or extension of this Agreement. Rather such continued sales, if any, shall be considered as sales on a non-exclusive basis and on such terms as EchoStar may impose, in its sole judgment. **RETAILER RECOGNIZES THAT THIS AGREEMENT MAY BE TERMINATED PRIOR TO THE EXPIRATION OF THE TERM AND THAT NO REPRESENTATIONS HAVE BEEN MADE TO RETAILER THAT RETAILER WILL REMAIN AN AUTHORIZED RETAILER DURING THE ENTIRE TERM OR THAT THE AGREEMENT WILL NOT BE TERMINATED PRIOR TO EXPIRATION OF THE TERM PURSUANT TO SECTIONS 12.2, 12.3, OR 12.4 BELOW.**

12.2 Termination By RS&I Upon Default. This Agreement may be terminated by RS&I upon the occurrence of any of the following:

- (a) Retailer commits a payment default which is not cured within thirty (30) days of receipt of written notice from RS&I or any of its Affiliates (for purposes of this Section 12.2), Retailer shall be deemed to have committed a "payment default" if Retailer fails to pay any amount owing to RS&I and/or any of its Affiliates when due whether such amount is owing under this Agreement or any Other Agreement); or
- (b) Retailer defaults on any material obligation or breaches any material representation, warranty or covenant in this Agreement or any Other Agreement, and such default or breach, if curable, is not cured within thirty (30) days of receipt of written notice from RS&I; or
- (c) at any time upon thirty (30) days advance written notice to Retailer.

13.1 **Retailer an Independent Business.** The relationship of the parties hereto is that of independent contractors. Retailer shall conduct its business as an independent contractor, and all persons employed in the conduct of such business shall be Retailer's employees only, and not employees or agents of RS&I or EchoStar. Notwithstanding anything to the contrary set forth herein, Retailer (including without limitation its officers, directors, agents and employees) shall not hold itself out or represent that it is the agent or employee of RS&I or EchoStar. This Agreement does not constitute any joint venture, partnership, employment relationship, or franchise between Retailer and RS&I or EchoStar. It is further understood and agreed that Retailer has no right or authority to make any representation, promise or agreement on behalf of RS&I or EchoStar. Any such representation, promise or agreement made by, or attempted to be made by, Retailer shall constitute a breach of, and serve as grounds for an automatic termination of, this Agreement pursuant to Section 12.3.

13.1.2 Retailer, at its sole expense, shall provide and maintain in good working order all facilities, vehicles, tools and equipment as may be necessary or proper for the conduct of Retailer's operations under this Agreement, and from which it shall operate, and Retailer shall not have any responsibility or liability relating to said facilities, vehicles, tools and equipment.

13.1.3 Retailer shall have no authority to employ persons on behalf of RS&I or EchoStar and no employees of Retailer shall be deemed to be employees or agents of RS&I or EchoStar. No employees of Retailer shall be represented as, or represent themselves as, employees or partners of RS&I or EchoStar, and they shall not, under any circumstance, represent that they have any greater rights than those specifically provided in this Agreement. Retailer shall have the sole and exclusive right to hire, transfer, suspend, layoff, recall, promote, assign, discipline, adjust grievances and discharge its employees. Retailer is solely responsible for all salaries and other compensation of all Retailers' employees.

13.1.4 Retailer acknowledges that neither RS&I nor EchoStar has required Retailer to pay any franchise fee or other payment of any type as a condition of this Agreement. Retailer represents and warrants to RS&I and EchoStar that Retailer does not and shall not claim it to be a franchisee of EchoStar, in relation to this Agreement or for any purpose or under any Law.

14. **LIMITATION OF LIABILITY.** The provisions of this Section 14 shall survive expiration or termination of this Agreement indefinitely (even if terminated due to a default or breach of this Agreement by EchoStar).

14.1 Upon expiration or termination of this Agreement for any reason whatsoever, RS&I shall have no liability or obligation to Retailer whatsoever. Retailer shall have no right to require RS&I or EchoStar to continue to allow Retailer to act as an Authorized Retailer. For example and not by limitation, in any such event Retailer shall have no right to require RS&I or EchoStar to continue to allow Retailer to act as an Authorized Retailer for EchoStar, and Retailer shall not be entitled to any further Incentives with respect to prior or future sales except as expressly set forth in Section 6.6.3. Retailer agrees that upon expiration or termination of this Agreement for any reason whatsoever, no amounts spent in its fulfillment will be recoverable from RS&I or any of its Affiliates by Retailer. The provisions of this Section 14.1 shall survive expiration or termination of this Agreement for any reason whatsoever indefinitely.

