

## CONTENT PARTICIPANT AGREEMENT: AUDIOVISUAL VERSION

This Content Participant Agreement (the “Agreement”) is effective as of \_\_\_\_\_ (the “Effective Date”), by and between: Digital Transmission Licensing Administrator, LLC, a Delaware limited liability company (“Licensor”); and the entity which is named immediately below (together with its Affiliates, “Content Participant”):

Name of Content Participant: Location of  
Principal office: Jurisdiction under which  
Incorporated:

### WITNESSETH:

WHEREAS, a group of companies identified below as the Founders has developed a certain method for encryption, decryption, key exchange, authentication and renewability for purposes of protecting certain digital content from unauthorized interception and copying (“DTCP”), which method is described in the specification entitled “5C Digital Transmission Content Protection” Release 1.20, as from time to time may be modified by the Founders (defined below) in accordance with Section 3.7 hereof (the “Specification”);

WHEREAS, the Founders have licensed DTCP to Licensor for purposes of Licensor’s further licensing DTCP and administering such licenses;

WHEREAS, Content Participant wishes to have the right, subject to the terms and conditions set forth herein, to use DTCP, or to cause DTCP to be used, to protect its Commercial Audiovisual Content (defined below) and to obtain certain other rights, including but not limited to certain rights to seek revocation of Device Certificates (defined below) as may be granted to Content Participant hereunder;

WHEREAS, Content Participant intends that any permitted copies of its Commercial Entertainment Content are to be used for non-commercial purposes;

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements set forth herein, the parties hereto hereby agree as follows:

1. DEFINITIONS. In addition to terms defined elsewhere in this Agreement, the following terms shall have the following meanings:

“Administration Fee” shall have the meaning set forth in Section 4.1.

“Adopter” shall mean any Founder or any other entity that has executed an Adopter Agreement with Licensor and delivered it to Licensor or its designee, and shall include any Affiliate of such entity.

“Adopter Agreement” shall mean any Digital Transmission Protection License Agreement entered into by Licensor and any adopter of DTCP.

“Adopter Beneficiary” shall have the meaning set forth in Section 11.2.

“Adopter Beneficiary Claim” shall have the meaning set forth in Section 11.2.

“Affiliate” shall mean, with respect to any person or entity, any other person or entity that directly or indirectly Controls, is Controlled by or under common Control with such person or entity. “Control” means the possession of beneficial ownership of more than fifty percent (50%) of the stock or other similar interest entitled to vote for the election of the Board of Directors or similar managing authority.

“Agreement” shall have the meaning set forth in the preamble to this Agreement.

“AV Content Participant Agreement” shall mean this Agreement and any other Content Participant Agreement: Audiovisual Version, substantially in the form of this Agreement, as may be amended from time to time in accordance with Section 3.7 hereof, entered into by Licensor and a Fellow AV Content Participant.

“AV Content Participant Beneficiaries” shall have the meaning set forth in Section 3.4.

“AV Content Participant Beneficiary Claim” shall have the meaning set forth in Section 3.4.

“AV Content Participant User Group” shall have the meaning set forth in Section 3.1.

“Beneficiary Claim” shall have the meaning set forth in Exhibit A.

“Claim Notice” shall have the meaning set forth in Exhibit A.

“Commercial Advertising Messages” shall mean, with respect to any service, Program, or schedule or group of Programs, commercial advertising messages other than (a) advertising relating to such service itself or the programming contained therein, (b) the programming of Content Participant or any of its Affiliates, or (c) any advertising which is displayed concurrently with the display of any part of such Program(s), including but not limited to “bugs,” “frames” and “banners.”

“Commercial Audiovisual Content” shall mean Commercial Entertainment Content in the form of audiovisual works, as defined in 17 U.S.C. § 101.

“Commercial Entertainment Content” shall mean works, including audio, video, text and/or graphics, that are (a) not created by the user of the Licensed Product; (b) offered for transmission, delivery or distribution, either generally or on demand, to subscribers or purchasers or the public at large, or otherwise for commercial purposes, not uniquely to an individual or a small, private group; and (c) received by a

Commercially-Adopted Access Control Method.

“Commercially-Adopted Access Control Method” shall mean any commercially-adopted access control method, such as CSS, Digicypher, Harmony, DBS and any other commercially-adopted access control technology, including digitally-controlled analog scrambling systems, whether now or hereafter in commercial use.

“Comparable” shall mean, when used in connection with a Defined Business Model and an Undefined Business Model, that such Undefined Business Model approximates such Defined Business Model more closely than it approximates any other Defined Business Model.

“Compliance Rules” shall mean both the requirements set out in the exhibit entitled “Compliance Rules” and the exhibit entitled “Robustness Rules” to each Adopter Agreement, as such exhibits may be revised by Licensor from time to time in accordance with Section 3.7 hereof.

“Conditional Access Delivery” shall mean any delivery of a service, Program, or schedule or group of Programs via a Commercially-Adopted Access Control Method. Without limitation, “Conditional Access Delivery” includes Prerecorded Media; a Pay Television Transmission; Pay-Per-View; Video-on-Demand; Subscription-on-Demand; Non-Premium Subscription Television and Free Conditional Access Delivery. Notwithstanding the foregoing, “Conditional Access Delivery” does not include any service, Program, or schedule or group of Programs, that is a further transmission of a broadcast transmission (i.e., an over-the-air transmission for reception by the general public using radio frequencies allocated for that purpose) that, substantially simultaneously, is made by a terrestrial television broadcast station located within the country or territory in which the entity further transmitting such broadcast transmission also is located, where such broadcast transmission is not subject to a Commercially-Adopted Access Control Method (e.g., is broadcast in the clear and supported by advertising revenues or government-mandated fees, without any other charge to members of the public receiving such broadcasts), regardless of whether such entity subjects such further transmission to an access control method. Notwithstanding the foregoing, Conditional Access Delivery shall include any service, Program, or schedule or group of Programs, that both (a) was primarily authored in a format with a resolution equal to or greater than 1000i or 700p (“High Definition”) and (b) is transmitted via a Commercially-Adopted Access Control Method in High Definition, provided that such service, Program, or schedule or group of Programs, is not, substantially simultaneously, transmitted in High Definition by a terrestrial broadcast station located within the same country or territory, where such broadcast transmission is not subject to a Commercially-Adopted Access Control Method.

“Confidential Information” shall mean Proprietary Information that is either marked “confidential” or “proprietary” when disclosed in written form or indicated as “confidential” or “proprietary” when disclosed orally and confirmed in writing within thirty (30) days after such disclosure, provided that “Confidential Information” shall not include

information described in Sections 2.5(i) – 2.5(iii) of the Confidentiality Agreement.

“Confidentiality Agreement” shall have the meaning set forth in Section 7.1.

“Content Participant” shall have the meaning set forth in the preamble to this Agreement.

“Content Participant Agreement” shall mean any Content Participant Agreement entered into by Licensor and a Fellow Content Participant, including but not limited to an AV Content Participant Agreement.

“CP Affidavit” shall have the meaning set forth in Section 6.4.

“DTCP” shall have the meaning set forth in the first recital to this Agreement.

“Defendant” shall have the meaning set forth in Exhibit A.

“Defined Business Model” shall mean Prerecorded Media, Video-on-Demand, Pay-Per View, Pay Television Transmission, Subscription-on-Demand, Non-Premium Subscription Television, Free Conditional Access Delivery or EPN Eligible Non-Conditional Access Delivery.

“Device Certificate” shall mean a cryptographically encoded value which may be provided by Licensor or its designee and which authorizes a device to exchange certain Commercial Entertainment Content.

“Device Keys” shall mean cryptographic values that may be provided to an Adopter by Licensor or its designee for use in devices and include the “Private Device Key” and “Public Device Key”, and keys associated with “Restricted Authentication”, all identified in the Specification.

“Effective Adopter Agreements” shall have the meaning set forth in Section 3.6.2.

“Effective Date” shall have the meaning set forth in the preamble to this Agreement.

“Eligible AV Content Participant” shall have the meaning set forth in Section 3.2.

“Eligible Content” shall have the meaning set forth in Section 3.2.

“encode, or direct to be encoded, using EPN” means, with respect to Commercial Audiovisual Content, to encode or direct to be encoded such Commercial Audiovisual Content using EPN Encoding (as “EPN Encoding” is defined in Exhibit H).

“Encoding Rules” shall mean the obligations set forth in Sections 5.1(a), (b), (d) and (e) and 5.3 .

“EPN” shall mean the encoding method known as "Encryption Plus Non-Assertion" that indicates that Commercial Audiovisual Content is to be protected using DTCP but that copy control restrictions are not being asserted with respect to such content.

“EPN Eligible Non-Conditional Access Delivery” shall mean the delivery or transmission of any service, Program, or schedule or group of Programs, that (a) is delivered or transmitted via a Commercially-Adopted Access Control Method and (b) does not fall within the definition of Conditional Access Delivery.

“Exhibition” shall include the display of a Program on a television receiver, computer screen, monitor or other device.

“FAB” shall have the meaning set forth in Section 3.8.

“Fellow AV Content Participant” shall mean Content Participant and any other provider of Commercial Audiovisual Content that has entered into an AV Content Participant Agreement.

“Fellow Content Participant” shall mean Content Participant and any other provider of Commercial Entertainment Content that has entered into a Content Participant Agreement.

“Form Adopter Agreement” shall mean the version of the form Digital Transmission Protection License Agreement that is appended hereto as Exhibit E.

“Founders” shall mean Hitachi, Ltd., Intel Corporation, Panasonic Corporation, Sony Corporation and Toshiba Corporation.

“Free Conditional Access Delivery” shall mean a Conditional Access Delivery, as to which viewers are not charged any fee (other than government-mandated fees) for the reception or viewing of the programming contained therein.

“Highly Confidential Information” shall mean Proprietary Information that is marked “Highly Confidential Information” when disclosed in written form.

“Image Constraint Token” shall mean the Image\_Constraint\_Token field, as defined in the Specification, used to trigger the output of a “Constrained Image” in Licensed Products having Sink Functions.

“Interface” shall mean the protocols (including cryptographic algorithms), packet formats and data structures disclosed in the Specification.

“Licensed Product” shall have the meaning set forth in the Adopter Agreement.

“Licensor” shall have the meaning set forth the preamble to this Agreement.

“Major AV Content Participant” shall mean, during the course of any year, any Fellow AV Content Participant that either is a member of the MPAA or has generated U.S. box office revenues from theatrical releases of feature films in the immediately prior year that are at least as great as the MPAA member company with the lowest U.S. box office revenues from theatrical releases of feature films for that same year.

“MPAA” shall mean the Motion Picture Association of America.

“Necessary Claims” shall mean claims of a patent or patent application relating to the Interface that must be infringed in order to make a product that complies with the Interface, which are owned or controlled by Licensor, any Founder, any Adopter, Content Participant, any Fellow Content Participant or any of their respective Affiliates. “Necessary Claims” do not include any claims relating to semiconductor manufacturing technology; claims relating to aspects of any technology, standard or product that is not itself part of the Specification (including, by way of example, CSS, MPEG, IEEE 1394 and analog copy protection systems) even though such technology, standard or product may otherwise be mentioned or required by the Specification or Compliance Rules; claims with regard to which it would be possible to build a product in compliance with the Interface in the Specification without infringing such claim (even if in the same patent as Necessary Claims); or claims which, if licensed, would require a payment of royalties by the licensor to unaffiliated third parties.

