



## TERMS OF SERVICE

### WELCOME!

Thank you for choosing our advertising products and services (collectively, "Ad Services"). Ad Services are provided by DISH Network L.L.C., a Colorado limited liability company ("DISH" and "our"). Your submission of an application or other request for, or confirmation, use or receipt of, Ad Services constitutes acceptance of these terms and conditions ("Terms of Service") by you and your employees, agents (e.g. any Agent identified on your customer application) and other representatives acting on your behalf (collectively, referred to as "you" and "your"). Please visit us at [www.dishmediasales.com](http://www.dishmediasales.com) to explore DISH's various Ad Services.

### 1. TERMS OF SERVICE AND CHANGES.

These Terms of Service govern any and all Ad Services requested and/or received by or otherwise provided, directly or indirectly, to you. If you do not agree to these Terms of Service, then do not apply for, request, purchase or otherwise use Ad Services. DISH may modify these Terms of Service from time to time and at any time without providing written notice to you and recommends that you visit <http://www.dishmediasales.com/downloads/DISH-Media-Sales-Terms-of-Service.pdf> prior to each request for or use of Ad Services following your submission of a customer application. Any and all modifications will be effective immediately upon posting; provided, however, that if you are currently receiving or using Ad Services, then unless otherwise stated therein, such changes will be effective thirty (30) calendar days following the date on which such changes are posted. Copies of prior terms of service applicable to you may be requested from your account executive at DISH. The posting date of the current version is located at the end of these Terms of Service.

### 2. ORDERS.

**(a) Getting Approved to Purchase Ad Services.** Each order or request for (e.g., via an insertion order) or confirmation or acceptance of (e.g., via an order letter) Ad Services (each, regardless of the method of agreement or confirmation, hereinafter referred to as an "Order") may be subject to your submission of DISH's standard customer application. In the alternative, you may elect in your customer application to pre-pay for any or all Ad Services rather than complete DISH's standard credit review process. DISH's standard customer application is available at: <http://www.dishmediasales.com/downloads/DISH-Media-Sales-Customer-Application.pdf>. DISH may determine, in its sole discretion, that pre-payment for Ad Services is required.

**(b) Order/Confirmation Letters; Insertion Orders.** For clarity, the term "Order" includes, without limitation, both insertion orders and letter orders, including, without limitation, letter confirmations designed to finalize and confirm the specifications of Ad Services contained in a proposal submitted by DISH. These Terms of Service govern any and all Orders submitted, confirmed or otherwise accepted or requested by you. Each Order, together with these Terms of Service, constitutes an agreement by and between you and DISH to purchase Ad Services, and is hereinafter referred to, collectively, as the "Agreement" (or an "Agreement"). To be binding upon DISH, each Order must be accepted by DISH as evidenced by a written confirmation (e.g., a written letter order provided to you or written confirmation or acceptance of an insertion order provided to DISH) or DISH's provision of Ad Services (each, a "Confirmation"). DISH reserves the right to accept, modify and/or reject any Order for any reason whatsoever. Any failure to provide a Confirmation will be deemed a rejection of such Order by DISH. 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, and regardless of whether you received a Confirmation.

**(c) Technical Specifications Requirements; Changes to Orders.** In order for DISH to provide Ad Services, you must ensure that any and all 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), whether created by or approved by you or on your behalf (collectively, "Ad Content") provided by you or on your 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's media kit available at: <http://www.dishmediasales.com> and please click on the Media Sales Tab. You may request changes to Orders for which you have received a Confirmation; 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.

**(d) 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 your Ad Services, and to obtain approvals use any of the same, you must first speak with your DISH account executive; your use of any such technologies is subject to DISH's prior written consent and your agreement to comply with any limitations or requirements related to such use (each, on a case-by-case basis, "Permitted Advertising Technology(ies)"). Your use of the Permitted Advertising Technologies is at your sole cost and expense. Notwithstanding anything to the contrary contained in any agreement, other than use of only those Permitted Advertising Technologies, you 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 you should contact your DISH account executive to discuss compatibility and permission for use of the desired technology, material or service in connection with Ad Services. After gaining consent to use a Permitted Advertising Technology, you acknowledge and agree that, as applicable, you must either provide the pixel embedded in the asset or provide DISH with the pixel and the asset at least three (3) days prior to scheduled launch of 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, you acknowledge and agree that: (i) such authorization is subject to the Permitted Advertising Technology provider's agreement with DISH governing the treatment of DISH's confidential information; (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 subclause (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 you 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 Ad Services from DISH (whether as a as a distinct makegood flight or as part of your future Ad Services purchase(s) with DISH).