14.2 IN NO EVENT SHALL RS&I OR ANY AFFILIATE OF RS&I BE LIABLE FOR ANY EXEMPLARY, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES TO DISTRIBUTOR (INCLUDING WITHOUT LIMITATION, ANY PAYMENT FOR LOST BUSINESS, FUTURE PROFITS, LOSS OF GOODWILL, REIMBURSEMENT FOR EXPENDITURES OR INVESTMENTS MADE OR COMMITMENTS ENTERED INTO, CREATION OR CLIENTELE, ADVERTISING COSTS, TERMINATION OF EMPLOYEES OR EMPLOYEES SALARIES, OVERHEAD OR FACILITIES INCURRED OR ACQUIRED BASED UPON THE BUSINESS DERIVED OR ANTICIPATED UNDER THIS AGREEMENT), WHETHER FORESEEABLE OR NOT, CLAIMS UNDER DEALER AND/OR DISTRIBUTOR TERMINATION, PROTECTION, NON-RENEWAL OR SIMILAR LAWS, FOR ANY CAUSE WHATSOEVER WHETHER OR NOT CAUSED BY RS&I'S NEGLIGENCE, GROSS NEGLIGENCE OR WILFULL MISCONDUCT. IN NO EVENT SHALL ANY PROJECTIONS OR FORECASTS BY RS&I BE BINDING AS COMMITMENTS OR PROMISES BY RS&I. THE PROVISIONS OF THIS SECTION 14.2 SHALL SURVIVE EXPIRATION OR TERMINATION OF THIS AGREEMENT INDEFINITELY.

14.3 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF RS&I AND ITS AFFILIATES UNDER THIS AGREEMENT EXCEED THE AMOUNT PAID TO RETAILER BY RS&I UNDER THE TERMS OF THIS AGREEMENT.

15. **INDEMNIFICATION.** Retailer shall indemnify, defend and hold RS&I 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 "RS&I Group") harmless from and against, any and all costs, losses, liabilities, damages, lawsuits, judgments, claims, actions, penalties, fines and expenses (including, without limitation, interest, penalties, reasonable attorneys' fees and all monies paid in the investigation, defense or settlement of any or all of the foregoing) ("Claims"), that arise out of, or are incurred in connection with: (i) any act or omission of a Retailer who purchased, leased or otherwise received a DISH DBS System and/or Promotional Certificate from RS&I (or those of any agent, employee, officer or Affiliate of such Retailer, whether or not such act or omission is within the scope of authority or employment of any such agent, employee, officer or Affiliate of such Retailer), including, without limitation, any claim or defense which might arise from a breach of warranty, guaranty or representation relating to DISH DBS Systems and equipment,

that Retailer shall deliver the cash value of the economic benefit to RS&I and/or EchoStar immediately upon receipt of the economic benefit. It is further agreed that Retailer shall hold such economic benefit in trust for the benefit of RS&I and/or EchoStar until such time as its cash value is delivered to RS&I and/or EchoStar. The foregoing is agreed to without prejudice to RS&I and/or EchoStar to exercise any other rights and remedies it may have, including without limitation, the right to terminate this Agreement and seek damages or other legal or equitable relief. The provisions of this Section 16 shall survive expiration or termination of this Agreement for any reason whatsoever indefinitely.

17. DISPUTE RESOLUTION. Retailer acknowledges that EchoStar deals with several Distributors, thousands of Retailers, and that hundreds of thousands of Incentive payments are made annually. Retailer acknowledges that any delay in notifying RS&I of any alleged shortage or non-payment, allegedly incorrect chargeback, or any other claim that may result in RS&I's liability to Retailer for damages may impede EchoStar's ability to fully and timely investigate any such Retailer claim received by RS&I and provided to EchoStar. Retailer agrees that it is in each party's best interest to give EchoStar control over claims that have to be investigated and to allow EchoStar to investigate any such claim at the earliest possible moment as well as maintain an orderly method for handling Retailer's and RS&I's claims. Accordingly, Retailer agrees to immediately inspect and review the statements described in Section 6.5.4 to determine any claims or disputes the Retailer believes exist and, in the event of any claim or dispute, to follow the procedures set forth below. Retailer also agrees to follow the below claims procedures for all other claims received by RS&I and provided to EchoStar that may result in RS&I's liability to Retailer for damages.

