dish media
dish sling

DISH ADVERTISING INVENTORY RESELLER TERMS AND CONDITIONS

Thank you for choosing to be a reseller of certain commercial advertising time within live linear and/or on demand television content that DISH owns and operates directly or receives through its relationships with third party television programming content providers (the "**DISH Inventory**"). The DISH Inventory is provided by DISH Network L.L.C., a Colorado Limited Liability Company having a place having a place of business at 9601 South Meridian Boulevard, Englewood, Colorado 80112 ("**DISH**") to you and your employees and other representatives acting on your behalf (collectively referred to as "**Reseller**," "**you**," and "**your**") for resale to certain third party buyers including your clients ("**Buyers**"). Your execution of an Order or other agreement to purchase and resell DISH Inventory shall constitute acceptance of these DISH Advertising Inventory Reseller Terms and Conditions ("**Agreement**" or "**Terms and Conditions**").

This Agreement governs any and all purchases of DISH Inventory requested and/or received by or otherwise provided, directly or indirectly to you. If you do not wish to enter into this Agreement, then do not apply for, request, purchase or otherwise use any DISH Inventory. DISH may modify this Agreement from time to time and at any time without providing written notice to you. DISH further recommends that you visit http://www.media.dish.com to view these Terms and Conditions prior to each purchase of DISH Inventory through an Order (as defined herein) or other agreement. Any and all modifications will be effective immediately upon posting; provided, however, that if you or your Buyers have an active Ad (as defined herein) campaign in progress on the date that any updated terms are posted, then unless otherwise stated herein or therein, such changes will be effective thirty (30) calendar days following the date on which such changes were posted. Copies of prior DISH Advertising Inventory Reseller Terms and Conditions applicable to you may be requested from your account executive at DISH. The posting date of the current version is located at the beginning and end of these Terms and Conditions.

1. **AD RESELLER SERVICES**

    1.1.   <u>Right to Sell DISH Inventory</u>.   Subject to the terms and conditions set forth in this Agreement, DISH hereby grants you the right to: (i) purchase certain DISH Inventory from DISH and/or its Affiliates (as defined below) in accordance with this Agreement and/or an Order (as defined below) executed by both Reseller and DISH; (ii) bundle DISH Inventory with other Ad (as defined below) inventory that Reseller acquires from online and/or television programming content providers other than DISH and its Affiliates (as defined below) ("**Joint Inventory**"); (iii) market, promote, and solicit orders for the DISH Inventory; (iv) resell the DISH Inventory as part of the Joint Inventory to third party buyers that are clients of Reseller (the "**Buyers**") for the placement of video advertisements for display to subscribers of DISH Services (as defined herein) (each an "**Ad**" and collectively, the "**Ads**") provided by such Buyers in the DISH Inventory; and (iv) represent that the Joint Inventory includes DISH Inventory in its marketing materials (including pitch materials) to prospective Buyers. For purposes of this Agreement, "**Affiliate(s)**" means with respect to a Party, any person or entity directly or indirectly controlling, controlled by or under

common control with such Party; provided, however, that for purposes of this Agreement, neither EchoStar Corporation nor any entity directly or indirectly controlled by EchoStar Corporation will be deemed to be an Affiliate of DISH unless and until any such entity becomes (a) directly or indirectly controlled by DISH Network Corporation (or its successor) after the Effective Date, or (b) under common control with DISH Network Corporation (or its successor) as a result of merger, acquisition or similar corporate transaction occurring after the Effective Date, in which case the entity(ies) directly or indirectly controlled by or under common control with DISH Network Corporation (or its successor) under clause (a) or clause (b) will be deemed to be an Affiliate of DISH. As used in the preceding sentence, the term "control", when used with respect to a particular person or entity, means that such person or entity: (i) owns, directly or indirectly, more than fifty percent (50%) of the voting securities or other ownership interests of a party; or (ii) possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of a party, whether through the ownership of voting securities or other ownership interest, by contract or otherwise. Correlative forms of "control", such as "controlling," "controlled by" and "under common control with", shall have the correlative meanings.

1.2.   Prohibited Sales Activities. Reseller may not under any circumstance: (a) market or otherwise represent to any third party that Reseller is a direct seller of the DISH Inventory and/or an agent or employee of DISH, without the express prior written permission of DISH (email sufficient) on a case-by-case basis; (b) solicit or accept any order from any Buyer to place Ads specifically on the DISH Inventory, or represent to any third party its capability to do so; (c) market or otherwise represent that DISH Inventory represents a specific percentage of Joint Inventory or that DISH Inventory represents a specific percentage of any purchase a Buyer has made or may make from the Joint Inventory; or (d) publish or otherwise distribute: (i) a report or statistic explicitly pertaining to the performance of any DISH Inventory that it may sell pursuant to this Agreement, (ii) any specific information regarding the DISH Inventory, or (iii) a report or statistic from which a recipient thereof could reasonably draw a conclusion as to the identity of DISH and its performance under this Agreement. Notwithstanding the foregoing, nothing in this Agreement shall prevent Reseller from providing post-campaign reporting to Buyers so long as any Reports (defined below) containing DISH Data (as defined below) is aggregated with no less than three (3) other online and/or television programming content providers and does not specifically identify by percentage or otherwise, the amount of impressions attributed to DISH. "**Reports**" means either (i) physical reports provided to Buyers generated by Reseller or (ii) the reports shown to Buyer in Reseller's user interface, and both which shall include no more than the information to be provided by DISH to Reseller. Reseller shall at all times store, process and share DISH Data (as defined below) in accordance with DISH's Minimum Privacy Requirements attached hereto and incorporated herein as Exhibit A and DISH's Minimum Security Requirements attached hereto and incorporated herein as Exhibit B, each as applicable. "**DISH Data**" means any data that is owned, licensed, stored or managed by DISH that contains information regarding or related to DISH personnel, customers, employees, prospects, or business operations, including without limitation DISH Subscriber Information.

1.3.   Order/Confirmation Letters; Insertion Orders. For purposes of this Agreement, "**Order**" shall mean both insertion orders and letter orders, including without limitation, letter confirmations designed to finalize and confirm details surrounding the purchase of DISH Inventory pursuant to this Agreement. This Agreement shall govern any and all Orders submitted, confirmed or otherwise accepted or requested by Reseller. Each Order, together with this Agreement, constitutes the entire agreement by

and between Reseller and DISH to purchase DISH Inventory. In no event will DISH be liable for any delay, or failure to fulfill any Order (or any portion thereof), regardless of the cause of such delay or failure. For the avoidance of doubt, DISH agrees that Reseller may order and purchase DISH Inventory on an 'open order' basis under the agreed upon insertion order, which will specify that Reseller may purchase from DISH up to an agreed upon number of impressions at an agreed upon rate for multiple campaign Orders during the Term. Each Order must be agreed upon in writing and executed by Reseller and DISH. DISH reserves the right to accept and/or reject any Order for any reason whatsoever. All purchases of Joint Inventory by Buyers will be subject to a separate written agreement between Reseller and the applicable Buyer.

1.4.   Sales Activities; Collection of Advertising Fees. Reseller shall assume sole responsibility for any and all activities related to the purchase, marketing, promotion, solicitation of orders for, resell and placement of Ads in Joint Inventory, including, identifying prospective Buyers and ensuring each Ad placed in the DISH Services (a "**Placed Ad**") complies with all of DISH's stated terms, conditions, rules, policies and technical standards, as provided herein or in an Order ("**Ad Policies**"). Subject to the limitations expressly set forth in this Agreement, Reseller will have control over all aspects of the marketing, promotion and solicitation of orders for Joint Inventory. The rates at which Ad impressions on Joint Inventory are sold shall be determined by DISH and Reseller upon mutual written agreement.

1.5.   No Commitment; Non-Exclusivity. Reseller acknowledges and agrees that: (i) this Agreement is not intended to confer, nor will it be construed as conferring, any exclusive rights upon Reseller; (ii) The Joint Inventory combines inventory from multiple online video and/or television programming content providers; (iii) DISH and its Affiliates may market, promote, solicit orders for, sell, and place advertisements from any third party, including, without limitation, advertisements directly or indirectly competitive with the Joint Inventory marketed by Reseller pursuant to this Agreement, without giving notice to or obtaining the consent of Reseller; (iv) except as limited by Sections 1.2, 2.2, 5, 9 and 11, Reseller and its Affiliates may market, promote and solicit orders for advertisements with any third party, including, without limitation, third party online video and/or television programming content providers that are directly or indirectly competitive with DISH and the DISH Inventory marketed by DISH, without giving notice to or obtaining the consent of DISH; (v) DISH and DISH's Affiliates make absolutely no statements, promises, representations, warranties, covenants or guarantees as to the amount of business or revenue that Reseller may expect to derive from participation in this Agreement; and (vi) Reseller may not realize any business or revenue in connection with this Agreement.

2.   MATERIALS AND OTHER CONTENT USED IN CONNECTION WITH DISH INVENTORY

2.1.   Grant of Rights to DISH. Reseller hereby grants DISH and its Affiliates a non-exclusive, royalty free, worldwide right and license (including, without limitation, the license to all copyright, trademark and other intellectual property rights appurtenant to the programming content that makes up or relates to any Placed Ad) to: (i) distribute, sub distribute and/or otherwise sublicense the Placed Ads via any and all means or methods for reception, viewing, exhibition, and display using any form of device used for the reception and/or display of visual images, audio, and/or data; and (ii) record, store, copy, digitize, compress, encode, decode, transcode, receive, encrypt, decrypt, up-convert, down-convert, and otherwise process (including, without limitation, for adaptive bit-rate streaming) each Placed Ad (clauses

(i) and (ii) collectively, the "**License Grant**"). Reseller's delivery of any Ad to DISH or its Affiliates constitutes Reseller's confirmation, representation, warranty and certification that: (a) it has obtained any and all rights necessary, from the Buyer or otherwise, to make the License Grant to DISH and its Affiliates; (b) the delivered Ad complies with all Ad Policies ; and (c) the Ad does not violate any Ad Content Restrictions (as set forth in Section 2.2).