**(e) Confidential Information.** You may not disclose (orally, in writing, by press release or by public disclosure of any kind or otherwise) to any third party (other than your respective directors, officers, members, managers, employees, auditors, financial advisors, lenders, attorneys and agents, in each case in their capacity as such and on a need-to-know basis, and in the case of third-parties, subject to a binding and enforceable confidentiality agreement between you and the relevant third party), any Confidential Information, except to the extent necessary to comply with applicable law(s). For clarity, unless agreed to by DISH in advance in writing, you may not issue any press release or other public announcement concerning your purchase of Ad Services or the terms of this Agreement. For purposes of this Section 2(e), (1) "Confidential Information" means the existence of any Agreement, material or non-public terms of any Agreement (including, without limitation, rates other than published rates), and any and all other non-public information disclosed by DISH, or contained in any Order, in connection with any Agreement, proposed or requested Ad Services or delivery of Ad Services, including, without limitation, technical information, technical or marketing tests, product plans, data and/or information used and the source thereof, reports provided, including, without limitation, post-campaign reports provided directly or indirectly, information received in connection with the Permitted Advertising Technologies (i.e., any and all information related to viewing or viewers), and Subscriber Information (which Subscriber Information the parties agree is DISH's Confidential Information); and (2) "Subscriber Information" means any and all information relating to one or more past, present or future subscribers of DISH or its affiliates (i.e., any person, entity, or location, whether residential or commercial, that DISH (or a DISH affiliate or subdistributor) has intentionally authorized to receive any level of television programming service or package of television programming services), including, without limitation, names, addresses, e-mail addresses, account numbers, account history, persistent identifiers and usage or other viewer data (regardless of whether such Subscriber Information is anonymized and/or aggregated).

### **3. RATES, BILLING AND PAYMENTS.**

**(a) Rate(s).** The rates for Ad Services will be set forth in the applicable Order.

**(b) Payment(s).** You are fully responsible for payment for any and all Ad Services provided by DISH in accordance with any Agreement. You shall make payment in full to DISH for any and all Ad Services within 30 days following the date on which you receive an invoice from DISH. You acknowledge and agree that DISH Reporting shall be used for calculating the amounts owed to DISH. You agree to pay all portions of DISH's invoice that are not specifically disputed in good faith and in writing with DISH's Finance Department prior to the due date set forth in the applicable invoice, and your failure to timely report any dispute constitutes a waiver of all claims with respect to such dispute. All amounts due under the applicable Agreement shall be paid in full without any off-set, deduction or other withholding other than as required by law.

**(c) Late Payments and Payment Defaults.** If DISH does not receive any payment in full due under any 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 Agreement) or otherwise, with respect to your failure to make timely payment or your breach of these Terms of Service. If you are an Agent that has not delivered payment to DISH within 15 days from the date on which such amount was due, then DISH may contact Client directly for payment following delivery of notice to Agent of its intention to contact Client about the delinquent payment. DISH may offset, against any payments due to you under any Agreement, any amounts owed by you or any of your affiliates to DISH or any of its affiliates under the applicable or any other agreement. You hereby agree to pay any and all reasonable legal fee(s) and collection costs incurred by DISH in connection with any attempt to collect any past due amounts.

**(d) 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 related to or arising out of any Ad Services, all of which shall be the sole responsibility of you, if any.