17.1 Claims for Breach or Default. IN THE EVENT OF AN OCCURRENCE THAT RENDERS, OR MIGHT RENDER, RS&I LIABLE TO RETAILER FOR ANY DAMAGES OR INJUNCTIVE RELIEF AS A RESULT OF ANY ALLEGED BREACH OR DEFAULT OF THIS AGREEMENT, RETAILER SHALL GIVE WRITTEN NOTICE OF SUCH OCCURRENCE AS SOON AS PRACTICABLE TO RETAILER (A "NOTICE OF CLAIM"). IN NO EVENT SHALL ANY NOTICE OF CLAIM BE PROVIDED LATER THAN SIXTY (60) DAYS AFTER THE DATE OF THE RELEVANT OCCURRENCE, OR THE SHORTEST PERIOD PERMITTED UNDER APPLICABLE LAW (IN THE EVENT THAT SUCH PERIOD IS IN EXCESS OF THE APPLICABLE PERIOD SET FORTH ABOVE). THE NOTICE OF CLAIM SHALL STATE: (A) THE DATE, TIME AND NATURE OF THE OCCURRENCE; (B) THE TOTAL AMOUNT CLAIMED BY RETAILER, IF ANY, IN CONNECTION WITH SUCH OCCURRENCE AND THE BASIS FOR ANY AMOUNT CLAIMED, AND (C) IDENTIFICATION OF ALL DOCUMENTS AND OTHER INFORMATION IN RETAILER'S CONTROL OR POSSESSION RELATING TO SUCH OCCURRENCE. AFTER SUBMITTING A NOTICE OF CLAIM, RETAILER SHALL PROVIDE RS&I WITH ANY AND ALL ADDITIONAL INFORMATION REQUESTED BY RS&I WITHIN TWENTY (20) DAYS AFTER RECEIPT OF RS&I'S REQUEST. RS&I SHALL BE ENTITLED TO HAVE ACCESS TO RETAILER'S BOOKS AND RECORDS DURING ITS INVESTIGATION OF RETAILER'S CLAIM. FAILURE TO STRICTLY COMPLY WITH THE PROVISIONS OF THIS SECTION 17.1 WITH RESPECT TO A PARTICULAR OCCURRENCE THAT RENDERS, OR MIGHT RENDER, RS&I IN BREACH OR DEFAULT OF THIS AGREEMENT AND LIABLE TO RETAILER FOR DAMAGES, SHALL CONSTITUTE A WAIVER BY RETAILER WITH RESPECT TO THE RELEVANT OCCURRENCE, INCLUDING ANY DAMAGES RELATED THERETO.

17.2 MEDIATION. THE PARTIES AGREE TO SUBMIT ANY AND ALL DISPUTES, CONTROVERSIES OR CLAIMS NOT OTHERWISE BARRED OR RESOLVED UNDER SECTION 17.1 OR EXEMPTED UNDER SECTION 17.4, WHICH MAY ARISE BETWEEN RETAILER AND/OR ANY OF ITS AFFILIATES, ON THE ONE HAND, AND RS&I AND/OR ANY OF ITS AFFILIATES, ON THE OTHER HAND, INCLUDING BUT NOT LIMITED TO ANY AND ALL DISPUTES, CONTROVERSIES, AND CLAIMS ARISING IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER AGREEMENT INCLUDING, WITHOUT LIMITATION, ALL DISPUTES, CONTROVERSIES OR CLAIMS RELATED TO: (I) THE EXECUTION OF THIS AGREEMENT OR ANY OTHER AGREEMENT; (II) THE INTERPRETATION OF THIS AGREEMENT OR ANY OTHER AGREEMENT; (III) A PARTY'S PERFORMANCE OR FAILURE TO PERFORM HEREUNDER; (IV) THE TERMINATION OF THIS AGREEMENT OR ANY OTHER AGREEMENT; AND (V) ANY RIGHTS RETAILER MAY HAVE UNDER DEALER TERMINATION OR NON-RENEWAL LAWS (COLLECTIVELY "DISPUTES"), TO MANDATORY NON-BINDING MEDIATION (THE "MEDIATION") IN FRONT OF A SINGLE MEDIATOR. EITHER PARTY MAY INITIATE A MEDIATION BY GIVING WRITTEN NOTICE TO THE OTHER PARTY DESCRIBING THE DISPUTE (A "NOTICE OF MEDIATION"). THE NOTICE OF MEDIATION SHALL INCLUDE (1) A STATEMENT OF THE INITIATING PARTY'S POSITION AND A SUMMARY OF ARGUMENTS SUPPORTING THAT POSITION, AND (2) THE NAME AND TITLE OF THE EXECUTIVE WHO WILL REPRESENT THAT PARTY AND OF ANY OTHER PERSONS WHO WILL ACCOMPANY THE EXECUTIVE. THE MEDIATION MUST BE INITIATED WITHIN ONE (1) YEAR OF THE EVENT(S) GIVING RISE TO THE DISPUTE. THE MEDIATION SHALL TAKE PLACE IN THE CITY OF IDAHO FALLS, IDAHO AND COUNTY OF BONNEVILLE, IDAHO AT A MUTUALLY AGREEABLE TIME AND LOCATION BEFORE A MEDIATOR CHOSEN BY MUTUAL AGREEMENT OF THE PARTIES. EACH PARTY SHALL PARTICIPATE THROUGH A REPRESENTATIVE WITH FULL SETTLEMENT AUTHORITY AND SHALL BEAR ITS OWN COSTS AND EXPENSES AND ONE-HALF OF THE COSTS AND EXPENSES OF THE MEDIATOR. ANY SUCH MEDIATION MUST BE CONCLUDED WITHIN 60 DAYS OF THE NOTICE OF MEDIATION. NOTHING CONTAINED HEREIN SHALL LIMIT OR RESTRICT THE RIGHTS OF EITHER PARTY AND/OR ITS AFFILIATES TO FILE A NOTICE OF ARBITRATION AND/OR BRING A REQUEST FOR INJUNCTIVE RELIEF AGAINST THE OTHER PARTY AND/OR ITS AFFILIATES FOR EITHER PARTY'S AND/OR ITS AFFILIATES' VIOLATIONS OF THIS AGREEMENT OR ANY PROVISIONS OF ANY OTHER AGREEMENT (AS DEFINED IN SECTION 3.10).