2.2. Ad Content Restrictions. Reseller shall ensure that any and all advertising content, programming content and/or other video, audio, visual, interactive and data contained therein, and any documentation related thereto (e.g., sweepstakes rules, disclaimers, ratings, descriptions, permitted triggers), created or approved by Reseller or on Reseller's behalf (collectively, "**Ad Content**") provided, indirectly or directly, to DISH does not contain: (i) any Ad Content that is rated (or if not rated, that would have been rated) more restrictively than the rating of the programming during which the Ad Content is scheduled to be distributed, or that otherwise violates the advertising restrictions required by the third-party provider of such programming (note: if Reseller or a Buyer do not have copies of the applicable third party restrictions, then it is Reseller's and the appropriate Buyer's responsibilities to obtain such restrictions from DISH); (ii) any fraudulent, deceptive and/or unfair descriptions of any products and/or services; (iii) any statement or other reference related to decisions and/or processes used (including, without limitation, any information used) in connection with DISH Inventory; (iv) any promotion or marketing of "900," or "976" telephone services, or other similar services that bill a caller for placing or confirming the call (other than for the telephone company's cost of the call); (v) any solicitations for funds or contributions; (vi) any Ad Content for any purpose other than the narrow purpose agreed to in an Order or otherwise or required in connection with any DISH Inventory, if any (e.g., political purposes and/or market research); (vii) any reference to the reason the viewer or subscriber is receiving, or was requested or chosen to receive, any Ad Content; (viii) any advertisement or other message for any programming provider (including, without limitation, any programming provider affiliated or associated with Reseller) other than DISH or its Affiliates or for any other entity that competes, directly or indirectly, with DISH or any of its Affiliates in providing programming services and/or television or movie services (provided that any Buyer expressly identified in an Order accepted by DISH shall be deemed an exception to this clause (ix) any content that in any way disparages DISH or any affiliate of DISH; or (x) any content that violates any law(s), including, without limitation, advertising and/or other laws relating to children (e.g. the Children's Television Requirements and the Children's Online Privacy Protection Act), requiring closed captioning and/or video narration information and technical specifications pertaining to compliance with commercial loudness restrictions. Reseller shall provide and appoint a representative to serve as Ad Content compliance manager who will be available to DISH on a 24/7 basis and offer monitoring support to DISH for Ad Content that violates the Ad Content restrictions in this Section 2.2 including but not limited to assisting DISH in removing noncompliant Ad Content from the DISH Inventory and/or providing DISH with written verification that the suspected noncompliant Ad content is in compliance with the restrictions stated herein.

2.3. Prohibited Materials; Permitted Advertising Technologies. For details on standard technologies (e.g., third-party measurement technologies, verification technologies and advertisement-serving technologies) supported in connection with Reseller's purchase of the DISH Inventory, and to obtain approvals for using any of the same, Reseller must communicate with and seek such approval from DISH. Reseller's use of any such technologies is subject to DISH's prior written consent and Reseller's

agreement to comply with any limitations or requirements related to such use (each, on a case-by-case basis, "**Permitted Advertising Technology(ies**)"). Reseller shall use the Permitted Advertising Technologies at its sole cost and expense. Notwithstanding anything to the contrary contained in any agreement, other than use of only those Permitted Advertising Technologies, Reseller may not embed any information, data, images, sounds, features, calls to action, messages, prompts, tags, cookies, pixels, beacons, triggers and/or other technologies, including, without limitation, anything that may degrade and/or otherwise interfere with any product or service provided by DISH and/or its Affiliates (e.g., a primary signal used to deliver programming content and/or any other hardware, software or firmware or other technology used by DISH or its affiliates or service providers). If any technology, material or other service is not expressly consented to as a Permitted Advertising Technology for the applicable campaign, then such technology, material or other service is not approved and Reseller must seek permission from DISH for use of the desired technology, material or service in connection with the DISH Inventory. After gaining consent to use a Permitted Advertising Technology, Reseller must either provide the pixel (including VAST tags) embedded in the asset or provide DISH with the pixel and the asset at least three (3) days prior to scheduled launch of a Placed Ad campaign. Failure to comply with the immediately preceding sentence will result in a delayed launch or a launch without the Permitted Advertising Technologies, as determined by DISH in its sole and absolute discretion. With respect to campaigns on DISH's streaming platforms (e.g., DISH Anywhere, Sling TV) and to the extent that DISH expressly authorizes the use of a Permitted Advertising Technology for the purpose of advertisement serving and/or reporting, Reseller acknowledges and agrees that: (i) such authorization is subject to the Permitted Advertising Technology provider's agreement with DISH governing the treatment of DISH's Confidential Information (as defined herein); (ii) DISH reserves the right to revoke such authorization at any time for any or no reason; and (iii) in the event of any discrepancy between the Ad serves as reported by DISH's standard reporting methodology (the "**DISH Reporting**") and that reported by the Permitted Advertising Technology then the DISH Reporting shall be binding on the Parties. Notwithstanding sub clause (iii) above, if (and only if): (a) the Permitted Advertising Technology's Ad serve measurement technology (the "**Measurement Technology**") is certified as compliant with the IAB/AAAA Ad Measurement Guidelines; (b) such Measurement Technology has been delivered to DISH three (3) business days prior to the launch of the applicable campaign and is fully functional throughout the entirety of the applicable campaign; and (c) there is a measurement discrepancy in excess of ten percent (10%) between the DISH Reporting and the Measurement Technology's reporting for such applicable campaign, then the Parties shall promptly engage in good-faith discussions to resolve the source of the discrepancy. In the event that following such discussions, the Parties mutually agree that it is reasonably certain the Measurement Technology's reporting for such campaign is true and correct, then DISH shall provide Reseller with a credit equal to the discrepancy between the amount actually received by DISH for such campaign and the amount that should have been received for such campaign utilizing the Measurement Technologies reporting (the "**Credit**"). You acknowledge and agree that any Credit may only be used to purchase additional DISH Inventory (whether as a distinct make good flight or as part of your future DISH Inventory purchases).

2.4.   <u>Technical Specifications Requirements; Changes to Orders</u>**.** Reseller shall ensure that any and all Ad Content provided to DISH by Reseller or on Reseller's behalf meets the specifications and other technical and delivery requirements established by DISH applicable to such Ad Content. Details on DISH's "Commercial Specifications & Requirements" are set forth in DISH and/or Sling's (as applicable) 'Tech Specs' available at: <u>http://www.dishmediasales.com</u> . Reseller may request changes to Orders that have

been expressly confirmed by DISH in writing; provided that DISH will have no obligation to make or honor any request for changes following a confirmation, and any and all changes are subject to further written confirmation by DISH, which may be given, withheld or denied in DISH's sole and absolute discretion.

2.5.　Technical Delivery of Advertising. DISH and Reseller shall use commercially reasonable efforts to integrate Reseller's Ad delivery systems into the DISH Inventory for purposes of delivering Ads hereunder. Reseller shall notify DISH in writing of all vendors it uses for its Ad delivery systems prior to the launch of any Buyer Ad campaigns

2.6.　Addressable Ad Services. Reseller hereby acknowledges and agrees that certain DISH Inventory requires the use of certain information and/or data in connection therewith. You hereby represent, warrant and certify to DISH that you: (i) are authorized to use such information under applicable laws; (ii) have a permissible purpose to use such information; and (iii) will ensure that the only use of such information is and will remain permitted by law for the permissible purpose(s).

3.　RATES, BILLING AND PAYMENTS

3.1.　Rates. Reseller shall purchase from DISH and resell to Buyers the DISH Inventory at the rates specified in the applicable Order.

3.2.　Payment. At the end of each calendar month, DISH shall submit an invoice to Reseller setting forth the amount due from Reseller to DISH (each, an "**Invoice**"). Reseller acknowledges and agrees that DISH Reporting shall be used for calculating all amounts owed to DISH pursuant to this Agreement. Reseller shall pay to DISH all amounts due under such Invoice no later than thirty (30) days following its receipt of such Invoice. Reseller is fully responsible for all payments owed to DISH related to its purchase and resale of the DISH Inventory, irrespective of the rate at which Buyers purchased the Inventory or the amount Reseller collects from Buyers. Reseller shall have ten (10) days from the date of the Invoice to report in writing any issue or dispute it may have with any individual Invoice. Reseller shall pay all portions of DISH's invoice that are not specifically disputed in good faith and in writing prior to the due date set forth in the applicable invoice. Reseller's failure to timely report any dispute constitutes a waiver of all claims with respect to such disputed amounts. All amounts due under this Agreement, an Order or other applicable agreement shall be paid in full without any off-set, deduction or other withholding other than as required by law.

3.3.　Late Payments and Payment Defaults**.** If　DISH does not receive from Reseller any undisputed payment in full due under this Agreement, an Order or other applicable agreement by the close of business on the day when it is due, then any amounts not received shall bear interest at the rate of one and one-half percent (1.5%) per calendar month (or a lower amount if required by law), or prorated portion thereof, starting on the date such amounts were due. Acceptance of such late fee by DISH shall not constitute a waiver of any other rights that DISH may have at law, in equity, under contract (including without limitation, each Order) or otherwise, with respect to Reseller's failure to make timely payment or Reseller's breach of this Agreement. DISH may offset against any payments due to Reseller under this Agreement or any Order, any amounts owed by Reseller or any of Reseller's Affiliates to DISH or any of DISH's Affiliates under this Agreement, Order or any other applicable agreement.