“Non-Premium Subscription Television” shall mean a Conditional Access Delivery of a service, or schedule or group of Programs (which may be offered for sale together with other services, or schedule or group of Programs), for which subscribers are charged a subscription fee for the reception or viewing of the programming contained therein, other than Pay Television and Subscription-on-Demand. By way of example, “basic cable service” and “extended basic cable service” in the United States (other than such programming contained therein that does not fall within the definition of Conditional Access Delivery) are “Non-Premium Subscription Television.”

“Operative Protection Agreements” shall have the meaning set forth in Section 3.6.2.

“Party” shall mean a party to this Agreement.

“Pay-Per-View” shall mean a delivery of a single Program or a specified group of Programs, as to which each such single Program is generally uninterrupted by Commercial Advertising Messages and for which recipients are charged a separate fee for each Program or specified group of Programs. The term “Pay-Per-View” shall also include delivery of a single Program as described above for which multiple start times are made available at time intervals which are less than the running time of such Program as a whole. If a given delivery qualifies both as Pay-Per-View and a Pay Television Transmission, then, for purposes of this Agreement, such delivery shall be deemed Pay-Per-View rather than a Pay Television

Transmission.

“Pay Television Transmission” shall mean a transmission of a service or schedule of Programs, as to which each individual Program is generally uninterrupted by Commercial Advertising Messages and for which service or schedule of Programs subscribing viewers are charged a periodic subscription fee, such as on a monthly basis, for the reception of such programming delivered by such service whether separately or together with other services or programming, during the specified viewing period covered by such fee. If a given delivery qualifies both as a Pay Television Transmission and Pay-Per-View, Video-on-Demand, or Subscription-on-Demand then, for purposes of this Agreement, such delivery shall be deemed Pay-Per-View, Video-on-Demand or Subscription-on-Demand rather than a Pay Television Transmission.

“Prerecorded Media” shall mean the delivery of one or more Programs, in prerecorded and encrypted or scrambled form, on packaged media, such as DVD discs.

“Presently Known Watermark Technology” shall mean any of the technologies submitted to the DVD Copy Control Association, Inc. in August 1999 by the Galaxy group of companies or by the Millennium Group, and the technology defined as “ARIS/SOLANA-4C,” as required by the SDMI Portable Device Specification, Part 1, Version 1.0 (July 8, 1999).

“Program” shall mean any work of Commercial Audiovisual Content.

“Proprietary Information” shall mean any and all information relating to DTCP or the Specification or Licensor’s or any Founder’s business practices with respect to DTCP, made available to Content Participant by Licensor or its designee or representative or by any Fellow Content Participant or Adopter during the term of this Agreement, including but not limited to specifications, software, hardware, firmware, documentation, designs, flow charts, technical data, outlines, blueprints, notes, drawings, prototypes, templates, systems, manuals, know-how, processes and methods of operation, trade secrets, business plans, strategies, concepts, research, data bases, client or customer lists, financial data, other proprietary or confidential data or information that relates to Licensor’s or a Founder’s past, present or future research, development or business activities. In no event does “Proprietary Information” include “copy control information”, codes, tags, flags or other indicia or signifiers included in Commercial Audiovisual Content.

“Retention State Field” means the Retention\_State field, as defined in the Specification, used to specify the retention period that is associated with a Program received by a Sink Function.

“Revocation” or “Revoked” shall have the meaning set forth in Section 6.1.

“Revocation Criteria” shall have the meaning set forth in Section 6.4.

“Revocation Information” shall mean information distributed to Fellow AV

Content Participants by or under the direction of Licensor for purposes of distributing such information with Commercial Audiovisual Content in order to (i) revoke one or more Device Certificates or (ii) rescind the Revocation of one or more Device Certificates.

“Robustness Rules” shall mean the requirements set out in the exhibit entitled “Robustness Rules” to each Adopter Agreement, as such exhibit may be revised by Licensor from time to time in accordance with Section 3.7 hereof.

“Sink Device” shall mean a Licensed Product that has a Sink Function (as “Sink Function” is defined in the Compliance Rules to the Form Adopter Agreement).

“Source Device” shall mean a Licensed Product that has a Source Function (as “Source Function” is defined in the Compliance Rules to the Form Adopter Agreement).

“Specification” shall have the meaning set forth in the recitals to this Agreement.

“Subscription-on-Demand” shall mean the delivery of a single Program or a specified group of Programs for which (i) a subscriber is able, at his or her discretion, to select the time for commencement of exhibition thereof; (ii) where each such single Program is generally uninterrupted by Commercial Advertising Messages; and (iii) for which Program or specified group of Programs subscribing viewers are charged a periodic subscription fee for the reception of programming delivered by such service during the specified viewing period covered by the fee. In the event a given delivery of a Program qualifies both as a Pay Television Transmission and Subscription-on-Demand, then for purposes of this Agreement, such delivery shall be deemed Subscription-on-Demand rather than a Pay Television Transmission.

“Third-Party Beneficiary” shall have the meaning set forth in Exhibit A.

“Undefined Business Model” shall have the meaning set forth in Section 5.2.

“Video-on-Demand” shall mean a delivery of a single Program or a specified group of Programs for which (i) each such individual Program is generally uninterrupted by Commercial Advertising Messages; (ii) recipients are charged a separate fee for each such single Program or specified group of Programs; and (iii) a recipient is able, at his or her discretion, to select the time for commencement of exhibition of such individual Program or specified group of Programs. In the event a delivery qualifies as both Video-on-Demand and a Pay Television Transmission, then for purposes of this Agreement, such delivery shall be deemed Video-on-Demand.

## 2. LICENSES.

2.1 License to Use DTCP. Subject to the terms and conditions of this Agreement, Licensor hereby grants to Content Participant (including, for avoidance of doubt, its Affiliates), and Content Participant accepts from Licensor, a nonexclusive, nontransferable



(except pursuant to Section 12.3), nonsublicenseable, worldwide license under the Necessary Claims of the Founders and Licensor, as well as under any trade secrets or copyrights of the Founders and Licensor embodied in the Specification, to use DTCP, and to cause DTCP to be used, to protect Commercial Audiovisual Content in connection with the distribution and transmission of such Commercial Audiovisual Content, provided that such license shall not extend to Content Participant if Content Participant is in violation of Section 2.2. Licensor represents and warrants that it has received a license from the Founders authorizing Licensor to grant the sublicense to Content Participant as is granted under this Agreement, and that such license shall remain in effect during the term of this Agreement.

2.2 Reciprocal Non-Assertion Covenant. Content Participant hereby covenants that it shall not, and shall cause each of its Affiliates not to, assert against Licensor, any Fellow Content Participant or Affiliate thereof, or any Adopter or Affiliate thereof, any claim of infringement under its Necessary Claims or of any copyrights embodied in the Specification, or any claim of misappropriation of any trade secret embodied in the Specification, with respect to (i) in the case of Adopters, the making, having made, use, import, offering to sell and sale of Licensed Products, (ii) in the case of Fellow Content Participants, the using, or causing the use, of DTCP to protect Commercial Entertainment Content and (iii) with respect to Founders and Licensor, the licensing and use of DTCP, provided that in each case, such covenant shall not extend to any entity that is asserting, or whose Affiliate is asserting, a Necessary Claim against Content Participant if (x) Content Participant is not willfully in material breach of Section 5 or (y) is not otherwise in material breach of Section 5, which breach has not been cured or is not capable of cure within thirty (30) days of Content Participant's receipt of notice thereof.

2.3 Scope of Use. Without limiting any other term or condition hereunder, the license granted to Content Participant under Section 2.1 shall only extend to distribution or transmission of Commercial Audiovisual Content that is distributed or transmitted in material compliance with Section 5.

provisions of Section 3.7 addressing material changes in protection or rights, Content Participant shall have the right to participate in a user group consisting of all Fellow AV Content Participants that choose to become a member of such group (the "AV Content Participant User Group"). In the event that Content Participant elects to become a member of the AV Content Participant User Group, it shall so notify Licensor upon such election. Content Participant may, by notice to Licensor, change its status as a member or non-member of the AV Content Participant User Group. Upon request of the Founders, the AV Content Participant User Group, or a majority of the member companies of the MPAA that are AV Content Participants, Licensor shall undertake to have the Founders meet with, and take into account the views expressed by, the AV Content Participant User Group with respect to (a) the Compliance Rules as of the Effective Date, (b) any future technical or other amendments thereto (such as with respect to extending DTCP to additional bi-directional digital buses), and (c) such other matters relating to DTCP as Licensor and the members of the AV Content Participant User Group may agree to discuss.

2 Additional Rights for Eligible AV Content Participants. At any time during the term of this Agreement, Content Participant shall be deemed an "Eligible AV Content Participant"

and, as such, shall be entitled to the additional rights set out in Sections 3.3, 3.4, 3.5 and 3.7, if Content Participant (a) causes or permits distribution or transmission of its Commercial Audiovisual Content in commercial quantities, or via mass distribution channels, including but not limited to satellite or cable transmission, to the general public in a form that would, in the course of a transmission up to and including the display or other performance of such Commercial Audiovisual Content, use a channel protected by DTCP (“Eligible Content”) and (b) at such time (i) is not willfully in material breach of any term or condition of this Agreement, and (ii) is not otherwise in material breach of any term or condition of this Agreement, which breach has not been cured, or is not capable of cure, within thirty (30) days of Content Participant’s receipt of notice thereof by Licensor or any Adopter.

### 3. ADDITIONAL RIGHTS GRANTED TO CONTENT PARTICIPANT.

#### 3.1 AV Content Participant User Group. Without limiting the \_\_\_\_\_

3.3 Right to Seek Revocation. For so long as Content Participant is an Eligible AV Content Participant, it shall have the right to seek Revocation of a Device Certificate pursuant to the terms of Section 6.4.

3.4 Content Participant Third-Party-Beneficiary Rights. For so long as Content Participant is an Eligible AV Content Participant, it shall be a third-party beneficiary of each Adopter Agreement (Content Participant, together with any one (or more) other Fellow AV Content Participant(s) that is (or are) Eligible AV Content Participant(s) under its (or their) respective Content Participant Agreement(s), “AV Content Participant Beneficiaries”), and, as such, shall be entitled to bring a claim or action to enforce such rights against an Adopter as are specified in such Adopter’s Adopter Agreement (such claim or action, together with any third-party-beneficiary claim brought by any other AV Content Participant Beneficiary, an “AV Content Participant Beneficiary Claim”), and to have such remedies as are set forth in such Adopter Agreement in accordance with the procedures set forth in Exhibit A, with respect to such Adopter’s implementation of DTCP in any product that is capable of receiving or transmitting data in a format in which Content Participant has made Eligible Content available. Exercise of Content Participant’s third-party-beneficiary rights under any Adopter Agreement shall not constitute an election against any statutory or other extra-contractual remedy or other relief against an Adopter which may be available to Content Participant for the same act which gave rise to the AV Content Participant Beneficiary Claim.

3.5 Enforcement Actions. For so long as Content Participant is an Eligible AV Content Participant, (i) it shall have the right to communicate with Licensor with respect to the status of enforcement actions that are brought by Licensor to enforce an Adopter’s compliance with its Adopter Agreement and that may reasonably implicate Content Participant’s Eligible Content and (ii) Licensor shall respond to inquiries from Content Participant with respect to such enforcement actions, subject to any confidentiality obligations that may apply under any Adopter Agreement.