17.3 ARBITRATION. EXCEPT AS SET FORTH IN SECTION 17.4, BELOW, ANY AND ALL DISPUTES, CONTROVERSIES OR CLAIMS BETWEEN RETAILER AND/OR ANY OF ITS AFFILIATES, ON THE ONE HAND, AND RS&I AND/OR ANY OF ITS AFFILIATES, ON THE OTHER HAND, INCLUDING WITHOUT LIMITATION ANY AND ALL DISPUTES, CONTROVERSIES OR CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE VALIDITY OF SECTION 17.3, THE CIRCUMSTANCES CONCERNING THE EXECUTION OF THIS AGREEMENT, AND ALLEGATIONS OF FRAUD IN THE INDUCEMENT, OR WHICH RELATE TO THE PARTIES' RELATIONSHIP WITH EACH OTHER OR EITHER PARTY'S COMPLIANCE WITH ANY STATE OR FEDERAL LAW, WHICH ARE NOT SETTLED THROUGH NEGOTIATION, THE CLAIM PROCESS ABOVE, OR THE MEDIATION PROCESS SET FORTH ABOVE, SHALL BE RESOLVED SOLELY AND EXCLUSIVELY BY BINDING ARBITRATION IN ACCORDANCE WITH BOTH THE SUBSTANTIVE AND PROCEDURAL LAWS OF TITLE 9 OF THE U.S. CODE ("FEDERAL ARBITRATION ACT") AND THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION. IN THE EVENT OF ANY CONFLICT BETWEEN THE FEDERAL ARBITRATION ACT AND THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION, THE FEDERAL ARBITRATION ACT WILL CONTROL. THE ARBITRATION MUST BE INITIATED WITHIN NINETY (90) DAYS FROM THE FINAL DAY OF MEDIATION, OR 150 DAYS FROM THE NOTICE OF MEDIATION IN THE EVENT MEDIATION IS NOT CONCLUDED WITHIN 60 DAYS OF THE NOTICE OF MEDIATION, AND SHALL BE INITIATED BY WRITTEN NOTICE FROM THE INITIATING PARTY TO THE OTHER PARTY STATING THE INITIATING PARTY'S INTENT TO INITIATE ARBITRATION ("NOTICE OF ARBITRATION"). THE ARBITRATION SHALL BE CONDUCTED IN THE CITY OF IDAHO FALLS, IDAHO AND COUNTY OF BONNEVILLE, IDAHO BY A PANEL OF THREE ARBITRATORS WHO SHALL BE SELECTED AS FOLLOWS: (I) ONE ARBITRATOR SHALL BE SELECTED BY THE CLAIMANT(S) WITHIN 30 DAYS OF SENDING THE NOTICE OF ARBITRATION; (II) ONE ARBITRATOR SHALL BE SELECTED BY THE RESPONDENT(S) WITHIN 30 DAYS OF THE CLAIMANT(S) NOTIFYING RESPONDENT OF THE IDENTITY OF CLAIMANT'S ARBITRATOR; AND (III) THE THIRD ARBITRATOR SHALL BE SELECTED BY THE ARBITRATORS CHOSEN BY THE CLAIMANT(S) AND THE RESPONDENT(S) WITHIN 30 DAYS OF THEIR APPOINTMENT. THE DECISION OF THE ARBITRATORS SHALL BE FINAL AND BINDING ON THE PARTIES AND ANY AWARD OF THE ARBITRATORS MAY BE ENTERED AND ENFORCED AS A FINAL JUDGMENT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE UNITED STATES. THE PARTIES AGREE THAT, IN NO EVENT, SHALL THE ARBITRATORS' DECISION INCLUDE A RECOVERY UNDER ANY THEORY OF LIABILITY, OR AWARD IN ANY AMOUNT, NOT EXPRESSLY ALLOWED UNDER THIS AGREEMENT, ANY PROMOTIONAL PROGRAM OR APPLICABLE BUSINESS RULES. IN FURTHERANCE AND WITHOUT LIMITATION OF THE FOREGOING, ANY AWARD MADE BY THE ARBITRATORS SHALL BE WITHIN THE LIMITATIONS SET FORTH IN SECTION 14. THE COST OF ANY ARBITRATION HEREUNDER, INCLUDING WITHOUT LIMITATION THE COST OF THE RECORD OR TRANSCRIPTS THEREOF, IF ANY, ADMINISTRATIVE FEES, AND ALL OTHER FEES INVOLVED, SHALL BE PAID BY THE PARTY(IES) DETERMINED BY THE ARBITRATORS TO NOT BE THE PREVAILING PARTY(IES), OR OTHERWISE ALLOCATED IN AN EQUITABLE MANNER AS DETERMINED BY THE ARBITRATORS. NEITHER PARTY HERETO NOR ITS AFFILIATES MAY BRING ANY DEMAND FOR ARBITRATION AGAINST THE OTHER PARTY AND/OR ITS AFFILIATES IF IT AND/OR ITS AFFILIATES HAVE: (I) FAILED TO FULLY COMPLY WITH THE PROCEDURES SET FORTH IN SECTIONS 17.1 AND 18.2 PROVIDED, HOWEVER, THAT NOTHING CONTAINED HEREIN SHALL LIMIT OR RESTRICT THE RIGHTS OF EITHER PARTY AND/OR ITS AFFILIATES TO FILE A NOTICE OF ARBITRATION AND/OR BRING A REQUEST FOR INJUNCTIVE RELIEF AGAINST THE OTHER PARTY AND/OR ITS AFFILIATES FOR EITHER PARTY'S AND/OR ITS AFFILIATES' VIOLATIONS OF THIS AGREEMENT OR ANY PROVISIONS OF ANY OTHER AGREEMENT (AS DEFINED IN SECTION 3.10).