3.4.   No Responsibility for Taxes. DISH may not have or be deemed to have any responsibility or assume any liability for the determination, calculations, collection and remittance to proper taxing authorities of any sales, use or other taxes (other than taxes assessed on DISH's income) related to or arising out of any Joint Inventory, all of which shall be the sole responsibility of Reseller, if any.

4.   TERM; TERMINATION

4.1.   Term. The Agreement shall commence on the Effective Date and, unless sooner terminated, renewed or extended, shall expire on the one (1)-year anniversary thereof (the "**Initial Term**"). The Initial Term shall automatically renew for successive one (1)- year terms, unless sooner terminated, renewed or extended (each, a "**Renewal Term**" and, as applicable, together with the Initial Term, the "**Term**"), unless and until either Party gives written notice of its intent not to renew at least sixty (60) days prior to the end of the then-current Initial Term or Renewal Term (as applicable) (the "**Termination Notice**").

4.2.   Termination. This Agreement may be terminated: (i) by DISH in its sole and absolute discretion, for any reason or no reason whatsoever, upon thirty (30) days' prior written notice to Reseller; (ii) by either Party in the event that the other Party breaches any provision, representation, warranty or covenant of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of such breach; provided that, the Parties acknowledge and agree that breaches of Sections 2.2, and 10 by Reseller are incapable of being cured and, therefore, in such cases, termination by DISH may, in DISH's sole discretion, become effective immediately upon written notice of the breach incapable of cure.

4.3.   Effect of Termination. In the event that either Party terminates this Agreement pursuant to Section 4.2, except in the event that DISH terminates this Agreement for nonpayment by Reseller or Reseller's breach of Sections 2.2 or 10 of this Agreement: (i) subject to DISH's rights under this Agreement, DISH shall place all of Reseller's Ad campaign commitments of DISH Inventory taken pursuant to a binding Order prior to the date of termination, communicated to DISH, in writing, and running as of the termination date through either (a) the completion of the pre-termination Ad commitments or (b) thirty (30) days from the termination date, whichever is sooner (the "**Post-Termination Window**"); (ii) after the close of the Post-Termination Window, DISH shall submit an Invoice to Reseller detailing the number of impressions reported as delivered by DISH for Reseller's Placed Ads through the Post-Termination Window; and (iii) Reseller shall pay such Invoice pursuant to Section 3 of this Agreement in addition to any and all other amounts due and/or owing pursuant to this Agreement or an Order for the period of time prior to the Post-Termination Window.

5.   LOGOS AND TRADEMARKS

Subject to the terms and conditions of this Section 5, DISH hereby licenses to Reseller, and grants Reseller a non-exclusive, revocable, royalty-free, non-assignable, non-sub licensable limited right to use DISH and its Affiliates' names, trade names, service marks and/or logos (collectively, the "**DISH Marks**") solely in the United States in Reseller's general sales and promotional materials (including Reseller's website where Reseller promotes the Joint Inventory and its ad sales services generally) solely to indicate that DISH

Inventory is among the inventory included in the Joint Inventory, provided that in any such use of the DISH Marks, the DISH Marks will be featured with at least equal prominence to the marks of any other services included in the Joint Inventory. Any such use of any DISH Mark is expressly subject to DISH's prior written approval; *provided that*, in the event that Reseller's exact intended manner of use of the DISH Marks has been approved in writing by DISH in the immediately preceding six (6) months, and such approval has not been revoked (in whole or in part) in any way, then Reseller may reuse the DISH Marks in the exact manner of use subject to such prior approval (with such non material and conforming changes as necessary to reflect the passage of time since such previously approved use). Reseller acknowledges and agrees that the DISH Marks are the exclusive property of DISH and its Affiliates and that Reseller has not and will not acquire any proprietary rights in the DISH Marks by reason of this Agreement or otherwise. Except as provided in this Agreement, Reseller shall at no time adopt or use, without DISH's prior written consent, any variation of the DISH Marks or any mark likely to be confused with any of the DISH Marks. Any and all goodwill arising from Reseller's use of the DISH Marks shall inure solely to the benefit of DISH.

6. REPRESENTATIONS, WARRANTIES AND COVENANTS

6.1. <u>General Representations and Warranties</u>. Each Party represents and warrants that: (i) it has all requisite corporate power and authority to execute, deliver and perform its obligations hereunder; (ii) it is duly licensed, authorized or qualified to do business and is in good standing in every jurisdiction in which a license, authorization or qualification is required for the transaction of business of the character transacted by it, except when the failure to be so licensed, authorized or qualified would not have an adverse effect on its ability to fulfill its obligations hereunder; (iii) it will comply with all federal, state and local laws and regulations applicable to it in the performance of its obligations hereunder; (iv) it is not a party to any agreement with a third party, the performance of which is reasonably likely to adversely affect its ability or the ability of the other Party to perform fully its respective obligations hereunder; and (v) its performance of its obligations under this Agreement will not violate any other agreement between such Party and any third party.

6.2. <u>Reseller Representations, Warranties and Covenants</u>. Reseller further represents warrants and covenants to DISH that: (i) it will perform its duties, responsibilities and obligations required hereunder in a professional, ethical and workmanlike manner by appropriately qualified and trained personnel at all times in accordance with this Agreement; (ii) it will not knowingly or willfully engage in any activity or business transaction that is or may be damaging to DISH's or DISH Affiliates' image or goodwill, and it will not take, authorize, or permit to be taken, any action that would or could in any way impair any of the rights for which DISH contracted under this Agreement or an Order; (iii) it has, or will have at the time of delivery of any Ad to DISH or its Affiliates, any and all rights, licenses and/or permissions necessary to grant DISH and its Affiliates the License Grant; (iv) any and all Placed Ads will be in compliance with the terms of this Agreement and all applicable laws; (v) no Placed Ads will violate the Ad Content Restrictions in <u>Section 2.2</u> of this Agreement; (vi) none of the Placed Ads will contain any material that is libelous, slanderous or defamatory, or any material that violates or infringes any copyright, royalty, trademark, right of privacy, literary or dramatic right, music performance right, or any other right of any person or entity (including, without limitation, "through-to-the-viewer" music performance rights and any other rights necessary from ASCAP, BMI, SESAC and any other applicable performing rights

organizations or other applicable entities); and (vii) it will not, without DISH's prior written consent, use any DISH Marks or make any statements with respect to DISH or any of DISH's Affiliates in connection with any Ad Content, DISH Inventory or in any media or at any other time or place so as to state or imply that DISH is in any way responsible for the production of, or content of, any of the Ad Content, and/or any information used in connection therewith, or that DISH or any DISH Affiliate endorses, or is responsible for, any products, services, or other benefits promoted or advertised in connection with any Ad Content or that you are employed by, the agent of, or in any way under the control or direction of DISH or any DISH Affiliates.

7. INDEMNIFICATION

7.1. Indemnification By DISH. DISH shall defend, indemnify and hold harmless Reseller and Reseller's Affiliates, and its and their respective officers, directors, employees, agents and shareholders, and its and their respective assigns, heirs, successors and legal representatives 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 breach or alleged breach by DISH of its covenants, obligations, representations or warranties under this Agreement, or any willful, intentional or negligent action or failure by DISH or its agents in connection with its obligations under this Agreement.

7.2. Indemnification by Reseller. Reseller shall indemnify, defend and hold DISH and DISH's Affiliates, and its and their respective officers, directors, employees, agents and shareholders, and its and their respective assigns, heirs, successors and legal representatives harmless from and against, any and all Claims that arise out of, or are incurred in connection with: (i) any breach or alleged breach by Reseller of its covenants, obligations, representations or warranties under this Agreement, or any willful, intentional or negligent action or failure by Reseller or its agents in connection with its obligations under this Agreement; (ii) the failure of Reseller or the Ad Content to comply with, or any actual or alleged violation of, any law or any other failure on Reseller's part that causes DISH to violate any law(s) or court of administrative decrees; (iii) the content or subject matter of any Placed Ad (including without limitation claims and/or other statements made therein or allegations that any claims and/or statements therein are fraudulent or misleading); (iv) any statement or representation made by Reseller regarding the DISH Inventory that is misleading or fraudulent; (v) Reseller's advertising, marketing and/or sale of DISH Inventory; (vi) any Placed Ad that is not in compliance the Ad Policies; (vii) any Placed Ad that violates Section 2.2 of this Agreement, Ad Content Restrictions; (viii) any Placed Ad that contains any material that is libelous, slanderous or defamatory, or any material that violates or infringes any copyright, royalty, trademark, right of privacy, literary or dramatic right, music performance right, or any other right of any person or entity (including, without limitation, "through-to-the-viewer" music performance rights and any other rights necessary from ASCAP, BMI, SESAC and any other applicable performing rights organizations or other applicable entities); and (ix) the failure of Reseller to obtain any and all rights, licenses and/or permissions necessary to grant DISH and its Affiliates the License Grant.