### 3.6 Documents Relating to DTCP.

3.6.1 Effective Documents. Licensor represents that, as of the Effective Date, the following documents are the only documents establishing the rights and obligations of Adopters with respect to DTCP:

Adopter Agreements, including their attachments and documents incorporated therein by reference, including the “Procedural Appendix”, “Confidentiality Agreement”, Compliance Rules and “Activation Notice”

Component Adopter Agreements, which are included within the definition of Adopter Agreements, including their attachments and documents incorporated therein by reference, including the “Procedural Appendix”, “Confidentiality Agreement”, Compliance Rules and “Activation Notice”

The Specification

- Other interpretive and clarifying documents relating to the licensing of DTCP posted on the website of Licensor as of the Effective Date, including by way of example and not limitation, policy statements of Licensor, side-letters with certain Adopters, clarifications of the Adopter Agreements and notifications from the Founders

Non-Disclosure Agreements

The Content Participant Agreements (with respect to such third-party beneficiary rights as are granted Adopters thereunder)

Licensor further represents that all Adopter Agreements entered into after the Effective Date shall be substantially in the form of the Form Adopter Agreement, provided, however, that such Form Adopter Agreement may be amended from time to time in accordance with Section 3.7.

3.6.2 Consistency with Form Adopter Agreement. Licensor further represents that (i) the Adopter Agreements in effect as of the Effective Date (the “Effective Adopter Agreements”), together with all other documents described in Section 3.6.1 in effect as of the Effective Date (collectively, the “Operative Protection Agreements”), are consistent in all material respects affecting the integrity or security of DTCP, or the operation of DTCP with respect to protecting Commercial Audiovisual Content from any unauthorized output, transmission, interception or copying, or the rights (including, for avoidance of doubt, third-party beneficiary rights) of Content Participant with respect to DTCP, with the version of the Digital Transmission License Agreement that is attached hereto as Exhibit G [the December 1999 version]; and (ii) there are no oral or written amendments or understandings with any Adopter varying or modifying such Effective Adopter Agreements or other Operative Protection Agreements, other than the Operative Protection Agreements with respect to such integrity, security or operation. For the avoidance of doubt, nothing in this Section 3.6.2 or elsewhere in this Agreement shall be construed as imposing on Content Participant any acceptance of, or agreement with respect to, liquidated damages except as provided in Exhibit F. Content Participant may review the Operative Protection Agreements upon reasonable notice to Licensor, provided, however, that Content Participant may only review the Specification if it has entered into a non-disclosure agreement with Licensor.

3.7 Material Changes in Protection or Rights. Licensor may make changes to the Operative Protection Agreements or the Form Adopter Agreement, or issue, execute or amend such other documents or sections of documents with respect to DTCP as are described in Section 3.7(a), only in accordance with the following provisions:

(a) Licensor shall provide reasonable advance written notice to Content Participant and to all members of the AV Content Participant User Group of, and identify with specificity, (1) any proposed change, addition or supplement to Sections 1 (Definitions), 3 (Specification), 4 (Revocation), 5 (Licenses), 6 (Distribution of Products), 7 (Confidentiality), 8 (Term/Termination) and 10 (Remedies) and 11.6 (Governing Law) of any Effective Adopter Agreement, of the Form Adopter Agreement or of any copy of the Form Adopter Agreement entered into by an Adopter after the date of this Agreement, and to the Compliance Rules of any Effective Adopter Agreement or of the Form Adopter Agreement (including, for avoidance of doubt, any expansion or approval of additional technologies or features contemplated in the Compliance Rules or any change that would excuse an Adopter from complying with, or would provide an alternative means for complying with, the “Standard Definition Analog Output” sections of the Compliance Rules); (2) any change to any other Operative Protection Agreements (other than the Specification) that would affect the integrity or security of DTCP, or the operation of DTCP with respect to protecting Commercial Audiovisual Content from any unauthorized output, transmission, interception or copying, or the rights of Content Participant with respect to DTCP; (3) the proposed issuance, execution or amendment by Licensor of any other document that would affect the integrity or security of DTCP, or the operation of DTCP with respect to protecting Commercial Audiovisual Content from any unauthorized output, transmission, interception or copying, or the rights of Content Participant with respect to DTCP; (4) the identification or approval by Licensor of any methods for copying Copy One Generation Decrypted DT Data (as such terms are defined in the Compliance Rules) pursuant to Section 2.2, Part 1 of Exhibit B to the Form Adopter Agreement or comparable provisions of any Adopter Agreement; (5) any notice to any Adopter that such Adopter may have longer than eighteen (18) months to comply with a change to the Compliance Rules; and (6) any change to the Specification affecting Commercial Audiovisual Content, provided, however, that (x) Licensor’s advance written notice with respect to any such change to the Specification shall be sent to Content Participant only if Content Participant has executed and delivered to Licensor a nondisclosure agreement relating to Highly Confidential Information in the form of Exhibit F (the “Highly Confidential NDA”) and (y) changes to the Specification that may be necessary to map the Specification, with respect to Commercial Audiovisual Content, onto other digital buses for transmission or delivery within the home or other, similar local environment (including but not limited to Universal Serial Bus 1.1 and 2.0, mobile entertainment networks such as MOST, Home PNA, PCI, Bluetooth, Home RF and 802.11) (“home and personal networks”) shall not be regarded as “material” or “adverse” for purposes of, or otherwise subject to, this Section 3.7, provided that the mapping of DTCP to any such bus will result in the same level of protection and security with respect to the use of DTCP on such bus as is provided with respect to the use of DTCP on the IEEE1394 bus; provided, further that DTCP works on any mobile network in a manner analogous to DTCP over “home and personal networks.” For purposes of this Agreement, each of the items as to which Content Participant is to receive

advance written notice as described in clauses (1) to (6), hereof, inclusive, is a “DTLA Proposed Action.”

(b) Changes to map the Specification onto buses that are intended for use outside of home and personal networks (e.g., Ethernet) shall be subject to the terms of this Section 3.7 and shall be deemed to be “material” for purposes of this Section 3.7, and Licensor shall bear the burden in any arbitration initiated pursuant to Section 3.7(f) of proving, by a preponderance of the evidence, that the proposed change is not “adverse.” Identification and approval by Licensor of any methods for copying Copy One Generation and EPN-Eligible Non-Conditional Access Delivery DT Data pursuant to Sections 2.2 or 2.4, Part 1 of Exhibit B to the Form Adopter Agreement or comparable provisions of any Adopter Agreement shall be deemed to be “material” for purposes of this Section 3.7, and Licensor shall bear the burden in any arbitration initiated pursuant to Section 3.7(f) of proving, by a preponderance of the evidence, that the proposed method affords a level of protection comparable to DTCP itself with respect to protecting Commercial Audiovisual Content from unauthorized output, transmission, interception or copying. If Licensor carries its burden, as described in each of the preceding two sentences, then such proposed change or proposed method shall be deemed to be not “adverse”. Licensor shall, during the second calendar quarter of each year, make available to Content Participant any changes to the Form Adopter Agreement not otherwise noticed pursuant to this Section 3.7. If Content Participant objects to any of such changes, Licensor will disclose to Content Participant, upon request, any similar changes that were made to Adopter Agreements.

(c) Except as otherwise expressly provided in this Section 3.7, for so long as Content Participant is an Eligible AV Content Participant, it shall have the right, either on its own or with one or more Fellow AV Content Participants that are each an Eligible AV Content Participant under its AV Content Participant Agreement, to file a written objection to any DTLA Proposed Action that it believes would have a material and adverse effect on the integrity or security of DTCP, or the operation of DTCP with respect to protecting Commercial Audiovisual Content from any unauthorized output, transmission, interception or copying, or the rights of Content Participant with respect to DTCP. Any such objection shall set forth with specificity the alleged material and adverse effects on the integrity or security of DTCP, or the operation of DTCP with respect to protecting Commercial Audiovisual Content from any unauthorized output, transmission, interception or copying, or the rights of Content Participant with respect to DTCP, and shall be delivered to Licensor no later than fifteen (15) business days after the date of service of notice by Licensor pursuant to Section 3.7(a) at the address specified in the notice provisions of this Agreement.

(d) Licensor agrees to consider any such objection given pursuant to Section 3.7(c) in good faith. If Licensor rejects such objection, it shall provide prompt written notice thereof to Content Participant and any Fellow AV Content Participants that filed a written objection explaining, with specificity, the reasons for such rejection and why the action would not be material or have an adverse effect, including the benefits that would be afforded by the DTLA Proposed Action. Absent delivery to Licensor of written objection from one or more Fellow AV Content Participants pursuant to Section 3.7(c), Licensor may take the applicable DTLA Proposed Action.

(e) In the event Licensor has served such notice to Content Participant by (x) mail postmarked in the same country as the country in which Content Participant is to receive

notices, three (3) days shall be added to the prescribed period for filing an objection, (y) mail postmarked in a country other than the country in which Content Participant is to receive notices, fifteen (15) days shall be added to the prescribed period for filing an objection.

(f) If (x) Content Participant is a Major AV Content Participant and has objected to a DTLA Proposed Action pursuant to Section 3.7(c), (y) Content Participant is joined by other Fellow AV Content Participants that are Major AV Content Participants and also are Eligible AV Content Participants under each of their AV Content Participant Agreements, which, together with Content Participant, constitute a majority of such members, and (z) such majority continues to object to the DTLA Proposed Action notwithstanding communication with Licensor pursuant to this Section 3.7, then Content Participant and such Fellow AV Content Participants (the "Arbitrating Content Participants") shall have the right, within thirty (30) days from receipt of Licensor's rejection of such objection pursuant to Section 3.7(d), to initiate an arbitration in accordance with the provisions of this Section 3.7(f).

(i) In such arbitration, except as provided in Section 3.7(b), the Arbitrating Content Participants shall have the burden of demonstrating, based on the preponderance of evidence, that the DTLA Proposed Action is material and adversely affects the integrity or security of DTCP, or the operation of DTCP with respect to protecting Commercial Audiovisual Content from any unauthorized output, transmission, interception or copying, or the rights of the Arbitrating Content Participants with respect to DTCP (for purposes of this Section 3.7, "material and adverse"). Changes that only insignificantly diminish the integrity, security or operation of DTCP with respect to protecting Commercial Audiovisual Content from any unauthorized output, transmission, interception or copying, or the rights of Content Participants with respect to DTCP, shall not be deemed "material" or "adverse." Notwithstanding the above, the arbitrator(s) may, in his, her or their discretion take into consideration the cumulative effect of multiple related changes made within the then-preceding two (2)-year period that are not material and adverse when considered in isolation, provided that in any such consideration the arbitrator(s) afford(s) countervailing weight to any changes made within the then-preceding two (2)-year period, whether related or not, that

have had or, when implemented, will have a beneficial effect on the integrity or security of DTCP or the operation of DTCP with respect to protecting Commercial Audiovisual Content from any unauthorized output, transmission, interception or copying, or the rights of Content Participants with respect to DTCP.

(ii) Where the Arbitrating Content Participants have the burden of demonstrating that the DTLA Proposed Action is material and adverse, if they have carried such burden, then Licensor may not take the DTLA Proposed Action unless Licensor demonstrates, based on the preponderance of evidence, that the DTLA Proposed Action provides a material legal benefit in the form of avoidance of a reasonably-perceived potential legal liability to Licensor, Founders or Adopters which cannot practicably be achieved except by taking the DTLA Proposed Action.

(iii) There shall be a sole arbitrator, who shall be selected by Licensor and the Arbitrating Content Participants (collectively, the "Arbitrating Parties") from the National Panel of Commercial Arbitrators of the American Arbitration Association within fourteen (14) days of the initiation of arbitration; provided, however, that in the event the Arbitrating Parties cannot

agree on a sole arbitrator within such fourteen (14)-day period, Licensor, on the one hand, and the Arbitrating Content Participants, on the other, shall each, promptly thereafter, select one arbitrator from the National Panel of Commercial Arbitrators of the American Arbitration Association and those two (2) arbitrators shall jointly select a third arbitrator from the National Panel of Commercial Arbitrators of the American Arbitration Association, who shall serve as the presiding arbitrator and chairperson of such arbitration.