17.4 Exceptions. Notwithstanding the foregoing, the request by either party for preliminary or permanent injunctive relief, whether prohibitive or mandatory, shall not be subject to mediation or arbitration and may be adjudicated solely and exclusively in the United States District Court for the District of Idaho, or in the appropriate state court of competent jurisdiction located in Bonneville County, Idaho pursuant to Section 17.5, below. Furthermore, notwithstanding anything to the contrary in this Agreement, either party and/or its Affiliates may, at any time without regard for the time limitations or restrictions set forth above and without regard for Section 17.2, file a Notice of Arbitration and/or bring a request for injunctive relief against either party and/or its Affiliates for either party's and/or its Affiliates' violations of this Agreement or any of the provisions of any Other Agreement (as defined in Section 3.10).

17.5 Choice of Law; Consent to Jurisdiction. The relationship between the parties and their present and future Affiliates, including without limitation all disputes, controversies or claims, whether arising in contract, tort, or under statute, shall be governed by and construed in accordance with the laws of the State of Idaho, applicable to contracts to be made and performed entirely within the State of Idaho by residents of the State of Idaho, without giving any effect to its conflict of law provisions. In the event a lawsuit is brought for injunctive relief pursuant to Sections 17.2, 17.3, or 17.4 above, such lawsuit shall be litigated solely and exclusively before the United States District Court for the District of Idaho. The parties and their present and future Affiliates consent to the *in personam* jurisdiction of the United States District Court for the District of Idaho and all Idaho State Courts for the purposes set forth in this Section 17 and waive, fully and completely, any right to dismiss and/or transfer any action pursuant to Title 28 U.S.C. Sections 1404 or 1406 (or any successor statute). In the event the United States District Court for the District of Idaho 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 Bonneville County, State of Idaho