**(e) Election for Conditional Payment Liability.** For purposes of any Agreement, "Agent" is the person or entity, whether automated, integrated or manually done, that requests, purchases, submits an order for, and/or resells, Ad Services (e.g., an agency or reseller); and "Client" is the person or entity on whose behalf such Agent requests, purchases and/or submits orders for, or to whom such Agent resells, such Ad Services. Any Agent submitting a customer application or otherwise acting on behalf of a Client must also provide DISH with the most recently dated copy of any agency of record letters executed by Client. Agent hereby represents, warrants and covenants to DISH that, as applicable: (i) Client has retained Agent as its agent for the purpose of requesting, purchasing and/or submitting Orders for Ad Services from DISH on behalf of Client, the disclosed principal of Agent; (ii) Client expressly authorized Agent to purchase Ad Services from DISH and/or its affiliates on behalf of Client (or purchased Ad Services from Agent), which authorization to purchase Ad Services, included, for clarity, and without limitation, delegating the appropriate authority to Agent to accept and agree to these Terms of Service and any Order on behalf of Client; and (iii) Agent has, and will maintain, the undisputed express authority (including, without limitation, any and all necessary pre-approvals) to act as Client's agent for the purpose of requesting, purchasing and/or submitting orders for Ad Services from DISH on behalf of Client, until such time that Agent and/or Client gives notice to DISH in writing of any modification to, or termination of, such authority in accordance with Section 8(c) below. Agent hereby represents, warrants and covenants: (1) Orders for Ad Services made by Agent on behalf of Client (A) expressly identify that Agent is requesting, purchasing and/or submitting the applicable Order on behalf of Client (e.g., naming Client as the client or advertiser in the Order), and (ii) are, and will continue to be, final and binding on such Client; and (2) Client is, and shall continue to be, fully responsible and liable to DISH for any and all requests, purchases and/or submissions of orders for Ad Services made by Agent on Client's behalf. For clarity, and without limitation, Agent acknowledges and agrees that it is solely liable to DISH for any Ad Services requested, purchased and/or ordered *on its own behalf* and/or without the necessary authority, if any; and any such transactions will be governed by these Terms of Service. For clarity, if at all times Agent has complied with, and continues to comply with, the obligations set forth in these Terms of Service, then to the extent that Agent has the necessary authority to bind Client for the request, purchase and/or submission of an order for Ad Services: (y) unless and until Agent receives payment(s) from Client for Ad Services, Client shall be solely liable to DISH for any and all payments due to DISH for Ad Services made by Agent on such Client's behalf; and (z) immediately upon Agent's receipt of payment(s) from Client for Ad Services, Agent shall be liable to DISH for payments due to DISH for Ad Services made by Agent on such Client's behalf. Payment by Client to Agent of any amount due to DISH, may not, and will not, constitute payment to DISH of any amount owed to DISH and will not relieve Client of its obligations to pay DISH for such amounts until such time that DISH receives payment in full for such amounts. Unless the customer application contains a signature for both of Agent and Client, Agent and Client will be jointly and severally liable for the payments owed to DISH for any and all Orders for such Client.

#### **4. MATERIALS AND OTHER CONTENT USED IN CONNECTION WITH AD SERVICES.**

**(a) Grant of Rights.** You hereby grant DISH and its affiliates the 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 the Ad Content) to: (i) distribute, subdistribute, resell and/or otherwise sublicense the Ad Content via any and all means or methods for reception, viewing, exhibition and display by Subscribers 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) the Ad Content; and (iii) use the Ad Content to advertise, promote, publicize, market and sell DISH's and its affiliates' products and/or services, including, without limitation, Ad Services and DISH's programming services.

**(b) Content Limitations.** You shall ensure that no Ad Content provided, indirectly or directly, to DISH contains: (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 you do not have a copy of the applicable third-party restrictions, then it is your responsibility to obtain such restrictions from your DISH account executive*); (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 Ad Services; (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 programming containing solicitations for funds or contributions; (vi) any Ad Content for any purpose other than the narrow purpose agreed to or required in connection with any Ad Services, 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 you) 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 Client expressly identified in an Order accepted by DISH shall be deemed an exception to this clause (viii) to the extent it applies); (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.

**(c) Compliance with Laws; Advertising Restrictions.** In addition to and not in limitation of anything in any Agreement, if any programming or other content is regulated by any law, regardless of whether such law now or in the future is applicable to you, DISH or any of its affiliates, or a third party, then you shall (i) comply with such law(s); (ii) ensure that the any and all Ad Content, and the requested placement thereof, complies with such law(s); and (iii) provide DISH with all documents reasonably necessary for DISH to timely demonstrate such compliance.