(iv) The Arbitrating Content Participants, on the one hand, and Licensor, on the other, shall, during the course of the arbitration, share equally the costs of arbitration set forth in Section 3.7(f)(vi)(F), provided, however, that the arbitrator(s) shall award the prevailing party or parties all of its or their costs and expenses, other than attorneys' fees and expenses. In addition, if the arbitrator(s) find(s) that either Licensor or the Arbitrating Content Participants has or have advanced its or their position in bad faith or frivolously, he, she or they shall order such party or parties to reimburse the other party or parties for its or their reasonable attorneys' fees and expenses.

(v) The arbitrator(s) is (are) empowered solely to determine (1) whether (A) except as provided in Section 3.7(b), the Arbitrating Content Participants have carried their burden of demonstrating that a DTLA Proposed Action is material

and adverse or (B) in the event of a proposed change or a proposed method, as described in Section 3.7(b), whether Licensor has carried its burden as set forth in Section 3.7(b), and (2) in the case of the circumstances described in either (A) or (B), whether or not Licensor may take a particular DTLA Proposed Action.

(vi) The arbitration specified in this Section 3.7(f) shall be conducted in accordance with the following provisions:

(A) The arbitration shall be conducted in Los Angeles, California, in accordance with the International Arbitration Rules of the American Arbitration Association. The language of the arbitration shall be English.

(B) The arbitrator(s) may conduct the arbitration in such manner as he, she or they shall deem appropriate, including the imposition of time limits that he, she or they consider(s) reasonable for each phase of the proceeding, but with due regard for the need to act, and make a final determination, in an expeditious manner. The arbitrator(s) shall set a schedule to endeavor to complete the arbitration within one (1) month.

(C) The arbitrator(s) shall permit and facilitate such limited discovery as he, she or they shall determine is reasonably necessary, taking into account the needs of the Arbitrating Parties and the desirability of making discovery as expeditious and cost-effective as possible, recognizing the need to discover relevant information and that only one party may have such information.

(D) The Arbitrating Parties and the arbitrator(s) shall treat the arbitration proceedings, any related discovery, documents and other evidence submitted to, and the decision of, the arbitrator(s) as Confidential Information. In addition, and as necessary, the arbitrator(s) may issue orders to protect the confidentiality of proprietary information, trade secrets and other sensitive information disclosed in discovery or otherwise during the arbitration.

(E) Any decision by the arbitrator(s) shall be final and binding on the Arbitrating Parties, except that whether the arbitrator(s) exceeded his, her or their authority, as specifically described in this Agreement, shall be fully reviewable by a court of competent

jurisdiction. Judgment upon any award shall be entered in a court of competent jurisdiction.

(F) The arbitrator(s) shall be compensated at his, her or their hourly rates, determined at the time of appointment, for all time spent in connection with the arbitration, and shall be reimbursed for reasonable travel and other expenses. The arbitrator(s) shall determine all costs of the

arbitration, including the arbitrator(s)' fees and expenses, the costs of expert advice and other assistance engaged by the arbitrator(s), the cost of a transcript and the costs of meeting and hearing facilities.

(g) If (i) no arbitration has been initiated with respect to the DTLA Proposed Action pursuant to Section 3.7(f); (ii) the arbitrator(s) determine(s) that the Arbitrating Content Participants have not carried their burden of demonstrating that the DTLA Proposed Action is material and adverse or (iii) the arbitrator(s) determine(s) that Licensor, in the event of a proposed change or a proposed method described in Section 3.7(b), carried its burden as set forth in Section 3.7(b), then Licensor may take the DTLA Proposed Action, and such action may be effective, according to its terms, thirty (30) days after receipt of Licensor's rejection pursuant to Section 3.7(c) or such final determination of the arbitrator(s). In the event that the inability to take the DTLA Proposed Action exposes Licensor or Founders to potential legal liabilities based on a claim of infringement which cannot practically be avoided except by taking the DTLA Proposed Action, and the Arbitrating Content Participants nonetheless continue to object to the DTLA Proposed Action, Licensor and the Arbitrating Content Participants shall discuss in good faith whether and in what circumstances Licensor can continue to license DTCP, taking into account considerations, including but not limited to (x) Arbitrating Content Participants' and other content owners' willingness and ability to indemnify Licensor, the Founders and their respective Affiliates with respect to such claim, (y) other costs and liabilities to Licensor or Founders, and (z) possible conversion of any licenses relating to DTCP to covenants not to assert intellectual property claims. If, after such discussions, the Arbitrating Content Participants and Licensor are unable to agree on the circumstances in which Licensor would be willing to continue to license DTCP, Licensor may terminate this Agreement and any other license agreement relating to DTCP.

3.8 Changes sought by Content Participants or Adopters. One elected representative of Fellow AV Content Participants that is a Major AV Content Participant and one elected representative of the Content Protection Implementers Forum representing the Information Technology industry and one elected representative of the Content Protection Implementers Forum representing the Consumer Electronics industry shall be appointed by Licensor to serve on the Founders Advisory Board ("FAB"). Founders shall meet with the FAB at least once per quarter. After consulting with other members of the FAB, each member of the FAB shall be entitled to request changes to the Form Adopter Agreement or the Specification by presenting a written proposal to each of the Founders setting forth the specific amendment sought. The Founders shall consider such requests in good faith.

3.9 Consensus Watermark Designation.

(a) Licensor shall designate as the Consensus Watermark, as that term is used in the Form Adopter Agreement, such watermark system that is approved by Licensor pursuant to



this Section 3.9. In the event that either DVD Copy Control Association, Inc. (“DVD CCA”) selects a watermark for playback control purposes or 4C Entity L.L.C. (“4C Entity”) selects a watermark for copy control purposes (either such watermark, a “Proposed Watermark”), and such entity notifies Licensor of such selection and includes in such notice technical information sufficient to demonstrate that the Proposed Watermark will not interfere with DTCP or the operation of any Licensed Products (the “Non-Interference Standard”), Licensor shall, within thirty (30) days of receiving such notice, notify all member companies of the MPAA that Licensor is considering evaluating the suitability of the Proposed Watermark as the Consensus Watermark and that Licensor seeks written responses from each such member, within fifteen (15) business days of the date of such notice from Licensor (the “Watermark Notice Period”), informing Licensor whether such member supports or objects to such designation by Licensor. In the event that Licensor (i) receives any written objection from any such member within the Watermark Notice Period with respect to such designation and (ii) does not receive at least three (3) notices from such members within the Watermark Notice Period supporting such designation, Licensor shall have no obligation to evaluate the Proposed Watermark or to designate the Proposed Watermark as the Consensus Watermark, and Content Participant shall have no right to object to Licensor’s declining

(x) to conduct such an evaluation or (y) to designate the Proposed Watermark as the Consensus Watermark.

(b) In the event that Licensor (i) does not receive within the Watermark Notice Period any such written objection with respect to such designation from any member of the MPAA to whom Licensor sent a notice pursuant to Section 3.9(a) or (ii) receives at least three (3) written notices from such members within the Watermark Notice Period supporting such designation, it shall evaluate such watermark system to determine whether the Proposed Watermark meets the Non-Interference Standard. In the event that Licensor conducts such an evaluation and determines that the Proposed Watermark meets the Non-Interference Standard, it shall designate the Proposed Watermark as the Consensus Watermark. In the event that Licensor conducts such an evaluation and determines that the Proposed Watermark does not meet the Non-Interference Standard, it may decline to designate the Proposed Watermark as the Consensus Watermark. Licensor shall notify Content Participant of whether it will designate, or decline to designate, the Proposed Watermark as the Consensus Watermark

(x) in the case that DVD CCA or 4C Entity selects one of the Presently Known Watermark Technologies as the Proposed Watermark, within thirty (30) days after the conclusion of the Watermark Notice Period or (y) in the case that DVD CCA or 4C

Entity selects as the Proposed Watermark any watermark technology other than a Presently Known Watermark Technology, including but not limited to any upgrade to a Presently Known Watermark Technology, ninety (90) days after the conclusion of the Watermark Notice Period.

(c) In the event that Licensor is obligated to conduct an evaluation of the Consensus Watermark pursuant to Section 3.9(b) and notifies Content Participant, pursuant to Section 3.9(b), that it declines to designate the Proposed Watermark as the Consensus Watermark, then for so long as Content Participant is an Eligible AV Content Participant and believes in good faith that the Proposed Watermark meets the Non-Interference Standard, it shall have the right, either on its own or with one or more Fellow AV Content Participants that are each

an Eligible AV Content Participant under its AV Content Participant Agreement, to file a written objection to Licensor's decision not to designate the Proposed Watermark as the Consensus Watermark. Any such objection shall set forth with specificity the basis for such good faith belief by Content Participant that the Proposed Watermark meets the Non-Interference Standard and shall be delivered to Licensor no later than fifteen (15) business days after the date of service of notice by Licensor pursuant to Section 3.9(b) at the address specified in the notice provisions of this Agreement. In the event Licensor has served such notice to Content Participant by mail, three (3) days shall be added to the prescribed period for filing an objection. Licensor agrees to consider any such objection in good faith. If Licensor rejects such objection, it shall provide prompt written notice thereof to Content Participant and any Fellow AV Content Participants that filed a written objection explaining the reasons for such rejection.

(d) If (i) Content Participant is a Major AV Content Participant and has filed a written objection pursuant to Section 3.9(c), (ii) Content Participant is joined by other Fellow AV Content Participants that are Major AV Content Participants and also are Eligible AV Content Participants under each of their AV Content Participant Agreements, which, together with Content Participant, constitute a majority of such Major AV Content Participants that are also Eligible AV Content Participants, and (iii) such majority continues to believe in good faith that the Proposed Watermark meets the Non-Interference Standard, notwithstanding communication with Licensor pursuant to Section 3.9(c), then Content Participant and such Fellow AV Content Participants shall have the right, within thirty (30) days from receipt of Licensor's rejection of such objection pursuant to Section 3.9(c), to initiate an arbitration to determine whether the Proposed Watermark meets the Non-Interference Standard. In any such arbitration, Licensor shall have the burden of demonstrating, by a preponderance of the evidence, that the Proposed Watermark does not meet the Non-Interference Standard. Such arbitration shall be subject to the terms and conditions set forth in Sections 3.7(f) (iii)-(iv) and (vi) (except that "Arbitrating Content Participants" shall mean Content Participant

and such Fellow AV Content Participants that initiate an arbitration pursuant to this Section 3.9(d)), and this Section 3.9(d). The arbitrator(s) shall be empowered solely to determine whether Licensor has carried its burden of demonstrating that the Proposed Watermark does not meet the Non-Interference Standard. In the event that the arbitrator(s) determine(s) that Licensor has not carried such burden, Licensor shall designate the Proposed Watermark as the Consensus Watermark. If the arbitrator(s) determine(s) that Licensor has carried such burden, Licensor shall have no obligation to designate the Proposed Watermark as the Consensus Watermark.

(e) Except where Licensor is required to designate the Proposed Watermark as the Consensus Watermark pursuant to Section 3.9(d), any designation by Licensor of the Consensus Watermark shall be subject to all of the terms and conditions of Section

(f) Notwithstanding anything in this Section 3.9 to the contrary, if during the two (2)-year period immediately preceding the fourth anniversary of the date of Licensor's designation of the Consensus Watermark, the Consensus Watermark has not been implemented by Major AV Content Participants in more than thirty-three percent (33%) of DVD discs of new theatrical motion pictures produced for DVD release by such Major AV Content Participants in the United States of America and Canada during such period, Licensor may, upon six (6) months' notice to Content Participant, amend Section

3.7.