7.3. Process for Indemnification. The Party seeking indemnification hereunder ("**Indemnified Party**") shall promptly inform the other Party ("**Indemnifying Party**") of any Claim against the Indemnified

Party for which the Indemnified Party is entitled to indemnification hereunder (*provided, however*, that failure to give prompt notice will not relieve the Indemnifying Party of any liability or indemnification obligations hereunder, except to the extent the Indemnifying Party has suffered actual material prejudice by such failure). The Indemnified Party will allow the Indemnifying Party to direct the defense and settlement of any such claim, with counsel of the Indemnifying Party's choosing, and will provide the Indemnifying Party, at the Indemnifying Party's expense, with information and assistance that are reasonably necessary for the defense and settlement of the claim. The Indemnified Party shall have the right, but not the obligation, at its sole expense to participate in (but not to control) the defense of any such suit or proceeding. The Indemnifying Party will not acquiesce to any judgment or Claims on the Indemnified Party's behalf without the written consent of the Indemnified Party.

8. LIMITATIONS AND DISCLAIMERS OF LIABILITY

8.1. <u>Limitation of Liability</u>. EXCEPT WITH RESPECT TO EITHER PARTY'S: (I) FRAUD OR WILLFUL MISCONDUCT; (II) INDEMNIFICATION OBLIGATIONS UNDER SECTION 7 OF THIS AGREEMENT; AND/OR (III) BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER <u>SECTION 9</u> OF THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, INCIDENTAL OR OTHER INDIRECT DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8.2. <u>Disclaimer</u>. Reseller acknowledges that (i) neither DISH, nor its Affiliates nor its third party providers, control(s) the Ad Content or the transfers of information and/or Ad Content over communications facilities (including the Internet); and (ii) the DISH Inventory may be subject to limitations, interruptions, delays, cancellations, and other problems inherent in the use of the communications facilities (including, without limitation, severe weather, search engines and social media channels). Reseller agrees that DISH, its Affiliates, and its third party providers are not responsible for any interruptions, delays, cancellations, delivery failures, data or Ad Content damage and/or loss(es), content corruption, packet loss, or other losses or damages resulting from these problems. TO THE MAXIMUM EXTENT PERMITTED BY LAW AND EXCEPT FOR ANY EXPRESS WARRANTIES HEREIN, DISH PROVIDES ANY AND ALL DISH INVENTORY ON AN "AS-IS" BASIS WITH NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER. NEITHER DISH NOR ANY OF ITS AFFILIATES ARE RESPONSIBLE OR LIABLE WHATSOEVER FOR ANY BUSINESS DECISIONS MADE OR INFERENCES DRAWN BY ANY PARTY IN CONNECTION WITH RESELLER'S RELIANCE ON ANY DISH INVENTORY. DISH AND/OR ITS AFFILIATES MAKE NO, AND TO THE FULLEST EXTENT POSSIBLE HEREBY DISCLAIMS ANY AND ALL, REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, IN CONNECTION WITH DISH INVENTORY, INCLUDING, WITHOUT LIMITATION, REPRESENTATIONS, OR WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, SATISFACTION, GUARANTEES FOR IMPRESSIONS, REACH, SUCCESS, COMPLETENESS OR ACCURACY OR THAT THE DISH INVENTORY WILL BE ERROR-FREE, WITH RESPECT TO ITS DISTRIBUTION AND/OR TRANSMISSION OF ANY AD CONTENT, THE LOSS OR DAMAGE OF ANY AD CONTENT, THE FULFILLMENT (OR FAILURE TO FULFILL) ANY DISH INVENTORY FOR WHICH IT HAS OBTAINED A CONFIRMATION, THE AVAILABILITY OF ANY DISH INVENTORY REQUESTED BY RESELLER AND THE NUMBER OF IMPRESSIONS AVAILABLE OR REPORTED BY DISH, ITS AFFILIATES OR ITS THIRD PARTY PROVIDERS.

9. CONFIDENTIALITY

9.1. <u>Confidential Information</u>. For purposes of this Agreement, "**Confidential Information**" means: (i) the terms of this Agreement; and (ii) any other non-public information relating to the business of the other Party or provided in connection with this Agreement that is marked or identified as confidential or would be reasonably understood to be confidential given the nature of the information and/or circumstances of disclosure. Notwithstanding the foregoing, Confidential Information does not include information that: (a) is now or subsequently becomes generally available to the public through no wrongful act of the recipient; (b) the recipient can demonstrate was rightfully in its possession prior to disclosure by the other Party; (c) is independently developed by the recipient without the use of any Confidential Information provided by the other Party; or (d) the recipient rightfully obtained or obtains from a third party who the recipient reasonably believed had the right, without obligation to the other Party, to transfer or disclose such information.

9.2. <u>Restrictions</u>. The Parties agree that, during the Term of this Agreement and for three (3) years thereafter: (i) each Party will keep all Confidential Information of the other Party in strict confidence, using such degree of care as is appropriate to avoid unauthorized use or disclosure; (ii) neither Party will, directly or indirectly, disclose any Confidential Information to anyone outside of the Parties, except with the prior written consent of the Party supplying the Confidential Information; and (iii) neither Party will make use of any Confidential Information for its own purposes (except as necessary to perform the services contemplated under this Agreement) or for the benefit of anyone other than the Parties. Upon termination or expiration of this Agreement, or at any time that either Party requests, the other Party will deliver promptly to the requesting Party, or, at the requesting Party's option, will destroy, all Confidential Information (and all copies thereof) of the requesting Party that the other Party may then possess or have under its control.

9.3. <u>Permitted Disclosure of Confidential Information</u>. Notwithstanding anything in this Agreement to the contrary, either Party may disclose the Confidential Information of the other Party to its personnel, agents and advisors (including legal and financial advisors) who have a need to know such information in connection with the duties, responsibilities and obligations to be performed hereunder and who are obligated to keep such information confidential. Either Party may disclose the Confidential Information of the other Party in the event that such disclosure is required by law, court, or other governmental authority; provided, however, that such Party will notify the other Party in writing in advance of such disclosure and will provide the other Party with copies of any related information so that the Party may take appropriate action to protect its Confidential Information. Notwithstanding anything in this Agreement to the contrary, DISH may disclose the Confidential Information of Reseller to its Affiliates.

9.4. <u>Subscriber Information</u>. All consumers who directly or indirectly subscribe to, purchase, lease, or otherwise receive and/or acquire from DISH or any of its Affiliates: (i) programming services; (ii) video, audio, data and interactive programming services via the DISH-branded direct broadband satellite service and the Sling-branded over-the-top ("**OTT**") digital service (the "**DISH Services**"); (iii) any other services; (iv) any other services incidental, connected or related to any of the foregoing services; and/or (v) the

hardware necessary to receive any such programming and/or any such other services (the "**DISH Subscribers**") shall be deemed customers of DISH for all purposes relating to programming, the other services provided by DISH or any of its Affiliates, and any other services incidental, connected or related to any of the foregoing services ("**Consumer Services**") and the hardware necessary to receive any of such services ("**Hardware**"). Reseller acknowledges and agrees that, among other things, all Subscriber Information (as defined below) constitutes DISH trade secrets. Reseller further acknowledges and agrees that such Subscriber Information is, as between Reseller and DISH, proprietary to DISH, and shall be treated with the highest degree of confidentiality by Reseller. Reseller may not, directly or indirectly: (a) make use of any list of past or current DISH Subscribers (whether developed by Reseller or obtained from DISH or another source); (b) use any Subscriber Information for the direct or indirect benefit of any individual or entity other than DISH; (c) use any Subscriber Information for the purpose of soliciting, or permit any others to solicit, any person or entity to subscribe to any Consumer Services or similar services offered by any person or entity other than DISH or an Affiliate of DISH, or promote the sale, lease or other acquisition of any Hardware used in connection with services offered by any person or entity other than DISH and its Affiliates; or (d) reveal any Subscriber Information to any third party for any reason (or for no reason whatsoever), without the express prior written consent of DISH, which consent may be withheld by DISH in its sole and absolute discretion for any reason or for no reason whatsoever. For purposes of this Section 9, "**Subscriber Information**" means the names, addresses, email addresses, IP addresses, device IDs, other identifying information, and other nonpublic information of or about DISH Subscribers.

9.5.   Security Breaches. In the event that any third party gains access to any Confidential Information or Subscriber Information without the consent of Reseller (each, a "**Security Breach**"), then Reseller shall notify DISH of such Security Breach within twenty-four (24) hours following the occurrence of such Security Breach. Promptly following a Security Breach, Reseller shall: (a) conduct an audit to determine the cause of the Security Breach; (b) provide DISH with a written report describing in reasonable detail the cause of the Security Breach; and (c) take commercially reasonable efforts to prevent future Security Breaches and describe such efforts to DISH in writing. For clarity, Reseller's compliance with the terms and conditions of this Section 9.5 will not relieve Reseller of any of its obligations under any provision of this Agreement (including, without limitation, Reseller's obligation to indemnify DISH pursuant to Section 7 of this Agreement in connection with a breach of any provision of this Agreement).

9.6.   Economic Benefit Derived Held in Trust. In the event that Reseller derives an economic benefit, in any form, from a violation of Reseller's obligations under this Section 9 or Section 5 of this Agreement, it is hereby agreed that such economic benefit is the property of DISH and that Reseller shall deliver the cash value of the economic benefit to DISH immediately upon receipt of the economic benefit. It is further agreed that Reseller shall hold such economic benefit in trust for the benefit of DISH until such time as its cash value is delivered to DISH. The foregoing is agreed to without prejudice to DISH to exercise any other rights and remedies DISH may have, including, without limitation, the right to terminate this Agreement and seek damages or other legal or equitable relief.