**(d) Public Filings.** You shall promptly provide to DISH any and all information and/or other records necessary for DISH to maintain any of its public filings as such are required by applicable Law, and you shall ensure such information and/or records are complete and accurate and delivered to DISH within twenty (20) days following any such request by DISH.

**(e) Addressable Ad Services.** You hereby acknowledge and agree that certain Ad Services require 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).

**5. INDEMNIFICATION.** You hereby agree to indemnify, defend and hold harmless each of DISH and its affiliates, each of its and their present and future contractors, subcontractors, authorized distributors, authorized subdistributors, authorized retailers, directors, members, managers, officers, owners, employees, agents, shareholders and representatives, and each of their respective assigns, heirs, successors and legal representatives (the "DISH Group") from, against and with respect to any and all costs, losses, liabilities, damages, lawsuits, judgments, claims, actions, penalties, fines and expenses (including, without limitation, interest, penalties, reasonable court costs and attorneys' fees and all monies paid in the investigation, defense or settlement of any or all of the foregoing) (collectively, "Claims") to the extent incurred in connection with or arising out of: (i) the breach or default (or alleged breach or default) by you of any provision contained in the applicable Agreement, including, without limitation, these Terms of Service; (ii) any purchase, contracts, debt and/or obligation made by you; (iii) the content of the Ad Content (including, without limitation, claims and/or other statements made therein or allegations that any claims and/or statements therein are fraudulent or misleading), including, without limitation, any assertions that the transmission of any content is obscene, libelous, slanderous, indecent or defamatory, or violates or infringes any copyright, trademark, right of privacy, literary or dramatic right, music performance right, or any other right of any person or entity; (iv) the sale or marketing of any product or service by, through or on the Ad Content, including, without limitation, assertions related to product liability, patent, trademark, copyright infringement, right of privacy or publicity,

express or implied warranties, warranties relating to compliance with laws, and personal injuries (physical, economic or otherwise) to any person who may use, consume or be affected by the products and services sold or marketed by, through or on the Ad Content; (v) your and/or the Ad Content's failure to comply with any law(s) or any other failure on your part that causes DISH to violate any law(s) or court or administrative decree(s); (vi) your failure to have acquired at the pertinent time when all or part of the Ad Service is made available to DISH, good title to, and/or each and every property right and/or other right necessary for you to satisfy the obligations imposed on you pursuant to any Agreement; and (vii) as applicable, your advertising, marketing and/or sale of Ad Services. In the event of any claim for indemnification by the DISH Group under this [Section 5](#), the DISH Group shall be entitled to representation by counsel of its own choosing, at your sole cost and expense. In addition to the foregoing, the DISH Group shall have the right to the exclusive conduct of all negotiations, litigation and other proceedings arising from any such claim.