6.2 of Part 1 of Exhibit B to the Form Adopter Agreement and the comparable provisions of any Adopter Agreement, and rescind such designation of the Consensus Watermark. Any such amendments and rescissions shall not be subject to the provisions of Section 3.7.

3.10 New Circumstances. The Parties acknowledge that the Robustness Rules impose certain obligation on Adopters in the event of New Circumstances (as defined in the Robustness Rules). Content Participant may notify Licensor of information regarding any circumstances that Content Participant believes in good faith constitute New Circumstances with respect to one or more Adopters, and Licensor shall make such information available to the relevant Adopters.

#### 4. ADMINISTRATION FEES.

4.1 Administration Fee. Within thirty (30) days of the Effective Date and of each anniversary of the Effective Date, Content Participant shall pay Licensor a nonrefundable sum in the amount set out in Exhibit B (the "Administration Fee"). As of the first anniversary of the Effective Date, and on an annual basis thereafter, Licensor shall have the right, upon at least thirty (30) days' notice to Content Participant, to adjust the Administration Fee on a reasonable and nondiscriminatory basis, provided that any increase in such fee shall not exceed an amount commensurate with any increase in Licensor's costs (including but not limited to the cost of inflation). Unless Content Participant shall have exercised its right to terminate this Agreement pursuant to Section 8.1.1, Content Participant shall pay such Administration Fee. Content Participant shall not be entitled to any refund of Administration Fees for any reason.

#### 5. ENCODING RULES.

##### 5.1 Encoding Rules.

(a) Content Participant shall not encode, or direct to be encoded, using DTCP, Commercial Audiovisual Content so as to prevent or limit copying thereof in Licensed Products except as follows:

(i) to prevent or limit copying of Prerecorded Media, Video on Demand, Pay-Per-View, Subscription-on-Demand, and Undefined Business Models that are Comparable to any of the foregoing; and

(ii) to prevent or limit copying, other than such first generation of copies as are permitted under the Compliance Rules, of Pay Television Transmissions, Non-Premium Subscription Television, Free Conditional Access Delivery, and Undefined Business Models that are Comparable to any of the foregoing.

(b) Content Participant shall not encode, or direct to be encoded, using DTCP, Commercial Audiovisual Content so as to prevent or limit the retransmission thereof except as follows:

(i) Content Participant may encode, or direct to be encoded, using DTCP, Commercial Audiovisual Content pursuant to Section 5.1(a);

(ii) Content Participant may encode, or direct to be encoded, using EPN, any Defined Business Models other than EPN Eligible Non-Conditional Access Delivery, and any Undefined Business Models that are Comparable to such Defined Business Models; and

(iii) Content Participant may, solely as expressly authorized under Section 5.3, encode, or direct to be encoded, using EPN, EPN Eligible Non-Conditional Access Delivery and Undefined Business Models that are Comparable to EPN Eligible Non-Conditional Access Delivery.

(c) For purposes of this Agreement, to “encode, or direct to be encoded, using DTCP” means to cause or direct the inclusion of particular copy control information in the DTCP Encryption Mode Indicator (“DTCP EMI”), or the DTCP Embedded Copy Control Information (“EmCCI”) data packet of a DTCP encrypted data stream, in each case as such DTCP EMI and EmCCI are described in the Specification, or in such other location so as to cause DTCP (including, for avoidance of doubt, EPN and the Image Constraint Token) to be used to protect the Commercial Audiovisual Content carried in such data stream. For avoidance of doubt, “to encode, or direct to be encoded, using the Image Constraint Token” (as defined in Section 5.1(d)) and “to encode, or direct to be encoded, using EPN” are included in the definition of “to encode, or direct to be encoded, using DTCP.”

(d) Content Participant shall not encode, or direct to be encoded, using the Image Constraint Token, Commercial Audiovisual Content so as to prevent or limit any Sink Device from outputting such content in High Definition Analog Form or any unprotected digital equivalent thereof, except with respect to Prerecorded Media, Pay Television Transmissions, Video-on-Demand, Subscription-on-Demand, Pay-Per-View, an Undefined Business Model that is Comparable to any of the foregoing, or any other Conditional Access Delivery of a Program that had a theatrical release, or was released direct-to-video, and is transmitted or delivered uninterrupted by Commercial Advertising Messages. Notwithstanding the foregoing, Content Participant shall not so encode, or direct to be encoded, using the Image Constraint Token, any Commercial Audiovisual Content that Content Participant causes or permits to be transmitted or delivered to a device that incorporates a Source Function if Content Participant permits such Commercial Audiovisual Content to be substantially simultaneously output from such device in an unprotected High Definition Analog Form or any unprotected digital equivalent (unless (a) via a digital transmission technology which is licensed solely for transmission for display purposes (e.g., DVI) or (b) via any computer video output referenced in Section 4.3.3 of Part 1 of Exhibit B to the Form Adopter Agreement during the time period in which Licensed Products incorporated into Computer Products are permitted under such section to pass to such output Decrypted DT Data other than as a Constrained Image via such output) and such content, when received by such device, is not DT Data. For purposes of this Section 5.1, to “encode, or direct to be encoded, using the Image Constraint Token” means to direct or cause the setting of the Image Constraint Token so as to cause a Sink Device that outputs Decrypted DT Data to a High Definition Analog Output or an unprotected digital equivalent thereof to so output such Decrypted DT Data as a Constrained Image. Capitalized terms used in this Section 5.1(d) and not otherwise defined in this Agreement shall have the meaning given to such terms in the Compliance Rules to the Form Adopter Agreement.

(e) With respect to any Commercial Audiovisual Content delivered or transmitted in the form of Video-on-Demand, Pay-Per-View or Subscription-on-Demand, or an Undefined Business Model that is Comparable to any of the foregoing, in each case that Content Participant encodes or directs to be encoded, using DTCP, so as to prevent or limit a recipient authorized to receive such delivery or transmission from making such first generation of copies as are permitted under the Compliance Rules, Content Participant shall encode, or direct to be encoded, such content so as to cause the Retention State Indicator associated with such content to be set so as to permit Sink Devices to retain such content for at least ninety (90) minutes. Notwithstanding the foregoing, if the amount of time that such content may be retained in any Source Device is determined pursuant to rules, standards or obligations that were developed under an open-standards process, Content Participant shall not encode, or direct to be encoded, such content so as to cause the Retention State Indicator associated with such content to be set so as to prevent a Sink Device from retaining such content for such period of time specified in the Specification that is closest to, but not exceeding, the period of time that such Source Device is permitted to retain such content.

(f) Without limiting the terms of Section 5.2, in markets outside the United States, and where it is not clear whether a transmission and/or delivery of Commercial Audiovisual Content owned or licensed by Content Participant is Conditional Access Delivery or falls within one of the Defined Business Models, Content Participant and Licensor shall cooperate in good faith to determine the appropriate Encoding Rules that should apply to such transmission and/or delivery so as to apply the intention and spirit of the Encoding Rules thereto.

(g) The provisions of this Agreement shall not be taken or offered by any party as a waiver or license of any copyright interest or an admission of the existence of infringement (or not) of a copyright interest, but represents a technical accommodation with respect to DTCP. Without limiting any term or condition of this Agreement, this Agreement shall not be construed to limit Content Participant's right to seek to protect Commercial Audiovisual Content through means other than DTCP, and the Encoding Rules apply only with respect to the application of DTCP.

## 5.2 Encoding Rules for Different Business Models and Review

### Proceeding.

(a) If Content Participant desires to encode or direct to be encoded, using DTCP, Commercial Audiovisual Content in accordance with any business model for the delivery or transmission of such Commercial Audiovisual Content that Content Participant believes does not fall within the definitions of any Defined Business Model (an "Undefined Business Model"), then:

(i) Content Participant, in encoding, or directing to be encoded, using DTCP, such Commercial Audiovisual Content, shall comply with the specific Encoding Rules, permitted by Section 5.1, that are applicable to the Defined Business Model that most closely approximates Content Participant's Undefined Business Model; and

(ii) Content Participant shall make a good faith attempt to notify Licensor by the date on which Content Participant makes a public announcement of its determination to implement such business model.

In any event, Content Participant shall give such notice as soon as practicable after such public announcement and by no later than the date on which such Undefined Business Model is actually implemented; provided that the failure of Content Participant to provide such notice shall not be deemed to be a breach of this Agreement, unless such failure is a result of Content Participant not making a good faith attempt to comply with this Section 5.2(a). In all cases, a press release issued by Content Participant announcing such Undefined Business Model shall suffice to constitute the notice required by this Section 5.2(a).

(b) Any notice provided under Section 5.2(a), other than a press release, shall set forth the Encoding Rules adopted or proposed to be adopted by Content Participant and which Defined Business Model Content Participant believes most closely approximates Content Participant's Undefined Business Model. If the notice provided under Section 5.2(a) is a press release and if such press release does not specify the Encoding Rules adopted by Content Participant for such business model, Content Participant shall, as soon as practicable but, in any event, no later than ten (10) business days after the publication of such press release, provide Licensor with a second notice that specifies the Encoding Rules adopted or proposed to be adopted by Content Participant for such business model; provided that the failure of Content Participant to provide such notice shall not be deemed to be a breach of this Agreement, unless such failure is a result of Content Participant not making a good faith attempt to comply with this Section 5.2(b).

(c) For purposes of clarification, a temporary, bona fide trial of a proposed Undefined Business Model shall not be deemed to be a business model as to which notice is required to be given under Section 5.2(a), nor shall it otherwise be deemed to be a breach of any other provision of this Agreement.

(d) Either Party, on its own initiative or after Licensor receives the notice sent pursuant to Section 5.2(a), may notify the other that it desires to meet in order to determine whether Content Participant has complied with Section 5.2(a)(i). Promptly,

following such other Party's receipt of such notice requesting such meeting, the Parties shall meet in good faith to attempt to make such determination. Licensor shall keep confidential, and shall not disclose to any third party (other than to the Founders and its and their respective agents and representatives, which agents and representatives have agreed in writing, or are otherwise bound by a fiduciary or legal duty, to keep such information confidential) any proprietary business information disclosed by Content Participant during such meeting that Content Participant designates in writing as "Confidential," provided, however, that Licensor shall not be precluded from disclosing such information in any arbitration initiated pursuant to Section 5.2(e) or as may otherwise be necessary to enforce its rights under this Agreement, and provided further that such restriction shall not apply if such information becomes generally known to the public or has been disclosed to Licensor by a third party not bound by obligations of confidentiality.

(e) If, after the meetings required by Section 5.2(d), Licensor believes that Content Participant is proposing to encode or direct to be encoded, or has encoded or directed to be encoded, using DTCP, Commercial Audiovisual Content, in a manner that would not comply with the specific Encoding Rules, permitted by Section 5.1, that are applicable to the Defined Business Model that most closely approximates Content Participant's Undefined Business

Model, Licensor's sole remedy shall be to initiate an arbitration in accordance with Sections 3.7(f)(iii), 3.7(f)(vi) (except that the last sentence of Section 3.7(f)(vi)(B) shall not apply to such arbitration, and "Arbitrating Content Participants" shall be deemed to mean Content Participant) and this Section 5.2. In such arbitration, Content Participant shall have the burden of demonstrating, based on the preponderance of evidence, that it is or will be encoding such Commercial Audiovisual Content in compliance with Section 5.2(a)(i). In any such arbitration, the arbitrator(s) is (are) empowered solely to determine whether Content Participant has carried such burden, and if it has not, which specific Encoding Rules should apply to such Commercial Audiovisual Content based upon the Defined Business Model that most closely approximates Content Participant's Undefined Business Model. In no event is any arbitrator, or any court considering mandating arbitration or the enforcement of any decision of any arbitrator, empowered to award any monetary amount or other relief, except as specifically provided in Section 5.2(f).