9.7.   Remedies. Reseller agrees that the breach of Reseller's obligations under this Section 9 will result in the substantial likelihood of irreparable harm and injury to DISH and/or DISH's Affiliates, for which monetary damages alone would be an inadequate remedy, and which damages are difficult to

accurately measure. Accordingly, Reseller agrees that DISH will be entitled, in addition to any other remedies available, to obtain immediate injunctive relief 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 DISH 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.

10. INDEPENDENT CONTRACTOR

10.1. <u>Reseller as Independent Contractor</u>. The Parties acknowledge and agree that Reseller and any person employed by Reseller to resell DISH Inventory will act (and be considered for all purposes) as a contractor independent of DISH, and not as an employee or agent of DISH. Reseller shall conduct Reseller's business as an independent contractor, and all persons employed in the conduct of such business will be Reseller's employees only, and not employees or agents of DISH. Nothing contained in or performed pursuant to this Agreement is intended or should be construed as creating an agency, employee-employer, partnership, or joint venture relationship for any purpose. The Parties further acknowledge and agree that Reseller and any persons employed by Reseller have no right or authority to make any representation, promise or agreement on behalf of DISH, unless otherwise expressly agreed to in writing by DISH. Reseller and any persons employed by Reseller agree not to represent themselves as DISH's agents for any purpose to any third party unless specifically authorized, in advance and in writing, to do so, and then only for the limited purpose(s) stated in such authorization. This prohibition includes the use by Reseller and any persons employed by Reseller of the stationery and forms of DISH and/or DISH's Affiliates. Reseller agrees to assume full liability for any contracts or agreements which Reseller and any persons employed by Reseller enter into on behalf of DISH without the express knowledge and written consent of DISH.

10.2. <u>Reseller Assurances</u>. In Reseller's capacity as an independent contractor, Reseller acknowledges and agrees that: (i) Reseller will control and direct the means and methods of performance under this Agreement and any Order by Reseller and Reseller's employees; (ii) Reseller will provide supervision of all of Reseller's employees assigned to sell DISH Inventory; (iii) Reseller shall ensure compliance by Reseller and Reseller's employees with, all of DISH's policies and regulations (including any of Reseller's obligations, duties and/or responsibilities included in this Agreement) applicable to Reseller's sale of DISH Inventory; (iv) Reseller is responsible for paying all ordinary and necessary expenses of Reseller's employees; (v) Reseller and Reseller's employees are not entitled to any training by DISH relating to the professional skills necessary to sell DISH Inventory, though DISH may give general directions and orientation instructions; (vi) Reseller is solely responsible for the withholding and/or payment, as required by law, of all federal, state and local taxes and assessments, if any, imposed on Reseller or Reseller's employees as a result of its and their reselling of the DISH Inventory; (vii) Reseller will comply with all federal and state benefits laws applicable to Reseller or Reseller's employees, if any, including making deductions and contributions for social security and unemployment tax; and (viii) Reseller will indemnify, defend and hold DISH and DISH's Affiliates harmless in the manner prescribed in <u>Section 7</u> for any Claims made against DISH and/or any of DISH's Affiliates by any and all taxing authorities in connection with Reseller's performance under this Agreement. Nothing in this <u>Section 10.2</u> shall relieve Reseller of any of its obligations hereunder or in any Order.

10.3. <u>No Conflicts</u>. In Reseller's capacity as an independent contractor, Reseller represents, warrants and covenants that: (i) no third party has exclusive rights to Reseller's services in the specific areas described herein and that Reseller is in no way compromising any rights or trust relationships between any third party and Reseller, or creating a conflict of interest, or any possibility thereof, for Reseller or DISH and/or any of DISH's Affiliates; (ii) Reseller will offer its services to third parties during the Term; and (v) Reseller will indemnify, defend and hold DISH and DISH's Affiliates harmless in the manner proscribed in <u>Section 7</u> for any Claims made against DISH and/or any of DISH's Affiliates for breach of these representations and warranties.

11. MISCELLANEOUS

11.1. <u>Costs and Expenses</u>. Except as otherwise expressly specified in this Agreement, each Party will bear its own costs and expenses arising out of the performance of its obligations under this Agreement.

11.2. <u>Waiver; Cumulative Remedies</u>. The waiver or failure of either Party to exercise any right provided for herein will not be deemed a waiver of any further right hereunder. The rights and remedies of the Parties set forth in this Agreement are in addition to any rights or remedies the Parties may otherwise have at law or equity.

11.3. <u>Severability</u>. Each provision of this Agreement shall be construed as separable and divisible from every other provision and the enforceability of any one provision shall not limit the enforceability, in whole or in part, of any other provision. In the event that a court or administrative body of competent jurisdiction holds any provision of this Agreement to be invalid, illegal, void or less than fully enforceable as to time, scope or otherwise, then such provision shall be construed by limiting and reducing it so that such provision is valid, legal, and fully enforceable while preserving to the greatest extent permissible the original intent of the Parties; the remaining terms and conditions of this Agreement shall not be affected by such alteration, and shall remain in full force and effect.

11.4. <u>Assignment</u>. Neither Party may assign or delegate its rights, duties or obligations under this Agreement without the prior written consent of the other Party, which will not be unreasonably withheld, delayed, or conditioned. Notwithstanding the foregoing, DISH may assign its rights and obligations under this Agreement without Reseller's prior written consent or approval: (i) to a successor-in-interest as a result of a merger or consolidation or in connection with the sale or transfer of all or substantially all of it business or assets to which this Agreement relates; or (ii) to any Affiliate. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the Parties, their successors and permitted assigns.

11.5. <u>Governing Law</u>. The relationship between the Parties and their present and future Affiliates (including, without limitation, all disputes, controversies or claims, whether arising in contract, tort, under statute or otherwise) is governed by and must be 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. Any and all disputes, controversies and/or Claims arising out of, or in connection with, the interpretation, performance or the nonperformance of this Agreement or any and all disputes, controversies and/or claims arising out of, or in connection with, transactions in any way related to this Agreement (whether arising in contract, tort, under statute or otherwise) and/or the relationship between the Parties will be

litigated solely and exclusively before the United States District Court for the District of Colorado. The Parties and their present and future Affiliates consent to the *in personam* jurisdiction of the United States District Court for the District of Colorado and the appropriate state court located in the City and County of Denver, Colorado and waive, fully and completely, any right to dismiss and/or transfer any action pursuant to Title 28 U.S.C. Section 1404 or 1406 (or any successor statute). Further, Reseller hereby acknowledges and agrees to waive personal service of all process and hereby consents that any such service may be made by registered or certified mail directed to Reseller at the address listed in the preamble of this Agreement, or such other address as Reseller may designate in writing delivered to DISH in accordance with Section 11.6 of this Agreement, or at the Reseller's business address reported to the state of incorporation or organization, if applicable. In the event that the United States District Court for the District of Colorado does not have subject matter jurisdiction over any matter for which it is specified herein as the proper venue, then such matter must be litigated solely and exclusively before the appropriate state court of competent jurisdiction located in the City and County of Denver, Colorado.

       11.6. <u>Notices</u>. All notices or requests that are required or permitted to be given pursuant to this Agreement must be given in writing and must be sent by facsimile, electronic mail (e-mail), or by first-class certified mail, postage prepaid, or by nationally-recognized courier service, charges prepaid, to the Party to be notified, addressed to such Party at the address(es) set forth below, or sent by facsimile to the fax number(s) set forth below, or such other address(es) as such Party may have substituted by written notice (given in accordance with this Section 11.6) to the other Party. The sending of such notice with confirmation of receipt of the complete transmission (in the case of facsimile transmission) or receipt of such notice (in the case of delivery by first-class certified mail or by nationally-recognized courier service) will constitute the giving thereof.

If to be given to Reseller:

Notice may be given to you at the address listed in the applicable Order or any recent communication(s) with DISH and/or at the address on record with the applicable secretary of state.

If to be given to DISH:	

DISH Network L.L.C. Attn: Kevin Arrix, SVP Media Sales *If by e-mail*: kevin.arrix@dish.com *If by nationally recognized courier service*:	
9601 South Meridian Blvd. Englewood, Colorado 80112 *If by first-class certified mail*: P.O. Box 6655 Englewood, Colorado 80155	
If by facsimile: Fax #: (303) 723-2050	
cc: Office of the General Counsel DISH Network L.L.C. *If by nationally-recognized courier service*: Same address as noted above for DISH courier delivery *If by first-class certified mail*: Same address as noted above for DISH first- class certified mail delivery *If by facsimile*:	
Fax #: (303) 723-2050 *If by e-mail*: DishLegalNotices961@dish.com	

11.7. <u>Publicity</u>. Unless required by law, neither Party will issue any press releases concerning this Agreement and/or the relationship of the Parties hereto without the prior written consent of the other Party. Reseller shall not publish or otherwise distribute a report or statistic explicitly pertaining to the performance of this Agreement, the DISH Inventory, or a report or statistic from which a recipient thereof, could reasonably draw a conclusion as to the identity of DISH and its performance under this Agreement.

11.8. <u>Non-Disparagement.</u> Reseller hereby covenants that Reseller will not, directly or indirectly, at any time during or after the Term of this Agreement, in any capacity or manner, make, express, transmit, speak, write, verbalize or otherwise communicate in any way, any remark, comment, message, information, declaration, communication or other statement of any kind, whether verbal, in writing, electronically transferred or otherwise, that might reasonably be construed to be critical of, or negatively portray or depict, DISH, DISH's Affiliates or any of its and/or their respective products (including, without limitation, the DISH Inventory), services, directors, officers, employees, agents or representatives.

11.9. <u>Headings</u>. The headings in this Agreement are for convenience of reference only and have no legal effect. Each capitalized term applies equally to both the singular and plural forms thereof.