## **6. REPRESENTATIONS AND DISCLAIMERS.**

**(a) Rights to Use.** You represent, warrant, and covenant to DISH that: (i) you presently have and will continue to have, at all times that you request or receive Ad Services, all rights necessary (including, without limitation, with regard to the Ad Content) to grant DISH the rights contracted for by DISH under the applicable Agreement, in each case free and clear of all liens, restrictions, charges, claims and encumbrances; (ii) all Ad Content is, and will be at all times that you request or receive Ad Services, of a high quality that at least meets the standards of quality, with respect to audio and visual quality and quality of content, that are standard in the video programming industry; (iii) you have obtained and will maintain at all times that you request or receive Ad Services all licenses, permits, rights, exemptions, authorizations and consents necessary to fully perform the applicable Agreement; (iv) nothing contained in or related to the Ad Content, nor DISH's exercise of the rights granted to DISH hereunder will, at any time that you request or receive Ad Services, violate, infringe or conflict with any rights of any person or entity, including, without limitation, any copyright, literary, musical, dramatic, artistic, trademark, contract, privacy or publicity right, or the rights to be free from unfair competition or defamation, or any other property or personal right, or result in any liability, monetary or otherwise, to DISH or any affiliate of DISH; (v) the Ad Content does not, and the Ad Content will not, at all times that you request or receive Ad Services, contain any material that is libelous, slanderous, defamatory, obscene, or indecent, and the Ad Content does not and will not, at all times that you request or receive Ad Services, contain any elements constituting a lottery or a game of chance as such lotteries or games are defined under any applicable law; (vi) you have licensed, obtained and paid for, and will at all times that you request or receive Ad Services continue to license, obtain and pay for, all copyright, royalty or other performance rights and licenses (including, without limitation, "through-to-the-viewer" music performance rights and any other rights necessary from ASCAP, BMI, SESAC and any other applicable performing rights organizations or other applicable entities) for the programming contained in any Ad Content; (vii) you will not, without DISH's prior written consent, use any DISH Marks or make any statements with respect to DISH or any of its affiliates in connection with any Ad Content, Ad Services 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, Ad Services and/or any information used in connection therewith, or that DISH 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; (viii) you will not knowingly or willfully engage in any activity or business transaction that or may be damaging to DISH's 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 any Agreement; (ix) you and the Ad Content are, and will remain at all times that you request or receive Ad Services, in full compliance with all laws, including, without limitation, all laws enforced, administered, promulgated or pronounced in the United States and in the country or countries in which any Ad Content originated; (x) no third party has or has claimed, any right that would be inconsistent with the rights granted to DISH in the applicable Agreement; (xi) you are under no contractual or other legal obligation that will in any way interfere with its full, prompt and complete performance under the applicable Agreement; and (xii) except as authorized by DISH in writing, you will not collect, use, disclose and/or destroy, directly or indirectly, via any means or methods whatsoever, any information related to DISH, its affiliates and/or its or their viewers and subscribers in connection with any Ad Services or Ad Content without first obtaining the prior written consent of DISH.

**(b) DISCLAIMERS.** You acknowledge that (i) neither DISH, nor its affiliates nor its third party providers, control(s) your Ad Content or the transfers of information and/or Ad Content over communications facilities (including the Internet); and (ii) Ad Services 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). You agree 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 IN THESE TERMS OF SERVICE, DISH PROVIDES ANY AND ALL AD SERVICES 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 YOUR RELIANCE ON ANY AD SERVICES. 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 AD SERVICES, 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 AD SERVICES 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 AD SERVICES FOR WHICH IT HAS OBTAINED A CONFIRMATION, THE AVAILABILITY OF ANY AD SERVICES REQUESTED BY YOU AND THE NUMBER OF IMPRESSIONS AVAILABLE OR REPORTED BY DISH, ITS AFFILIATES OR ITS THIRD PARTY PROVIDERS.

## 7. LIMITATION OF LIABILITY.

IN NO EVENT WILL DISH OR ITS AFFILIATES BE LIABLE FOR ANY INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR OTHER INDIRECT DAMAGES, WHETHER FORESEEABLE OR NOT, OCCASIONED BY ANY FAILURE TO PERFORM OR THE BREACH OR DEFAULT OF ANY OBLIGATION UNDER ANY AGREEMENT FOR ANY REASON WHATSOEVER, WHETHER BASED ON NEGLIGENCE OR OTHERWISE (INCLUDING, WITHOUT LIMITATION, ANY PAYMENT FOR LOST BUSINESS, FUTURE PROFITS, LOSS OF GOODWILL, LOSS OR DAMAGE TO AD CONTENT, REIMBURSEMENT FOR EXPENDITURES OR INVESTMENTS MADE OR COMMITMENTS ENTERED INTO, CREATION OF CLIENTELE, ADVERTISING COSTS, DATA LOSS, TERMINATION OF EMPLOYEES OR EMPLOYEES SALARIES, OVERHEAD OR FACILITIES INCURRED OR ACQUIRED BASED UPON THE BUSINESS DERIVED OR ANTICIPATED UNDER ANY AGREEMENT). IN NO EVENT MAY THE AGGREGATE LIABILITY OF DISH AND ITS AFFILIATES IN CONNECTION WITH ANY AGREEMENT EXCEED THE FEES ACTUALLY PAID BY YOU TO DISH FOR AD SERVICES REQUESTED AND RECEIVED PURSUANT TO SUCH AGREEMENT. IN NO EVENT MAY ANY PROJECTIONS OR FORECASTS BY DISH BE BINDING AS COMMITMENTS OR PROMISES BY DISH.