(f) Each of the parties to the arbitration initiated pursuant to Section 5.2(e) shall bear its own costs and expenses in such arbitration, and otherwise shall share equally the costs of such arbitration. Notwithstanding the immediate preceding sentence and the last sentence of Section 5.2(e), if the arbitrator(s) find(s) that (x) Content Participant's selection of the Encoding Rules for an Undefined Business Model, based on the specific Encoding Rules that are applicable to the Defined Business Model that most closely approximates such Undefined Business Model, was not bona fide, or was

capricious or frivolous, or (y) Licensor's initiation of an arbitration pursuant to Section 5.2(e) was not bona fide, or was capricious or frivolous, then the arbitrator(s) is (are) empowered to award Licensor (in the case of the finding set forth in clause (x)) or Content Participant (in the case of the finding set forth in clause (y)), such Party's costs and expenses, and reasonable outside legal fees and expenses, incurred in such arbitration.

(g) The Parties intend that the issue of which specific Encoding Rules should apply to the transmission or other delivery of Commercial Audiovisual Content pursuant to an Undefined Business Model should be resolved expeditiously. If the date on which Content Participant notifies Licensor in accordance with Section 5.2(a) is sixty (60) or fewer days prior to Content Participant's commencement of any such transmission or other delivery, then the Parties shall conduct any meetings, or participate in any arbitration initiated pursuant to Section 5.2(e), on an expedited basis. The Parties shall take all reasonable efforts to have any such arbitration concluded as expeditiously as possible. Without limiting the foregoing, the Parties (x) agree to submit statements providing support for their positions, all supporting documents and witness statements from any witnesses on which they intend to rely within ten (10) business days after the arbitrator is selected, (y) shall agree on a date for a hearing that is no later than ten (10) business days after the date of such submission and (z) shall request the arbitrator(s) to render his, her or their determination within ten (10) business days after such hearing.

(h) If, in accordance with the good faith meetings required by Section 5.2(d), the Parties agree as to which specific Encoding Rules should apply to such Commercial Audiovisual Content, or if, in an arbitration conducted pursuant to Section 5.2(e), the arbitrator determines that Content Participant does not or will not comply with the specific Encoding Rules, permitted by Section 5.1, that are applicable to the Defined Business Model that most closely approximates Content Participant's Undefined Business Model, then

Content Participant shall implement such agreement or so comply with such Encoding Rules as soon as practicable thereafter.

5.3 Protection Against Internet Retransmission of Content for Which Copy Control is Not Asserted. In the event that Content Participant executes the “EPN Addendum” attached hereto as Exhibit H and delivers a copy of such addendum, duly executed by an authorized representative of Content Participant, to Licensor, (a) Content Participant shall comply with all of the terms and conditions of such EPN Addendum and (b) Content Participant may encode, or direct to be encoded, using EPN, solely in accordance with and pursuant to the terms and conditions of such EPN Addendum and this Section 5.3, any service, Program, or schedule or group of Programs, delivered or transmitted in the form of EPN Eligible Non-Conditional Access Delivery, provided, however, that Content Participant may not so encode or direct to be encoded, using EPN, any EPN Eligible Non-Conditional Access Delivery prior to the Effective Addendum Date (as defined in such EPN Addendum) or after the termination of such EPN Addendum.

## 6. REVOCACTION.

6.1 Generally. The Specification includes means by which certain devices’ Device Certificates may be invalidated, rendering such devices unable to exchange data via DTCP with Licensed Products (generally, “Revocation” or “Revoked”).

6.2 Obligation to Carry Revocation Information. Licensor shall notify Content Participant in the event that Licensor plans to Revoke or rescind a Revocation of a Device Certificate and deliver or cause to be delivered to Content Participant Revocation Information for use in connection with such Revocation or rescission of Revocation. Content Participant shall make commercially reasonable efforts to include Revocation Information in its distributed, transmitted or delivered Commercial Audiovisual Content that is distributed, transmitted or delivered more than thirty (30) days after receiving such notice from Licensor, provided that in no case shall Content Participant be required to (a) remaster any of Content Participant’s Commercial Audiovisual Content, or (b) include Revocation Information in previously manufactured copies of Content Participant’s Commercial Audiovisual Content. Nothing herein shall require Content Participant to impose any such obligation to carry Revocation Information on its licensees.

6.3 Information Relating to Revocation. If either Licensor or senior officials of Founders that have responsibility for Licensor’s activities or DTCP have knowledge of facts or other information relating to any particular Device Certificate or Device Key that would satisfy one or more of the Revocation Criteria (defined in Section 6.4(b)), Licensor shall, consistent with the necessity to maintain the confidentiality of such facts or other information, inform Content Participant of such facts or other information. Content Participant may seek Revocation in accordance with Section 6.4.

## 6.4 Content Participant Request for Revocation.



(a) For so long as Content Participant is an Eligible AV Content Participant, it shall have the right, either on its own or with one or more Fellow AV Content Participants in which each member of such group is an Eligible AV Content Participant under its respective AV Content Participant Agreement (including the AV Content Participant User Group), to seek Revocation by providing proof to Licensor in a sworn affidavit (the “CP Affidavit”) of any of the facts relating to any particular Device Certificate that would satisfy one or more of the Revocation Criteria (defined below) and to initiate an arbitration proceeding (Content Participant and such other Fellow AV Content Participants, if any, that initiate such arbitration, for the purposes of this Section 6.4, the “Arbitrating Content Participants”), in accordance with Section 3.7(f)(vi) (except that the terms “Arbitrating Content Participants” and “Arbitrating Parties” shall have the meanings given in this Section 6.4(a)) and this Section 6.4(a), provided, however, Content Participant may not initiate an arbitration to seek Revocation of the same Device Certificate based on the same set of facts at issue in any prior arbitration initiated by a Fellow AV Content Participant. The CP Affidavit shall be sufficiently detailed that Licensor can determine, solely on the basis of such affidavit whether the facts averred satisfy one or more of the Revocation Criteria:

(i) Upon receipt of the CP Affidavit, Licensor shall review it in light of the Revocation Criteria and, promptly determine whether the facts averred in the CP Affidavit satisfy one or more of the Revocation Criteria.

(ii) Licensor shall promptly provide any Adopter to whom Licensor or its designee had issued a Device Certificate for which Revocation has been requested by Content Participant with notice of such requested Revocation and a copy of the CP Affidavit. If such Adopter notifies Licensor in writing that such Adopter consents to such Revocation, Licensor shall take steps to Revoke the applicable Device Certificate by promptly delivering or causing to be delivered to Content Participant relevant Revocation Information.

(iii) If the Adopter objects to the Revocation, or does not consent to such Revocation, within fifteen (15) days of receipt of Licensor’s notice pursuant to Section 6.4(a)(ii), Licensor shall so notify Content Participant. Content Participant may initiate an arbitration proceeding to resolve the matter, in accordance with the following procedures, within thirty (30) days after receipt of such notice from Licensor.

(iv) The parties to the arbitration shall be the Arbitrating Content Participants, the affected Adopter(s), if any, that objected to the Revocation pursuant to Section 6.4(a)(iii) and/or any designee(s) that such Adopter(s) may designate (such Adopters and designees, collectively, the “Affected Adopters”) and/or, at its election, Licensor (collectively, the “Arbitrating Parties”). The Arbitrating Content Participants shall bear the burden of proof in demonstrating, by a preponderance of the evidence, that one or more of the Revocation Criteria have been satisfied.

(v) There shall be a sole arbitrator, who shall be selected by the Arbitrating Parties from the National Panel of Commercial Arbitrators of the American Arbitration Association within fourteen (14) days of the initiation of arbitration; provided, however, that in the event the Arbitrating Parties cannot agree on a sole arbitrator within such fourteen (14)-day period,

the Arbitrating Content Participants, on the one hand, and the other Arbitrating Parties, on the other hand, shall each, promptly thereafter, select one arbitrator from the National Panel of Commercial Arbitrators of the American Arbitration Association and those two arbitrators shall jointly select a third arbitrator from the National Panel of Commercial Arbitrators of the American Arbitration Association, who shall serve as the presiding arbitrator and chairperson of such arbitration.

(vi) The arbitrator(s) is (are) empowered solely to determine (a) whether one or more of the Revocation Criteria have been satisfied and (b) if so, only in the circumstance set forth in clause (x) of this Section 6.4(a)(vi), whether Revocation is warranted. Any such determination by the arbitrator(s) shall be final and binding on the parties to the arbitration, and on Licensor, if it is not a party to the arbitration, except that whether the arbitrator(s) exceeded his her, or their, authority as specifically described in this Section 6.4(a)(vi), shall be fully reviewable by a court of competent jurisdiction. In any such arbitration, the Affected Adopter(s), if any, may introduce evidence solely to support the position that one or more of the Revocation Criteria have not been satisfied. In the event that the Arbitrator(s) determine(s) that the Revocation Criteria set forth in Section 6.4(b)(ii) have been satisfied, (x) if Licensor is a party to the arbitration and objects to Revocation, it shall have the burden of demonstrating, by a preponderance of the evidence, that Revocation is not warranted, and if Licensor fails to meet such burden, Revocation shall be deemed warranted and (y) if Licensor is not a party to the arbitration, Revocation shall be deemed to be warranted. In the event that the arbitrator(s) determine(s) that the Revocation Criteria set forth in Section 6.4(b)(i) have been satisfied, Revocation shall be deemed warranted.

(vii) All costs and fees shall be shared equally as between the Arbitrating Content Participants, on the one hand, and the Affected Adopters, if any, that participate in the arbitration, on the other, provided, however, the arbitrator(s) may otherwise apportion such costs and fees among such Arbitrating Content Participants and Affected Adopters, if any, as the arbitrator(s) may determine.

(viii) The prevailing party in such arbitration shall provide to Licensor a copy of the arbitrator(s) decision. If, pursuant to this Section 6.4(a), Revocation is warranted, Licensor shall, promptly after it receives such decision, deliver or cause to be delivered to Content Participant relevant Revocation Information.

(b) In the event that Content Participant seeks Revocation (unilaterally or with one or more Fellow AV Content Participants) in accordance with Section 6.4(a), the objective Revocation criteria set out in either Section 6.4(b)(i) or Section 6.4(b)(ii) (the “Revocation Criteria”) must be satisfied.

(i) a Device Key and corresponding Device Certificate have been cloned such that the same Device Key and corresponding Device Certificate are found in more than one device or product; or

(ii) a Device Certificate and/or Device Key has been lost, stolen, intercepted or otherwise misdirected or made public or disclosed in violation of an Adopter Agreement.

## 7. CONFIDENTIALITY.

7.1 Treatment. Content Participant shall comply with the terms of Exhibit C (the “Confidentiality Agreement”). The materials marked “Confidential” shall be deemed Confidential Information under the Confidentiality Agreement, and the materials designated by Licensor as “Highly Confidential” shall be deemed Highly Confidential Information under the Highly Confidential NDA.

7.2 Export. Content Participant and Licensor shall comply with all applicable rules and regulations of the United States, Japan and other countries and jurisdictions relating to the export or re-export of commodities, software and technical data insofar as they relate to the activities under this Agreement. Each Party agrees that commodities, software and technical data provided under this Agreement are subject to restrictions under the export control laws and regulations of the United States, Japan and other countries and jurisdictions, as applicable, including but not limited to the U.S. Export Administration Act and the U.S. Export Administration Regulations and the Japanese Foreign Exchange and Foreign Trade Law, as such may be amended from time to time, and shall obtain any approval required of such Party under such laws and regulations whenever it is necessary for such export or re-export.