11.10. <u>Entire Agreement; Amendment</u>. This Agreement constitutes the complete and exclusive agreement between the Parties relating to the subject matter hereof. It supersedes all prior proposals, understandings and all other agreements, oral and written, between the Parties relating to this subject matter. This Agreement may not be modified or altered except by written instrument duly executed by both Parties.

11.11. <u>Force Majeure</u>. Except with respect to delays or failures caused by the negligent act or omission of either Party, any delay in or failure of performance by either Party under this Agreement will not be considered a breach of this Agreement and will be excused to the extent caused by any occurrence beyond the reasonable control of such Party including, but not limited to, acts of God, satellite failure, power outages, or failures of the Internet (each, a "**Force Majeure Event**"), provided that the Party affected by such Force Majeure Event will immediately begin or resume performance as soon as practicable after the Force Majeure Event has abated. Excusable delays do not include lockout, shortage of labor, labor interruptions due to COVID-19, lack of or inability to obtain raw materials, fuel or supplies or any other industrial disturbance. In the event that a Force Majeure Event that prevents a Party from performing any of its obligations under this Agreement continues for sixty (60) days or more, then the other Party may terminate this Agreement immediately upon written notice to the non-performing Party. The Parties agree that Force Majeure Events shall not excuse any payment due from one Party to the other.

11.12. <u>Survival</u>. In addition to and without limitation of the provisions of this Agreement that specifically provide for survival beyond expiration or termination, <u>Sections 2</u> (solely as necessary to effectuate the terms of <u>Section 4.3</u>), <u>4.3</u>, <u>6</u>, <u>8</u>, <u>9</u>, and <u>11</u> as well as all provisions regarding indemnification, liability and limits thereon as well as any other provision that would by its nature logically be expected to survive, shall survive indefinitely or until the expiration of any time period specified elsewhere in this Agreement with respect to the provision in question.

11.13. <u>Third-Party Beneficiaries</u>. Except as expressly provided in this <u>Section 11.13,</u> each Party acknowledges and agrees that there are no third-party beneficiaries to this Agreement and that no third party will have any claim or cause of action against either Party to this Agreement for any acts or omissions of either Party; *provided, however,* each Party intends that the Affiliates of DISH are third-party beneficiaries of this Agreement entitled to the rights and benefits hereunder and may enforce the provisions hereof as if they are a Party hereto.

11.14. <u>Contract Interpretation</u>. Ambiguities, inconsistencies or conflicts in this Agreement will not be strictly construed against either Party, but will be resolved by applying the most reasonable interpretation under the circumstances, giving full consideration to the Parties' intentions at the time this Agreement is entered into and common practice in the industry.

11.15. <u>Counterparts</u>. This Agreement may be executed in counterparts, each of which will constitute an original, and all of which will constitute one agreement.

Last Update Posted: October 13, 2023 (Version 1.0-2023)

EXHIBIT A
MINIMUM THIRD PARTY PRIVACY REQUIREMENTS

1.0 **DEFINED TERMS**.

1.1 "**Agreement**" means any agreement by and between Customer and DISH.

1.2 "**Customer**" means the customer named in the Agreement to which DISH provides or makes available DISH Data.

1.3 "**Data Center Operator**" means any entity, other than DISH, hosting or storing DISH Data.

1.4 "**DISH Data**" means any data that is owned, licensed, stored or managed by DISH that contains information regarding or related to DISH personnel, customers, prospects, employees or business operations, including, but not limited to, DISH Personal Information.

1.4.1 "**DISH Personal Information**" means any Personal Information provided or made available to Customer, collected by Customer at the direction of DISH, or otherwise made available to Customer pursuant to terms with DISH, including but not limited to any personal data, information, or combination of data points, that permits identification, contact, profiling, or tracking of any individual, household, or individual or household device, including any information (e.g., an identifier or code) that facilitates physical or online contact with, or reveals the identity or contact information of, a person, or is used to create a profile of a person or in connection with targeted advertising or analytics of an individual or household.

1.4.2 "**Personal Information**" shall be interpreted consistent with Privacy Laws, and includes at a minimum "personal information" and "personal data" as defined in the State Privacy Laws.

1.5 "**Privacy Laws**" means applicable statutes, regulations or other laws pertaining to privacy and information security, including, where applicable, the State Privacy Laws.

1.6 "**Privacy Requirements**" means all of the terms and conditions contained in these Minimum Third Party Information Privacy Requirements.

1.7 "**State Privacy Laws**" mean applicable US state privacy laws, which may include but shall not be limited to, the California Consumer Privacy Act, Cal. Civ. Code 1798.100 et seq., as amended, including by the California Privacy Rights Act (the "CCPA"), the Virginia Consumer Data Protection Act, Code of Virginia title 59.1, Chapter 52 (the "VCDPA"), the Colorado Privacy Act, Colorado Rev. Stat. 6-1-1301 et seq. (the "CPA"), the Utah Consumer Privacy Act, Utah Code 13-61-101 et seq. ("UCPA"), the Connecticut Act Concerning Personal Data Protection and Online Monitoring, Conn. PA 22-15 § 1 et seq. ("PDPOM"), or any regulations or guidance issued pursuant thereto.

1.8 The terms "**consumer**," "**processing**," "**sell**," "**share**," and "**third party**" shall have the meanings given to those terms in the State Privacy Laws to the extent such meanings are materially similar to terms' meanings in CCPA, VCDPA, CPA, UCPA, or PDPOM.

2.0 **GENERAL THIRD PARTY PRIVACY REQUIREMENTS**.

2.1 Agreement Compliance. Customer's compliance with these Privacy Requirements will not in and of itself excuse Customer from any of its obligations, including but not limited to, indemnification and confidentiality, set forth in the Agreement.

2.2   Compliance with Applicable Laws. Customer represents, warrants and covenants that its collection, access, use, storage, disposal, disclosure, and protection of DISH Data does and will at all times comply with all applicable laws, including, but not limited to, Privacy Laws, cyber, and data protection laws and regulations, and the International Traffic in Arms Regulations (ITAR) and Export Administration Regulations (EAR). Customer will require that processors and sub-processors that Customer uses to process DISH Data are obligated to comply with the foregoing requirements.

2.3   Notification of Regulatory Inquiry. In the event that Customer receives any regulatory inquiry or correspondence regarding DISH Personal Information in which Customer or DISH is named (an "Inquiry"), Customer shall, to the extent not prohibited by applicable law or any regulatory authority: (a) notify DISH of such Inquiry in writing within three (3) calendar days of receiving such Inquiry; (b) provide DISH with all copies of documents and correspondence relating to the Inquiry without undue delay after receipt or delivery of such documents or correspondence; (c) provide DISH with a written certification at the conclusion of the Inquiry that the action required by Privacy Laws has been taken in response to such Inquiry; and (d) not disclose any DISH Personal Information to the applicable authority without DISH's prior written consent.

3.0   **TERMS OF DISH PERSONAL INFORMATION.**

The Parties acknowledge and agree that:

3.1   Limited Purposes. DISH provides DISH Personal Information to Customer only for the following purposes, as applicable: (i) performing services on behalf of DISH, such as advertising or marketing, analytics, cross-context behavioral advertising, or similar services detailed in the Agreement; and/or (ii) improving or building the services identified in the Agreement, and Customer shall use the DISH Personal Information only for such purposes;

3.2   Privacy Protection. Customer will comply with all applicable sections of the State Privacy Laws and will provide the same level of privacy protection for DISH Personal Information as required of DISH by the State Privacy Laws, and grants DISH with the right to take reasonable and appropriate steps to ensure that Customer uses the DISH Personal Information in a manner consistent with DISH'S obligations under the State Privacy Laws;

3.3   Cooperation. Customer will provide DISH with all reasonably-requested assistance to enable DISH to fulfill its own obligations under the State Privacy Laws, including deletion of DISH Personal Information as required by the State Privacy Laws and when requested by a consumer in accordance with such State Privacy Laws;

3.4   Remediation. Customer will notify DISH if it makes a determination that it can no longer meet its obligations under the State Privacy Laws, and DISH has the right to take reasonable and appropriate steps to stop and remediate unauthorized use of DISH Personal Information, including, for example, requiring Customer to provide documentation that verifies that Customer no longer retains or uses the Personal Information of consumers who have had their requests to opt-out of sale or sharing forwarded to it by DISH; and

3.5   Sale & Sharing. Customer will not sell or share DISH Personal Information unless Customer does so in compliance with the State Privacy Laws.

4.0   **MISCELLANEOUS**.

If any provision of these Privacy Requirements shall be found to be void by a court of law, such provision shall be deemed to be severable from the other provisions of these Privacy Requirements, and the remainder of these Privacy Requirements shall be given effect, as if the Parties had not included the severed provision. All representations, warranties, and indemnities shall survive the termination and/or expiration of these Privacy Requirements and shall remain in full force and effect. All of a Party's rights and privileges shall survive termination and shall be enforceable by that Party. Except as expressly set forth herein, the terms of the Agreement shall remain unmodified and in full force and effect. In the event of a conflict between the terms of the Agreement and the terms of these Privacy Requirements, the more restrictive provisions shall control. Headers are for convenience and do not affect the interpretation of the terms of these Privacy Requirements.

EXHIBIT B
MINIMUM THIRD PARTY INFORMATION SECURITY REQUIREMENTS

1.0   *Defined Terms.*

1.1 "**Agreement**" means any agreement by and between Vendor and DISH in which Vendor agrees to perform services on behalf of or otherwise at DISH's direction including the DISH Advertising Inventory Reseller Terms and Conditions entered into by and between DISH and Vendor.