## 8. MISCELLANEOUS.

(a) **Assignment.** Each Agreement will inure to the benefit of and be binding upon each of the parties thereto and each of their respective assigns, heirs, successors and legal representatives, and DISH may assign or otherwise transfer any of its rights or obligations under any Agreement or these Terms of Service, in any manner, direct or indirect, contingent or otherwise, in whole or in part, voluntarily or by operation of law without any consent from you whatsoever. Notwithstanding anything to the contrary contained in the immediately foregoing sentence, you may not assign or otherwise transfer any of your rights or obligations under any Agreement or these Terms of Service, in any manner, direct or indirect, contingent or otherwise, in whole or in part, voluntarily or by operation of law without the prior express written consent of DISH. In the event of any valid assignment of any Agreement or these Terms of Service in accordance with this Section 8(a), the assigning party will be relieved of all obligations arising after the assignment, and the non-assigning party shall look solely to the assignee for enforcement of such obligations. Any attempted assignment in violation of this Section 8(a) will be null and void, *ab initio*.

(b) **Agent of Record.** Nothing in these Terms of Service is intended to limit or restrict Client's rights or ability to change the Agent on record with DISH; provided, however, that you must immediately send notice to DISH of any such change and may be required to submit a new customer application in connection with any such change(s).

(c) **Notice.** All notices given in connection with this Agreement, whether permissible or required hereunder or by law, must be given in writing and sent by facsimile transmission, by first-class certified mail, postage prepaid, or by nationally-recognized courier service, charges prepaid, to the party(ies) 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 set forth below, or such other address(es) or fax number(s) as such party may have substituted by notice (given in accordance with this Section 8(c)) to the other party(ies). The sending of 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 you:

Notice may be given to you at the address listed in the applicable customer application, listed in any recent communication(s) with DISH and/or at the address on record with the applicable secretary of state. Any notice given to an Agent will constitute the giving of notice to the Client, unless such Client's address and facsimile for notice are provided to DISH in accordance with this Section 8(c).

### If to be given to DISH:

DISH Network L.L.C.  
Attn: Vice President, Media Sales

*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 #: (917) 305-4455

cc: Office of the General Counsel, DISH Network L.L.C.

Attn: General Counsel & Corporate Counsel – Media Sales

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

Same address as noted above for delivery to DISH via nationally-recognized courier service

*If by facsimile:*

Fax #: (303) 723-1699

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

**(e) Relationship.** The relationship of DISH and you is that of independent contractors. Nothing in any Agreement may be construed or implied to create a relationship between DISH and you of agency, partners, affiliates, joint employers, or joint venturers. You do not have the power or authority to act for DISH in any manner or to create obligations or debts that would be binding on DISH. DISH may be deemed responsible for any obligation of you, any act or omission of you, or any employee, agent or representative of you. You will not, and you will not hold yourself out as, the agent of DISH or as a joint venturer with DISH under any Agreement. No viewer or subscriber may be deemed to have any privity of contract or direct contractual or other relationship with you by virtue of any Agreement; no supplier of advertising included in the any Ad Content may be deemed to have any privity of contract or direct contractual or other relationship with you by virtue of any such Agreement; and no supplier of Ad Content (including, for clarity and without limitation, any other material(s) (*e.g.*, information, functionality, features, technical materials) included in the Ad Content by you) will be deemed to have any privity of contract or direct contractual or other relationship with DISH, its viewers or its subscriber by virtue of any Agreement or Ad Services provided thereunder.

**(f) Records.** For a period of one (1) year after the completion or termination of any Order, Agent shall keep and maintain at its principal place of business complete and accurate books and records of its performance under these Terms of Service and any payments, charges or other amounts of any nature whatsoever paid or to be paid to either DISH or Client in connection with such Agreement (collectively, the “Records”). Prior to and for a period of one (1) year after the completion or termination of any Order, DISH may conduct an inspection of such Records. Following DISH’s written request, Agent shall deliver a copy of Records to DISH at the address set forth in Section 8(c) above for its inspection.