## 8. TERM/TERMINATION.

8.1 Termination. This Agreement shall be effective upon the Effective Date and shall remain in effect until terminated in accordance with the terms of this Section 8.

8.1.1 Termination by Content Participant. Content Participant shall have the right to terminate this Agreement at any time on or after the first anniversary of the Effective Date upon ninety (90) days prior notice to Licensor, or at any earlier time upon reasonable notice to Licensor in the event a third-party claim is made that may subject Content Participant to legal liability in connection with DTCP or this Agreement.

8.1.2 Breach. Either Party shall have the right to terminate this Agreement upon notice to the other Party in the event of a material breach by such other Party, which breach remains uncured after, or is not capable of cure within, thirty (30) days of the non-breaching Party providing notice of such breach to the breaching Party.

8.2 Effect of Termination. Within thirty (30) days after termination of this Agreement, Content Participant shall, at the direction of Licensor, either: (i) return all Proprietary Information to Licensor; or (ii) destroy all Proprietary Information in its possession, retaining no copies thereof, and certify such destruction in writing to Licensor. In no event shall Content Participant have any liability, after the termination of this Agreement, for any effects, after such termination, of Content Participant having encoded, or directed to be encoded, using DTCP, in accordance with the terms of this Agreement, its Commercial Audiovisual Content prior to such termination, including but not limited to in masters or other copies of such content made before such termination.

8.3 Survival. The terms of Sections 2.2 , 7 , 8.2 , 9.4, 10 , 11 (with respect to any claims arising prior to termination), 12 and this Section 8.3 shall survive any termination of this Agreement.

9. REPRESENTATIONS OF CONTENT PARTICIPANT AND LICENSOR.

9.1 Eligibility. Content Participant represents that it is causing or

permitting distribution or transmission, or that it intends to cause or permit distribution or transmission of, Commercial Audiovisual Content with the expectation that such Commercial Audiovisual Content will be transmitted or received by Licensed Products.

9.2 Compliance With Laws. Content Participant and Licensor each represent and warrant that they shall comply with all applicable governmental regulations, laws and orders pertaining to DTCP, including but not limited to with respect to export requirements pursuant to Section 7.2.

9.3 Controlled Entities. Content Participant represents and warrants that it has, or will have, the authority to bind its Affiliates to the terms of this Agreement.

9.4 Representations by Licensor and Founders.

(a) Licensor represents that as of July 9, 2001, the President of Licensor has not received any written notice or claim, threatened or pending, from a third party that the use of DTCP in accordance with the terms of this Agreement infringes any third party's patent rights or that the licensing of Licensor's or any Founder's Necessary Claim would require the payment of royalties by Licensor or Founders to unaffiliated third parties.

(b) The Parties acknowledge that Exhibit D sets forth certain representations from each of the Founders with respect to the receipt of written notices or claims from a third party that the use of DTCP in accordance with the terms of this Agreement infringes a third party's patent rights or that the licensing of any of such Founder's Necessary Claims would require the payment of royalties by such Founder to unaffiliated third parties.

(c) The Parties agree that in the event that a court of competent jurisdiction renders a final, non-appealable, judgment against Licensor for breach of the representations set forth in this Section 9.4 or Exhibit D, the liability of Licensor to Content Participant in connection with such breach shall in no event exceed the fees paid by Content Participant to Licensor hereunder in the immediately preceding two (2)-year period.

10. DISCLAIMER AND LIMITATION OF LIABILITY.

The terms of this Section 10 limit the ability of Content Participant to recover any damages from Licensor or the Founders in excess of fees actually paid to Licensor by Content Participant; provided that such limitation does not apply with respect to any third-party beneficiary claim brought by Content Participant against a Founder in its role as an Adopter pursuant to such Founder's Adopter Agreement. Such terms are an essential part of the bargain, without which Licensor would not be willing to enter into this Agreement.

10.1 Disclaimer. ALL INFORMATION, MATERIALS, REVOCATION INFORMATION, DEVICE KEYS AND DEVICE CERTIFICATES ARE PROVIDED "AS IS." LICENSOR AND THE FOUNDERS MAKE NO REPRESENTATIONS OR

WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EXPRESSLY DISCLAIM IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY EQUIVALENTS UNDER THE LAWS OF ANY JURISDICTION THAT MIGHT ARISE FROM ANY ACTIVITIES OR INFORMATION DISCLOSURES RELATING TO THIS AGREEMENT, ANY ADOPTER AGREEMENT OR ANY OTHER ACTIVITY OF LICENSOR OR THE FOUNDERS. WITHOUT LIMITING THE FOREGOING, LICENSOR AND THE FOUNDERS DO NOT REPRESENT OR WARRANT THAT DTCP WILL PROTECT COMMERCIAL AUDIOVISUAL CONTENT FROM UNAUTHORIZED INTERCEPTION OR THAT DTCP IS IMMUNE TO HACKING, CODE-BREAKING, PIRACY OR OTHER EFFORTS TO CIRCUMVENT SUCH SYSTEM. LICENSOR AND THE FOUNDERS FURTHER DISCLAIM ANY WARRANTY THAT ANY IMPLEMENTATION OF THE SPECIFICATION, IN WHOLE OR IN PART, WILL BE FREE FROM INFRINGEMENT OF ANY THIRD PARTY'S INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS.

10.2 Limitation of Liability. NEITHER LICENSOR NOR THE FOUNDERS NOR ANY OF THEIR DIRECTORS, OFFICERS, EQUIVALENT CORPORATE OFFICIALS, MEMBERS, EMPLOYEES, AGENTS OR REPRESENTATIVES ACTING IN THEIR CAPACITIES AS SUCH (COLLECTIVELY, THE "AFFECTED PARTIES") SHALL BE LIABLE TO CONTENT PARTICIPANT FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF ANY CAUSE OF ACTION RELATING TO THIS AGREEMENT, OR BASED ON ANY PERSON'S OR ENTITY'S USE OF, OR MAKING, USING, SELLING OR IMPORTING ANY PRODUCTS THAT IMPLEMENT, DTCP, WHETHER UNDER THEORY OF CONTRACT, TORT, INDEMNITY, PRODUCT LIABILITY OR OTHERWISE. TO THE EXTENT THAT ANY COURT OF COMPETENT JURISDICTION RENDERS JUDGMENT AGAINST ANY OF THE AFFECTED PARTIES NOTWITHSTANDING THE ABOVE LIMITATION, THE AFFECTED PARTIES' AGGREGATE LIABILITY TO CONTENT PARTICIPANT IN CONNECTION WITH THIS AGREEMENT SHALL IN NO EVENT EXCEED THE ANNUAL ADMINISTRATION FEE PAID TO LICENSOR BY CONTENT PARTICIPANT UNDER THIS AGREEMENT; PROVIDED THAT THE LIMITATION OF LIABILITY SET OUT IN THIS PARAGRAPH 10.2 DOES NOT APPLY WITH RESPECT TO ANY THIRD-PARTY BENEFICIARY CLAIM BROUGHT BY CONTENT PARTICIPANT AGAINST A FOUNDER IN ITS ROLE AS AN ADOPTER PURSUANT TO SUCH FOUNDER'S ADOPTER AGREEMENT.

## 11. REMEDIES.

11.1 Equitable Relief. Content Participant and Licensor agree and acknowledge that due to the unique nature of certain provisions hereof and the lasting effect of and harm from a breach of such provisions, if Content Participant breaches its obligations hereunder, money damages alone may not adequately compensate an injured party, and that injury to such party may be irreparable, and that specific performance or other temporary, preliminary, or permanent injunctive or equitable relief is an appropriate remedy to prevent

further or threatened breaches of such obligations. Licensor's remedies hereunder for any breach by Content Participant of this Agreement shall be limited to such injunctive or equitable relief, except (i) in the event that Content Participant willfully breaches, or engages in a pattern or practice of breaching, its obligations hereunder, it shall be liable for Licensor's attorneys' fees and expenses incurred in connection with any enforcement action brought by Licensor in which Licensor is the prevailing party and (ii) as provided in Exhibit F. Exercise of Licensor's rights, or any Adopter's third-party-beneficiary rights, under this Section 11 shall not constitute an election against any statutory or other extra-contractual remedy against Content Participant.

#### 11.2 Adopter Third-Party-Beneficiary Rights.

(a) The Parties acknowledge and agree that the compliance of Content Participant with the terms of this Agreement, and the compliance of the other Fellow AV Content Participants with their respective AV Content Participant Agreements, is essential to (including as to the integrity and security of) DTCP. As part of the consideration of the rights and licenses granted to Content Participant hereunder, Content Participant hereby confers a third-party-beneficiary right upon each Adopter that designs or manufactures Licensed Products that receive or transmit Commercial Audiovisual Content for so long as such Adopter is (i) not willfully in material breach of the terms and conditions of its Adopter Agreement and (ii) not otherwise in material breach of any term or condition of its Adopter Agreement, which breach has not been cured, or is not capable of cure, within thirty (30) days of such Adopter's receipt of notice thereof by Licensor or any Fellow AV Content Participant (each, an "Adopter Beneficiary") in order to enforce those obligations of Content Participant under Section 5. The remedies hereunder for any such Adopter Beneficiary that initiates or institutes a claim or action to enforce the terms of Section 5 (an "Adopter Beneficiary Claim") shall, notwithstanding any provision of any Adopter Agreement executed prior to the date hereof, be limited to seeking injunctive relief, except where Content Participant has willfully breached, or engaged in a pattern or practice of breaching, its obligations under Section 5, as to which breach(s) attorneys' fees and costs shall be awarded to each Adopter Beneficiary in connection with each Adopter Beneficiary Claim in which such Adopter Beneficiary is a prevailing party. The procedures set out in Exhibit A shall govern all Adopter Beneficiary Claims.

#### 12. MISCELLANEOUS.

12.1 Ownership. All Proprietary Information and media containing Proprietary Information as provided by Licensor or its designee to Content Participant hereunder shall remain the property of Licensor, the Founders or their suppliers. Except as expressly provided herein, this Agreement does not give Content Participant any license or other right to the Proprietary Information.

12.2 Entire Agreement. This Agreement, including the Confidentiality Agreement and other exhibits hereto and the EPN Addendum upon execution thereof by Content Participant, constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all oral, written or other agreements, either entered prior

to or contemporaneously with this Agreement. This Agreement may not be modified except by written agreement of both Parties.

12.3 Assignment. The rights and licenses granted hereunder are personal to Content Participant, and Content Participant may not assign or transfer this Agreement, or any of its rights or obligations hereunder, except (a) with the written approval of Licensor (which shall not unreasonably be withheld), (b) to a corporation controlling, controlled by or under common control with Content Participant or (c) to the purchaser of all or substantially all of the outstanding capital stock or assets and obligations of Content Participant or to the surviving entity in a merger, reorganization, or other business combination involving Content Participant where the surviving or acquiring company agrees in writing to be bound by this Agreement, provided that Content Participant shall use its good faith efforts to provide notice to Licensor of such assignment no later than thirty (30) days after such merger, reorganization or business combination. Subject to the limitations set forth in this Agreement, this Agreement will inure to the benefit of, and be binding upon, the Parties, their successors and permitted assigns. Licensor may assign or transfer this Agreement to any person or entity that agrees to assume Licensor's obligations hereunder, and Licensor shall provide Content Participant with notice thereof.

12.4 Presumptions. In construing the terms of this Agreement, no presumption shall operate in either Party's favor as a result of its counsel's role in drafting the terms or provisions hereof.