1.2 "**Business Continuity Plan**" means a document that details the series of all actions and processes that will be undertaken by Vendor to mitigate negative business impacts and/or monetary losses to DISH, should an "adverse event" occur. An "adverse event" is defined as an occurrence that will result in the complete or partial loss of Vendor services that support DISH for a continuous period of time that is greater than 24 hours. An event may be a Foreseen Event or an Unforeseen Event, as such terms are defined below.

> **1.2.1** A "**Foreseen Event**" is an event for which Vendor has had at least 24 hours prior knowledge that it will happen or is expected to happen based on the presence of certain conditions (e.g., planned system shutdowns, system conversions, hurricanes, etc.).

> **1.2.2** An "**Unforeseen Event**" is an event that is unanticipated or not expected beforehand (e.g., earthquakes, etc.).

1.3 "**Data Center Operator**" means any Vendor hosting or storing DISH Data.

1.4 "**DISH Data**" means any data that is owned, licensed, stored or managed by DISH that contains information regarding or related to DISH customers, employees or business operations.

> **1.4.1** "**Personal Information**" means any personal data, information, or combination of data points, that permits identification, contact, or tracking, including any information (e.g., an identifier or code) that facilitates physical or online contact with, or reveals the identity or contact information of, a person.

1.5 "**Data Interactions**"

> **1.5.1** "**Accesses**" means Vendor is able to view DISH Data within DISH systems.

> **1.5.2** "**Collects**" means Vendor obtains DISH Data on behalf of DISH while providing services to DISH.

> **1.5.3** "**Receives**" means Vendor will obtain DISH Data from DISH through scheduled or unscheduled transfers.

> **1.5.4** "**Processes**" means Vendor enhances or modifies DISH Data through their systems or algorithms.

> **1.5.5** "**Stores**" means Vendor retains DISH Data on their systems or an outsourced location (e.g., cloud storage, or physical file storage).

> **1.5.6** "**Transmits**" means Vendor sends DISH Data to another entity or back to DISH.

1.6 "**Fourth Party**" means any entity (other than DISH) that contracts with Vendor to assist in providing services to DISH.

1.7 "**Security Incident**" means a declared or known event in which an individual or an application illegitimately enters a private, confidential or unauthorized logical information system perimeter on any computer or network system that is within Vendor's care, custody, and control.

1.8 "**Security Requirements**" means all of the terms and conditions contained in these Minimum Third Party Information Security Requirements.

1.9 "**Vendor**" means Reseller and any other entity (other than DISH) that accesses, collects, receives, processes, stores, or transmits DISH Data on behalf of DISH or while providing services to DISH pursuant to the Agreement.

2.0 GENERAL THIRD PARTY INFORMATION SECURITY REQUIREMENTS.

2.1 Agreement Compliance. Vendor's compliance with these Security Requirements will not in it of itself excuse Vendor from any of its obligations, including without limitation, indemnification and confidentiality, set forth in the agreement.

2.2 Compliance with Applicable Laws. Vendor represents, warrants and covenants that its collection, access, use, storage, disposal and disclosure of DISH Data does and will at all times comply with all applicable laws, including, without limitation, federal, state and local privacy and data protection laws and regulations for all jurisdictions in which Vendor is conducting commerce with DISH Data.

2.3 Single Sign On. Vendor systems shall utilize SAML 2.0, OAuth2, or OpenID Connect for the purposes of providing DISH employees Single Sign On access to such systems.

2.4 Vendor Network Protection. DISH Data must at all times be protected from unauthorized use, access, disclosure, alteration or destruction.

2.4.1 Secure and Private Data Networks. Data networks that have Data Interactions, as defined in Section 1.3, must be secured and private.

2.4.2 Reputation Based Filtering. Vendor shall use a reputation-based service to determine if a source IP address is a known anonymous proxy, and prevent such anonymous proxies from accessing Vendor systems that have Data Interactions.

2.4.3 Non-US IP Address Blocking. If the Vendor systems are exposed to the internet (with the exception of Vendor's private IP Address ranges), Vendor shall prevent (i.e., block) any and all host addresses that are physically located outside of the U.S. or any U.S. territory from accessing any Vendor systems having Data Interactions.

2.4.3.1 Upon request by DISH, Vendor will blacklist non-U.S. IP Addresses known by Vendor to be associated with suspicious activity so that such IP addresses cannot access any Vendor system that has Data Interactions.

2.4.3.2 Upon request by DISH, Vendor will whitelist IP Addresses, or Vendor will provide DISH the capability to whitelist IP Addresses.

2.5 Audits. Vendor shall provide DISH with reasonable and sufficient access to all relevant Vendor personnel, records and facilities. No audit shall unreasonably interfere with Vendor's performance of services to DISH or Vendor's other customers.

2.5.1 Information Technology and Security Control Audits by External Firm. At least once per year, Vendor shall conduct an audit of the information technology and security controls for all systems used in complying with its obligations under any agreement, including without limitation, a network-level vulnerability assessment based on industry security best practices performed by a nationally recognized third-party audit firm.

2.5.2 Information Security Audits. Upon prior written notice of not less than fifteen (15) business days, not more than twice in any twelve (12) month period DISH shall have the right to conduct a security audit at any Vendor location having Data Interactions. The focus of the audits shall be Vendor's policies, procedures, relevant written records and documentation, security compliance requirements, inspections of equipment, logged data and facilities servicing DISH and

compliance with these Security Requirements. The audits will also include interviews with Vendor personnel who are responsible for data and information security.

2.5.3 <u>Audit Results Reporting</u>. Upon request, Vendor shall provide to DISH any relevant formal summaries, attestations, or executive summaries of any security audit reports.

2.5.4 <u>Issue Remediation: Addressing Risks, Gaps, or Other Issues</u>. If DISH requests a remediation plan to address identified risks, then Vendor shall provide, within an agreed upon timeframe following such request, a written remediation plan to DISH that details corrective actions, responsible individual(s), and associated time frames for completion of the remediation plan.

> 2.5.4.1 Vendor shall provide periodic progress reports during this remediation process.

> 2.5.4.2 DISH may, at DISH's convenience and in its sole discretion, verify results after the remediation plan has been executed.

> 2.5.4.3 In the event that DISH learns of, or identifies, a risk or vulnerability related to any Vendor system that transmits, stores or handles DISH Data, then Vendor shall cooperate with DISH to immediately address the risk. Possible remediation actions include, but are not limited to, taking down the affected service or application, remediating through development, making configuration changes and adding additional security controls.

2.6 <u>DISH System Disruptions</u>. Vendor shall make all commercially reasonable efforts to detect and prevent any disruptions of the DISH customer experience, the operation of DISH viewing platforms, or the undue usage of DISH resources and those of DISH's customers, resulting from the unauthorized or malicious use of the Vendor's platform or technology.

2.7 <u>Intrusion Detection/Prevention Systems</u>. Vendor shall employ an industry-standard Intrusion Detection System ("IDS") and/or an Intrusion Prevention System ("IPS").

2.7.1 <u>Monitoring</u>. The IDS/IPS devices must monitor all ingress and egress traffic in any environment where any Vendor system, that has Data Interactions, resides.

2.7.2 <u>Alerts</u>. The IDS/IPS devices must be configured to alert Vendor personnel of any and all suspected compromises of DISH Data.

2.8 <u>Event Logging</u>. Vendor shall ensure the following events are logged for any Vendor system that has Data Interactions:

2.8.1 <u>Audit Log Initialization</u>. Initialization of all audit logs.

2.8.2 <u>Authentication and Authorization Access Attempts</u>. All authentication and authorization access attempts, including but not limited to, login and logout (including attempts outside of standard methods).

2.8.3 <u>System-Level Object Events</u>. Events involving DISH Data related system-level objects including, but not limited to, customer accounts, service accounts, databases, servers, configuration records, settings, VLANs, WLANs, false log entries, logging sensitivity level, maximum size, storage that will create, delete, modify or retrieve/lookup.

2.8.4 <u>Administrative or Privileged Level Actions</u>. Any action performed using any administrative or privileged permission levels.

2.8.5   Audit Log Access and Viewing. Access and/or viewing of audit logs.

2.8.6   Payment Information Access and Viewing. Access and/or viewing of payment information.

2.8.7   Antivirus Activity. Antivirus activity, including without limitation, periodic scanning, virus detection and quarantine.

2.8.8   Time Synchronization Changes. Time synchronization changes.

2.8.9   Event Details. Vendor shall ensure that the following information is captured and included for each event logged:

   2.8.9.1   Login, user, process and/or transaction identifier ("ID").

   2.8.9.2   Success or failure indication, including without limitation login-success and login-failure.

   2.8.9.3   Event date and time.

   2.8.9.4   All source client IP addresses associated with the event (IP address of the end user's computer). This includes X-Forwarded-For (or XFF) addresses and all other possible source IP addresses.

   2.8.9.5   Application identifier and/or name that is writing the record and/or event.

   2.8.9.6   Host IP address (i.e. IP address of the system that is writing the record).

   2.8.9.7   Event type (i.e. create, delete, lookup, modify, etc.).

   2.8.9.8   Event details such as free-form text information relevant to the event including, but not limited to, receiver online ID, receiver number, account identifier, event details and phone number.

   2.8.9.9   The search criteria must be logged when writing a record associated with a lookup request.

2.8.10   Data Protection. DISH Data must not be written to any logs in plain text. Masking is acceptable to protect any DISH Data.