Promotional Certificates, installation and/or any other services; (ii) RS&I's performance or failure of performance under this Agreement and any direct or indirect results thereof, including but not limited to RS&I's sale and installation of DISH DBS Systems; (iii) Retailer's lawful or unlawful acts or omissions (or those of any of Retailer's employees or agents, whether or not such acts are within the scope of employment of such employees or agents) relating to the sale, marketing, advertisement, promotion of Programming, Promotional Certificates, DISH DBS Systems and related equipment and/or any other products or services of RS&I, EchoStar or any of their Affiliates; (iv) the failure of Retailer to comply with any provision of this Agreement any Other Agreement or any Business Rule; (v) the breach or default of any of Retailer's representations or warranties contained herein; (vi) all purchases, contracts, debts and/or obligations made by Retailer; (vii) Retailer directly or indirectly selling or otherwise transferring possession of a DISH DBS System or Promotional Certificate to any person or entity who Retailer knew or reasonably should have known: (a) intended to use it, allow others to use it, or resell, lease, or otherwise transfer it for use in any location other than a Residential Location; (b) intended to use it, allow others to use it, or resell, lease or otherwise transfer it for use in Canada, Mexico or at any other location outside of the United States, Puerto Rico and the U.S. Virgin Islands; or (c) intended to allow others to, or to resell, lease or otherwise transfer it others who will, authorize Programming for it using a single DISH Network programming account that had or would have Programming authorized for multiple satellite receivers that are not all located in the same residence and connected to the same phone line; (viii) Retailer directly or indirectly intended to authorize Programming for one or more DISH DBS System(s) or Promotional Certificate(s) using a single DISH Network account that had or would have Programming authorized for multiple satellite receivers that are not all located in the same Residential Location, Institutional/Residential Location, Unit of an MDU Property (except for Bulk Programming, in which case such multiple satellite receivers must all be located in the same MDU Property), Guest Property or Commercial Location, as the case may be, and connected to the same phone line; (ix) the failure of Retailer to comply with, or any actual or alleged violation of, any applicable laws, statute, ordinance, governmental administrative order, rule or regulation; (x) the failure of Retailer to comply with any provision of this Agreement or any Other Agreement, or the breach or default of any of Retailer's representations, warranties, covenants, duties or obligations there under; (xi) the failure of Retailer to collect and remit taxes as required by any law; (xii) any claim brought by Retailer's employees or agents for compensation and/or damages arising out of the expiration or termination of this Agreement; (xiii) any claim of pirating, infringement or imitation of the logos, trademarks or service marks of programming providers (except with respect to any marketing materials supplied to Retailer by RS&I or EchoStar); or (xiv) claims made by a Retailer against EchoStar and/or any of its Affiliates arising out of or relating to the Retailer's relationship with RS&I. In the event of any claim for indemnification by the RS&I Group under this Section 15, the RS&I Group shall be entitled to representation by counsel of its own choosing, at Retailer's sole cost and expense. The RS&I Group shall have the right to the exclusive conduct of all negotiations, litigation, settlements and other proceedings arising from any such claim and Retailer shall, at its own cost and expense, render all assistance requested by RS&I or EchoStar in connection with any such negotiation, litigation, settlement or other proceeding. Each indemnity obligation herein shall be in addition to and not in limitation of any other indemnity obligation set forth herein. The provisions of this Section 15 shall survive expiration or termination of this Agreement indefinitely.

16. CONFIDENTIALITY.

16.1 General. At all times during the term of this Agreement and for a period of three (3) years thereafter, Retailer and its employees will maintain, in confidence, the terms and provisions of this Agreement, as well as all data, summaries, reports or information of all kinds, whether oral or written, acquired, devised or developed in any manner from RS&I's personnel or files, or as a direct or indirect result of Retailer's actions or performance under this Agreement ("Confidential Information"), and Retailer represents that it has not and will not reveal the same to any persons not employed by Retailer, except: (i) at the written direction of RS&I or EchoStar; (ii) to the extent necessary to comply with law, the valid order of a court of competent jurisdiction or the valid order or requirement of a governmental agency or any successor agency thereto, in which event Retailer shall notify RS&I of the information in advance, prior to making any disclosure, and shall seek confidential treatment of such information; (iii) as part of its normal reporting or review procedure to its parent company, its auditors and its attorneys, provided such parent company, auditors and attorneys agree to be bound by the provisions of this paragraph; or (iv) to the extent necessary to permit the performance of obligations under this Agreement. During the Term, Retailer shall not issue an independent press release with respect to this Agreement or the transactions contemplated hereby without the prior written consent of RS&I and/or EchoStar, which consent may be withheld in RS&I and/or EchoStar's sole judgment. Upon expiration or termination of this Agreement for any reason whatsoever, Retailer shall return all copies of all Confidential Information or at RS&I's request destroy all such Confidential Information, and immediately certify in writing to RS&I that such delivery or destruction has taken place.

16.2 Remedies. Retailer agrees that a breach of these obligations of confidentiality will cause substantial and irreparable harm and injury to RS&I for which monetary damages alone would be an inadequate remedy, and which damages are difficult to accurately measure. Accordingly, Retailer agrees that RS&I shall have the right, in addition to any other remedies available, to obtain immediate injunctive relief (without the necessity of posting or filing a bond or other security) to restrain the threatened or actual violation hereof by Retailer, its employees and agents, as well as other equitable relief allowed by the federal and state courts. The foregoing remedy of injunctive relief is agreed to without prejudice to RS&I to exercise any other rights and remedies it may have, including without limitation, the right to terminate this Agreement and seek damages or other legal or equitable relief. The provisions of this Section 16.2 shall survive expiration or termination of this Agreement for any reason whatsoever indefinitely.