**(g) Severability.** The invalidity under applicable law of any provision of any Agreement will not affect the validity of any other provision of such Agreement. In the event that any provision of any Agreement is determined to be invalid, unenforceable or illegal: (i) the provision will be reformed to the minimum extent necessary to cause the position to be valid, enforceable and legal while preserving the intent of the parties as expressed in, and the benefits to the parties provided by, the applicable Agreement; or (ii) if the

provision cannot be so reformed, the provision will be severed from the applicable Agreement and the remainder of the applicable Agreement will remain effective and will be construed in accordance with its terms as if the invalid, unenforceable or illegal provision were not contained in the applicable Agreement.

**(h) Headings; References.** The titles and headings of the sections in these Terms of Service are for convenience only and may not in any way affect the interpretation of the applicable Agreement. Any reference in any Agreement to the singular form of a word will include the plural form of the word, if applicable, and any reference to the plural will include the singular, if applicable. In addition, the term “days” when used in any Agreement, unless specified as a ‘business day’ means a calendar day. For the purposes of each Agreement a ‘business day’ means a weekday (other than a Saturday or a Sunday) excluding any national (United States) holiday.

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

**(j) Entire Agreement.** Each Agreement sets forth the parties’ entire agreement with respect to the Ad Services specified therein. Following acceptance by you of these Terms of Service (*i.e.*, following any request for Ad Services), all prior agreements and understandings between you and DISH for Ad Services will be null and void, and any existing agreements or understandings related to Ad Services will be governed by these Terms of Service; provided, however, that if you or your affiliates provide products and/or services to DISH pursuant to any other agreement (*e.g.*, without limitation, if you are an agency of DISH, or you are a network providing programming service(s) to DISH pursuant to an affiliation agreement) (each, an “Other Agreement”), then such Other Agreement will remain in full force and effect on its terms, independent of these Terms of Service and any Order, and to the extent that any conflict or inconsistency arises between any Agreement and the Other Agreement, DISH may elect, in its sole discretion, to apply either the provisions of Terms of Service and the Order, or the provisions of the Other Agreement in connection therewith. Acceptance of these Terms of Service renders void any statements attempting to modify the provisions addressed in these Terms of Service, including, without limitation, provisions concerning liability made in connection with requests, orders, purchases, contracts, agreements and/or other correspondence, whether written or oral, and is irrevocable without the prior written consent of DISH’s Vice President of Media Sales. DISH and you hereby agree that in the event of any conflict or inconsistency between any term or condition set forth in these Terms of Service, an Order and/or any other writing, then the terms and conditions set forth in these Terms of Service govern and control. Each of the parties specifically acknowledges that there are no unwritten side agreements or oral agreements between the parties that alter, amend, modify or supplement these Terms of Service unless expressly set forth in therein referencing this Section 8(j).

**(k) Compliance with Laws; Legal Obligations.** DISH’s performance hereunder is subject to the terms and conditions of licenses held by it and by applicable federal, state, and local laws and regulations. If any of the terms or provisions of these Terms of Service or any Order is contrary to the provisions of DISH’s license or of any applicable laws or governing rules or regulations such terms and provisions shall be considered as automatically amended to conform thereto. Notwithstanding anything to the contrary contained in the applicable Agreement, you acknowledge and agree that DISH may from time to time and at any time preempt any or all Ad Content for any reason or no reason whatsoever, at DISH’s sole and absolute discretion; provided that if DISH cannot make good on any Ad Services preempted (or fails to deliver the minimum number of “guaranteed” impressions requested), then DISH shall provide you with alternative Ad Services that are at least similar to those set forth in the applicable Order, or at its election DISH may provide you with a pro-rata credit for any preempted airtime that was pre-paid by you. You agree to permit DISH to provide alternative Ad Services on any Ad Services set forth in an Order.

**(l) Survival.** Any provision of these Terms of Service that logically would be expected to survive the completion, expiration or earlier termination of any Agreement will survive such completion, expiration or earlier termination, including, without limitation, any and all representations and warranties and any and all provisions set forth in Sections 2, 3, 5, 6, 7, and this Section 8.

**Last Update Posted: February 9, 2017 (Version 1.0-2017)**