2.8.11   Log and Repository Format. Vendor shall ensure that event logs and log repositories are able to be systematically reviewed using structured query language programs. Vendor shall secure all audit logs using an industry-standard security method so they cannot be altered.

2.8.12   DISH Data Log Availability. No less than once a day, Vendor shall copy or forward to a centralized log server all event logs for systems handling DISH Data. The centralized log server must be located in a secure production network environment.

2.8.13   Source and Event Time Synchronization. Vendor shall ensure that all log sources and log events are time synchronized at all times.

2.8.14   Event Log Monitoring. Vendor shall review, either manually or through automated tools such as log harvesting, parsing or other security incident and event management (or SIEM) tools, all event logs related to DISH Data.

   2.8.14.1   On a daily basis, Vendor shall monitor all event logs related to DISH Data and associated with authentication, authorization, and accounting, or AAA, services for suspicious or unwanted traffic.

2.8.14.2 Vendor shall ensure all suspicious activity and other suspect log entries related to DISH Data triggers an alert, such as email or another type of notification, which is sent to appropriate personnel.

2.8.15 <u>Security Event Log Retention</u>. Vendor shall retain all security-related logs for a minimum of six (6) months from the date of entry unless the logs contain entries related to payment card data, whereupon the logs must be retained for twelve (12) months (as specified by the PCI DSS Standard).

2.8.16 <u>Purging Requirements</u>. Vendor shall instruct users with ability to "purge" log data not to use this ability. Vendor shall detect and log all log purging events.

2.8.17 <u>Network Protection: Original Source Tracing and Logging</u>. Vendor shall ensure that all connections to Vendor systems can be traced to the original source for troubleshooting or forensic purposes.

2.8.17.1 If individual IP addresses are obscured such as when Network Address Translation (or NAT) or Port Address Translation (or PAT) techniques are used, then all translated address assignments must be logged.

2.9 <u>Business Continuity</u>. On an annual basis, Vendor shall supply DISH with a detailed Business Continuity Plan related to the Services provided to DISH. DISH and Vendor agree to review the Business Continuity Plan at least once per year throughout the Term of this Agreement.

2.9.1 <u>Vendor Contact Information</u>. Within thirty (30) days of the Effective Date, and upon any organizational changes during the Term, Vendor will send to DISH, the contact information of the person(s) in charge of Vendor's Business Continuity Plans should there be an adverse event. The contact information must contain, at a minimum, the name, physical address, email address, business phone number, mobile phone number, and fax number of the contact and their assigned alternate.

2.9.2 <u>Event Reporting</u>. In the case of an adverse event and within twenty four (24) hours of such event, Vendor shall provide DISH with a description of the problem, the projected length of time Services will be interrupted, and a detailed contingency plan to continue Services.

2.9.3 <u>Annual Plan Testing</u>. Vendor shall conduct an annual test of the Business Continuity Plan related to the Services provided to DISH and provide test results or reporting to DISH within 30 days of test completion.

2.10 <u>Training</u>. Vendor will, within 30 calendar days of the written request of DISH and annually thereafter, ensure that all Vendor Personnel providing Services to DISH complete any required training. Training topics to include, but not limited to:

- DISH Data Handling

- CCPA/PII Handling

2.10.1 Vendor will, upon request of DISH but no more than annually, provide copies of related training materials for DISH review.

2.10.2 Vendor will, upon request of DISH, have an officer certify that the applicable Vendor personnel have completed the training.

2.11 <u>Security Incident Handling</u>. Vendor shall immediately investigate any Security Incident, take immediate steps to stop and control any damage, resolve the issue and prevent its recurrence.

2.11.1   Notification and Escalation. Vendor shall, unless prohibited by applicable law, notify DISH of any Security Incident as soon as possible, but not more than twenty four (24) hours following such incident. This includes any inadvertent exchange of DISH Data outside the intended exchange (e.g., payment card information, etc.). Vendor shall continue to provide written updates every twenty four (24) hours after submission of the initial report until the incident has been resolved to DISH's satisfaction. Notification must include a written report detailing:

2.11.1.1   the nature of the incident,

2.11.1.2   timelines of critical events,

2.11.1.3   scope of suspected data loss,

2.11.1.4   immediate steps taken to stop the damage,

2.11.1.5   ongoing resolution activities, and

2.11.1.6   expected timeline to reach full remediation.

2.11.2   Breach Investigations. Vendor shall cooperate with DISH during investigations of any known or suspected security breach of a DISH system or data network. Vendor shall allow DISH to employ an outside audit firm to conduct such an audit should it be deemed necessary by DISH in DISH's sole and absolute discretion.

2.11.3   Abnormal Access Research. Vendor shall follow up on all exceptions, suspected exceptions, suspicious activity, compromises and breaches in any way involving or related to DISH Data.

2.11.4   Customer Notification. Vendor shall notify end user customers that have been determined to be impacted as required by all applicable laws, including state privacy laws. In no event shall this provision require Vendor to assume any of the notification obligations that the law requires exclusively of DISH.

2.11.5   Login Credentials Incident Notification. Vendor acknowledges DISH's right to request additional information at any time, in DISH's sole discretion. If Vendor suspects that login credentials have been stolen or compromised in any manner, Vendor shall notify DISH immediately.

2.12   Credential Sharing Prevention. Vendor shall not engage in the "sharing" of login credentials (e.g., generic logins) between multiple systems or multiple personnel on any Vendor system having Data Interactions.

2.13   Quarterly Access Reviews. Vendor shall review all login IDs related to Vendor systems that have Data Interactions, on a quarterly basis, to ensure that any inactive or unauthorized accounts are disabled or removed.

3.0   **DATA ACCESS REQUIREMENTS.**

3.1   Automated Access Prevention. Vendor shall not use any automated means to access, query or otherwise collect DISH Data from DISH systems without prior explicit written authorization from DISH.

3.2   DISH Application or System Logouts. Vendor shall ensure that any person or system that logs into any DISH application or system also explicitly logs out of such DISH application or system immediately at the end of such use. Vendor acknowledges that DISH systems will not automatically end inactive sessions through use of time-outs or a similar mechanism.

4.0   **DATA PROCESSING REQUIREMENTS.**

4.1   Vendor Hosted Solution Location. All DISH Data processed through any Vendor or Fourth Party system must remain within the U.S. and/or any U.S. territory.

4.2   SOC 2 Type II for Data Centers. If Vendor is processing DISH Data, or using any third party to process DISH Data, then the data center and each Data Center Operator shall (a) maintain a SOC 2, Type II, report that is no more than one (1) year old, and (b) upon request, provide DISH with a true and complete copy of the most recent SOC 2, Type II report, for each Data Center Operator.

5.0   **DATA STORAGE REQUIREMENTS.**

5.1   Data Storage Location. All DISH Data stored on any Vendor or fourth party system must remain within the U.S. and/or any U.S. territory.

5.2   Data Center Security Standards. Vendor shall implement or, if using a third party Data Center Operator, ensure the Data Center Operator has implemented, administrative, physical and technical safeguards to protect DISH Data that are consistent with the most recently published versions of industry-recognized security standards that have been approved by DISH.

> 5.2.1   SOC 2 Type II for Data Centers. Vendor shall (a) maintain a SOC 2, Type II, report that is no more than one (1) year old, and (b) upon request, provide DISH with a true and complete copy of the most recent SOC 2, Type II report, for each Data Center Operator.

5.3   DISH Data Separation. DISH Data must at all times be logically separated from all non-DISH Data by means of using access control or other security related tools to ensure only authorized people are able to access DISH Data stored on Vendor systems.

5.4   Data "At Rest" Encryption. All non-public DISH Data must be encrypted at all times, using a method approved by DISH in its sole and absolute discretion prior to use, including, but not limited to, while it is stored ("at rest"), regardless of the means, methods or mediums of storage.

5.5   Data Retention. Unless otherwise set forth in the Agreement, all DISH Data that is not being used to service an active account must be purged on a regular basis at least once every six (6) months to proactively delete such data, and no DISH Data related to a former DISH customer or subscriber may be stored for any period longer than two (2) years.

5.6   Data Return or Destruction Upon Termination or Request. Except to the extent otherwise specifically set forth in the Agreement, upon termination of the Agreement and upon DISH request, Vendor shall destroy, at DISH's option in DISH's sole and absolute discretion, all documents, electronic media, software and other items containing or relating to DISH Data unless legally required to retain such information.

> 5.6.1   Data Return Upon Termination or Request. If DISH requests the Information to be returned, then delivery must take place by secure methods as determined by DISH, in its sole and absolute discretion, and must be completed no less than thirty (30) days after termination of the Agreement.

> 5.6.2   Data Destruction Upon Termination or Request. Within thirty (30) days following any request made by DISH, Vendor shall destroy the information in a manner that makes it completely unrecoverable, as approved by DISH in advance.

> 5.6.3   Fourth Party Data Destruction. Within thirty (30) days following any request made by DISH, Vendor shall require any fourth party in possession of DISH Data to destroy the information in a manner that makes it completely unrecoverable, as approved by DISH in advance.

5.6.4 <u>Data Destruction Certification</u>. Within sixty (60) days following any request made by DISH, an officer of Vendor will certify in writing to the DISH Information Security Department stating that all data destruction has taken place in accordance with these Security Requirements.

6.0 **DATA TRANSMISSION REQUIREMENTS*.***

6.1 <u>Data "In Transit" Encryption</u>. All DISH Data must be encrypted at all times, using a method approved by DISH in its sole and absolute discretion prior to use, including, but not limited to, while it is transmitted ("in transit"), regardless of the means, methods or mediums of transmission.