16.3 Economic Benefits Derived Held in Trust. In the event that Retailer derives an economic benefit, in any form, from a violation of its obligations under Section 16, it is hereby agreed that such economic benefit is the property of RS&I and/or EchoStar and

17.6 Survival. The provisions of this Section 17 shall survive expiration or termination of this Agreement indefinitely (even if termination is due to a default or breach by RS&I).

18. MISCELLANEOUS.

18.1 Taxes, Fees, etc. Retailer, at its sole cost and expense, shall pay and discharge all license fees, business, use sales, gross receipts, income, property or other similar or different taxes or assessments which may be charged or levied upon Retailer by reason of its performance under this Agreement.

18.2 Waiver. Except as otherwise set forth to the contrary in Section 18.6 below, the failure of any 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. In addition to and without limitation of the foregoing, the failure of RS&I or any of its Affiliates to insist upon strict performance of any provision of any agreement among RS&I and/or any of its Affiliates on the one hand and another Authorized Retailer on the other hand, shall not be construed as a waiver of RS&I's right to insist upon strict performance of each and every representation, warranty, covenant, duty and obligation of Retailer hereunder. All rights and remedies reserved to either party shall be cumulative and shall not be in limitation of any other right or remedy which such party may have at law or in equity. In addition to and without limitation of the foregoing, the election of certain remedies by RS&I or any of its Affiliates with respect to the breach or default by another Authorized Retailer of any agreement among RS&I and/or any of its Affiliates on the one hand and the other Authorized Retailer on the other hand shall not be deemed to prejudice any rights and remedies that RS&I may have at law, in equity, under contract or otherwise with respect to a similar or different breach or default hereunder by Retailer (all of which are hereby expressly reserved).

18.3 Attorney Fees. In the event of any suit, action or arbitration between Retailer and/or any of its Affiliates, on the one hand, and RS&I and/or any of its Affiliates, on the other hand, including but not limited to any and all suits, actions or arbitrations to enforce this Agreement or any provisions thereof, the prevailing party shall be entitled to recover its costs, expenses and reasonable attorneys' fees, at arbitration, at trial and on appeal, in addition to all other sums allowed by law. The provisions of this Section shall survive expiration or termination of this Agreement indefinitely (even if termination is due to a default or breach by RS&I).

18.4 Successor Interests; No Assignment by Retailer; Third Party Beneficiaries. This Agreement is binding upon the heirs, legal representatives, successors, and permitted assigns of RS&I and Retailer. RS&I may assign this Agreement to any person or entity or group of persons and/or entities in whole or in part at any time without the consent of Retailer. This Agreement shall not be assigned by Retailer, except upon the prior written consent of RS&I, which consent may be withheld by RS&I in its sole judgment. Any merger, reorganization or consolidation of Retailer shall be deemed an assignment. If any person not a substantial stockholder of Retailer (less than a 25% interest) as of the date of this Agreement becomes a substantial stockholder of Retailer (equal to, or greater than a 25% interest), that shall be considered an assignment requiring RS&I's consent hereunder. The provisions of this Agreement are for the exclusive benefit of the parties hereto and their heirs, legal representatives, successors and permitted assigns, and nothing in this Agreement, express or implied, is intended, or shall be deemed or construed, to confer upon any third party (other than as expressly set forth for Affiliates of RS&I and Retailer) any rights, benefits, duties, obligations, remedies or interests of any nature or kind whatsoever under or by reason of this Agreement.

18.5 Notices. Except as otherwise provided in Section 17.1, all notices to be given to RS&I pursuant to this Agreement shall be in writing, signed by the Retailer, and sent by: (i) first class certified mail, postage prepaid; or (ii) overnight courier service, charges prepaid, to RS&I, attention Marc Garitone, at the address listed on the first page of this Agreement, or such other address(es) as RS&I may designate to Retailer in accordance with this Section. All notices to be given to Retailer pursuant to this Agreement shall be in writing and sent by: (i) first class certified mail, postage prepaid; or (ii) overnight courier service, or (iii) with the exception of notices given pursuant to Sections 17 or 18, any method of mass communication reasonably directed to RS&I's retailer base, including, without limitation, a fax blast, email or posting on RS&I's web site. Such notice shall be deemed given upon receipt in the case of first class mail or overnight courier service, fax blast or email and upon posting in the case of posting on RS&I's web site. It shall be Retailer's sole responsibility to keep itself informed of all notices, changes, or other information as required in this Section 18.5.

18.6 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 provision shall not limit the enforceability, in whole or in part, of any other provision hereof. If any one or more of the provisions contained herein, or the application thereof to any person, entity, or circumstance, for any reason are held to be invalid, illegal, or unenforceable in any respect, then such provision(s) shall be enforced to the maximum extent permissible, and the remaining provisions of this Agreement shall be unaffected thereby and will remain in full force and effect.

18.7 Entire Agreement. Except as expressly stated to the contrary in Section 3.10 above, this Agreement sets forth the entire, final and complete understanding between the parties hereto relevant to the subject matter of this Agreement, and it supersedes and replaces all previous understandings or agreements, written, oral, or implied, relevant to the subject matter of this Agreement made or existing before the date of this Agreement. Except as expressly provided to the contrary in this Agreement, no waiver or modification of any of the terms or conditions of this Agreement shall be effective unless in writing and signed by both parties.

18.8 Compliance with Law. The parties shall comply with, and agree that this Agreement is subject to all applicable federal, state, and local laws, rules and regulations, and all amendments thereto, now enacted or hereafter promulgated in force during the term of this Agreement.

18.9 Modifications. Retailer acknowledges that RS&I, as an EchoStar Authorized Distributor, competes in the multi-channel video distribution market, which is highly competitive, fluid and volatile and that RS&I must make changes to its marketing, promotion and sales of products from time to time to stay competitive. Therefore, Retailer agrees that RS&I and/or EchoStar may, at any time and for any reason in its sole discretion, change or modify this Agreement, Incentives, Incentive Schedules, incentive structures, Promotional Programs, Business Rules, payment terms, or the chargeback rules associated therewith, upon notice to Retailer, without the need for any further consent, written or otherwise, from Retailer. IF ANY SUCH MODIFICATION OR CHANGE IS UNACCEPTABLE TO RETAILER, RETAILER'S ONLY RECOURSE IS TO TERMINATE THIS AGREEMENT. RETAILER'S CONTINUED PERFORMANCE UNDER THIS AGREEMENT FOLLOWING RECEIPT OF NOTICE OF A CHANGE OR MODIFICATION WILL CONSTITUTE RETAILER'S BINDING ACCEPTANCE OF THE CHANGE OR MODIFICATION. Except for such changes, and any other changes identified in this Agreement, any promotional program, Business Rules, or Other Agreement, which may be made by RS&I in its sole discretion, any modification to this Agreement shall be provided to Retailer in writing and shall constitute Retailer's binding acceptance.

18.10 Consent to Receive Faxes. Retailer hereby acknowledges that Agreement serves as Retailer's express written consent to receive facsimile transmittals from RS&I and its Affiliates, including facsimile transmittals which contain unsolicited advertisements. For the avoidance of doubt, such permitted facsimile transmittals from RS&I or its Affiliates shall include, but not be limited to, information about the commercial availability or quality of products, goods or services; notices of conferences and seminars; and new product, programming or promotion announcements. This written consent shall include all facsimile transmittals regulated by future Federal Communications Commission action.

18.11 Force Majeure. Notwithstanding anything to the contrary in this Agreement, neither party shall be liable to the other for failure to fulfill its obligations hereunder if such failure is caused by or arises out of an act of force majeure including acts of God, war, riot, natural disaster, technical failure (including the failure of all or part of the communications satellite, or transponders on which the programming is delivered to DISH Network Subscribers, or of the related uplinking or other equipment) or any other reason beyond the reasonable control of the party whose performance is prevented during the period of such occurrence.

18.12 Remedies Cumulative. It is agreed that the rights and remedies herein provided in case of default or breach by Retailer of this Agreement are cumulative and shall not affect in any manner any other remedies that RS&I may have by reason of such default or breach by Retailer. The exercise of any right or remedy herein provided shall be without prejudice to the right to exercise any other right or remedy provided herein, at law, or in equity.

18.13 Interstate Commerce. The parties acknowledge that the transactions contemplated by this Agreement involve interstate commerce.

18.14 Power and Authority. Retailer represents and warrants to RS&I that it has full power and authority to enter into this Agreement and perform its obligations hereunder and that its execution of this Agreement and performance of its obligations hereunder does not and will not violate any law or result in a breach of or default under the terms of any contract or agreement by which it is bound.

18.15 Counterparts. This Agreement may be executed in identical counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

18.16 General Provisions. The Exhibits attached hereto are fully incorporated into this Agreement in their entirety.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Agreement as of the date first set forth above.

RECREATIONAL SPORTS AND IMPORTS, INC.

RETAILER

By: _____
Name: _____
Title: _____

Century Satellite
By: David Campbell
Name: David Campbell
Title: President

EXHIBIT A
TERRITORY

Washington
Oregon
California
Montana
Idaho
Wyoming
Colorado
Utah
Nevada
Arizona
New Mexico
Oklahoma
Texas