12.5 Governing Law; Jurisdiction. THIS AGREEMENT, AND ALL ADOPTER BENEFICIARY CLAIMS, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED ENTIRELY IN SUCH STATE, AND WITH THE LAWS OF THE UNITED STATES AS WOULD BE CONSTRUED BY A FEDERAL COURT SITTING IN THE SOUTHERN DISTRICT OF NEW YORK;

12.5.1 IN CONNECTION WITH ANY LITIGATION BETWEEN THE PARTIES HERETO ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY ADOPTER BENEFICIARY CLAIM, EACH PARTY HERETO IRREVOCABLY CONSENTS TO: (i) THE EXCLUSIVE JURISDICTION AND VENUE IN THE FEDERAL AND STATE COURTS LOCATED IN THE COUNTY OF NEW YORK IN THE STATE OF NEW YORK AND IN LOS ANGELES COUNTY IN THE STATE OF CALIFORNIA; AND (ii) THE SERVICE OF PROCESS OF SAID COURTS IN ANY MATTER RELATING TO THIS AGREEMENT BY PERSONAL DELIVERY OR BY MAILING OF PROCESS BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, AT THE ADDRESSES SPECIFIED IN THIS AGREEMENT, OR TO THE AGENT TO BE APPOINTED PURSUANT TO SECTION 12.5.2.

12.5.2 EACH PARTY SHALL APPOINT AN AGENT IN THE STATES OF NEW YORK AND CALIFORNIA FOR ACCEPTANCE OF SERVICE OF PROCESS PROVIDED FOR UNDER THIS AGREEMENT AND SHALL NOTIFY THE OTHER PARTY OF THE IDENTITY AND ADDRESS OF SUCH AGENT WITHIN THIRTY (30)

DAYS AFTER THE EFFECTIVE DATE.

12.5.3 EACH PARTY WAIVES ANY OBJECTION TO THE JURISDICTION, PROCESS, AND VENUE OF ANY SUCH COURT, AND TO THE EFFECTIVENESS, EXECUTION, AND ENFORCEMENT OF ANY ORDER OR JUDGMENT (INCLUDING BUT NOT LIMITED TO A DEFAULT JUDGMENT) OF SUCH COURT PERTAINING TO THIS AGREEMENT OR ANY ADOPTER BENEFICIARY CLAIM, TO THE MAXIMUM EXTENT PERMITTED BY THE LAW OF THE PLACE WHERE ENFORCEMENT OR EXECUTION OF ANY SUCH ORDER OR JUDGMENT MAY BE SOUGHT AND BY THE LAW OF ANY PLACE WHOSE LAW MIGHT BE CLAIMED TO BE APPLICABLE REGARDING THE EFFECTIVENESS, ENFORCEMENT, OR EXECUTION OF SUCH ORDER OR JUDGMENT, INCLUDING PLACES OUTSIDE OF THE STATE OF NEW YORK, THE STATE OF CALIFORNIA AND THE UNITED STATES.

12.6 Records Maintenance. Content Participant and Licensor shall maintain accurate records of its activities under this Agreement, including but not limited to records relating to its distribution of Revocation Information for at least three (3) years from the date of the act recorded.

12.7 Notice. All notices to be provided pursuant to this Agreement shall be given in writing and shall be effective when either served by personal delivery or upon receipt via certified mail, return receipt requested, postage prepaid, overnight courier service or sent by facsimile transmission with hard copy confirmation sent by certified mail, in each case to the Party at the addresses set out on the signature pages hereof.

12.8 Severability; Waiver. Should any part of this Agreement judicially be declared to be invalid, unenforceable, or void, the Parties agree that the part or parts of this Agreement so held to be invalid, unenforceable, or void shall be reformed by the entity having jurisdiction thereof without further action by the Parties hereto and only to the extent necessary to make such part or parts valid and enforceable. A waiver by either of the Parties hereto of any of the covenants to be performed by the other Party or any breach thereof shall not be effective unless made in writing and signed by the waiving Party and shall not be construed to be a waiver of any succeeding breach thereof or of any covenant herein contained.

12.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument. The Parties acknowledge and agree that such counterparts may be executed by signatures sent by facsimile transmissions.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of EXHIBIT A

the date first above written.

**Digital Transmission Licensing    Content Participant:  
Administrator, LLC:**



By: \_\_\_\_\_ By: \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

Addresses for notices

**Digital Transmission Licensing Content Participant:  
Administrator, LLC:**

c/o License Management International, LLC.

380 Tennant Ave., Unit 4

Morgan Hill, CA 95037

**PROCEDURES FOR THIRD-PARTY BENEFICIARY CLAIMS**

1 Prior to initiating or instituting any AV Content Participant Beneficiary Claim or Adopter Beneficiary Claim (each, a “Beneficiary Claim”) against an Adopter or against a Fellow AV Content Participant, as the case may be (each, a “Defendant”), an AV Content Participant Beneficiary or Adopter Beneficiary (each, a “Third-Party Beneficiary”) shall provide Licensor notice and consultation reasonable under the circumstances regarding a proposed Beneficiary Claim; provided that such consultation with Licensor shall not affect such Third-Party Beneficiary’s complete discretion in initiating or instituting such a Beneficiary Claim. Such Third-Party Beneficiary shall further provide Licensor with notice of actual filing of a Beneficiary Claim and, upon Licensor’s request, any copies of material documents filed in such Third-Party Beneficiary’s initiation, institution or pursuit of such Beneficiary Claim. Licensor shall cooperate reasonably with such Third-Party Beneficiary in providing appropriate and necessary information in connection with the Beneficiary Claim to the extent that such cooperation is consistent with the preservation of the integrity and security of DTCP and to the extent such cooperation does not involve release of information provided to Licensor by an Adopter or Fellow AV Content Participant that such Adopter or Fellow AV Content Participant has designated to Licensor to be its confidential and proprietary information. Documents provided to Licensor under the procedures set out in this Exhibit A shall not include any documents filed or to be filed under seal in connection with such Beneficiary Claim.

2 Licensor shall provide all Adopters (in the case of an Adopter Beneficiary Claim) and all Fellow AV Content Participants (in the case of an AV Content Participant Beneficiary Claim) with prompt notice of Licensor’s receipt of any notice of a Beneficiary Claim against a Defendant (a “Claim Notice”). Within thirty (30) days of the date of mailing of a Claim Notice, all Adopter Beneficiaries (in the case of an Adopter Beneficiary Claim), or all AV

Content Participant Beneficiaries (in the case of an AV Content Participant Beneficiary Claim), shall elect whether to join such Beneficiary Claim, and the failure of any Adopter or Fellow AV Content Participant to provide written notice to Licensor of such election and to move to join such Beneficiary Claim within such thirty (30)-day period shall be deemed a waiver of such Adopter's or Fellow AV Content Participant's third-party-beneficiary right under its respective Adopter Agreement or AV Content Participant Agreement, as the case may be, with respect to all Beneficiary Claims against Defendant arising out of the alleged breach by Defendant raised in such Beneficiary Claim asserted by the Third-Party Beneficiary. The Third-Party Beneficiary instituting or initiating a Beneficiary Claim shall support, and Defendant shall not object to, any motion to so join by such Third-Party Beneficiaries electing to join such Beneficiary Claim within such thirty (30)-day period. Any judgment entered upon such Beneficiary

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Claim shall be binding on all Adopters and Fellow AV Content Participants that failed to join such Beneficiary Claim as if they had joined such Beneficiary Claim. Neither any Adopter's or Fellow AV Content Participant's failure to notify or consult with Licensor or to provide copies, nor Licensor's failure to give notice to any Adopter or Fellow AV Content Participant pursuant to these third-party beneficiary procedures, under paragraphs 1 or 2 shall be a defense against any Beneficiary Claim or grounds for a request to delay the granting of any preliminary relief requested.

3. Third-Party Beneficiaries shall have no right to, and Content Participant agrees that it will not, enter into any settlement that: (i) amends any material term of any Adopter Agreement or AV Content Participant Agreement; (ii) has an adverse effect on the integrity or security of DTCP, or the operation of DTCP with respect to protecting Commercial Audiovisual Content from any unauthorized output, transmission, interception or copying, or the rights of Content Participants with respect to DTCP; or (iii) affects any of Licensor's or the Founders' rights in and to DTCP or any intellectual property right embodied therein, unless Licensor shall have provided prior written consent thereto.

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July 10, 2001

EXHIBIT B ANNUAL FEES

US\$18,000

July 10, 2001

EXHIBIT C

CONFIDENTIALITY AGREEMENT

1 Confidentiality

1.1 Permitted Use. Content Participant shall use Proprietary Information and Confidential Information (and tangible embodiments of either of the foregoing) solely as may be necessary for the activities contemplated under the Agreement, and shall not use any mentally-retained recollections thereof to circumvent or copy the methods disclosed in the Specification or any Proprietary Information or Confidential Information or to circumvent any obligations under the Agreement.

2 Disclosure

2 Confidential Information. Content Participant may disclose Confidential Information only to (i) regular employees of Content Participant and individuals retained as independent contractors subject to confidentiality obligations equivalent to those applicable to regular employees of Content Participant who have a reasonable need to know and are bound in writing by obligations of confidentiality sufficient to protect the Confidential Information in accordance with the terms of the Agreement; (ii) Fellow Content Participants, provided that Content Participant may disclose to such Fellow Content Participants only information that such Fellow Content Participants are permitted to receive under their respective Content Participant Agreements or (iii) Content Participant's attorneys, auditors or other agents who owe Content Participant a duty of confidentiality and are bound to maintain such information in confidence as a result of a fiduciary relationship. Content Participant shall use the same degree of care, but no less than a reasonable degree of care, to avoid unauthorized disclosure or use of Confidential Information as Content Participant employs with respect to its comparably important confidential information. Notwithstanding the foregoing, Content Participant and Licensor may disclose Content Participant's status (or lack of it) as a licensee under the Agreement, and such disclosure shall not constitute Confidential Information.

2.2 Contact Person. Content Participant shall designate a single employee and an alternate employee who shall receive all Confidential Information disclosed by Licensor.

2.3 Notification of Unauthorized Use or Disclosure. Content Participant shall notify Licensor immediately upon discovery of any unauthorized use or disclosure of Proprietary Information, and will cooperate with Licensor in every reasonable way to regain possession of Proprietary Information and prevent its further unauthorized use or disclosure.

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2.4 Disclosure Required by Law. If Content Participant is required by law, regulation or order of a court or other authority of competent jurisdiction to disclose Confidential Information, Content Participant shall notify Licensor as promptly as possible, and shall, upon Licensor's request, reasonably cooperate in challenging or restricting the scope of such required disclosure.

2.5 Confidentiality Exceptions. The confidentiality restrictions contained in this Confidentiality Agreement shall not apply to Confidential Information that Content Participant can demonstrate: (i) is or becomes or has become generally known to the public through no breach of Content Participant's obligations owed to Licensor or the Founders and which Licensor failed to remove from public availability or to enjoin such public disclosure within 120 days after the date such information is or becomes generally known as set forth above; or (ii) is or has been developed by Content Participant's employees (whether independently or jointly with others) without having access (whether directly or through any intermediaries) to any such Confidential Information (or any translation, derivation or abstractions of Confidential Information) and without any breach of Content Participant's obligations to Licensor or the Founders; or (iii) is or has been disclosed to Content Participant by a third party which had developed (whether independently or jointly with others) or obtained such information without any access (whether directly or through any intermediaries) to any Confidential Information and without any breach of any such third party's obligations to Licensor or the Founders.

### 3 Period

3.1 Confidentiality Period. The confidentiality obligations set forth herein shall continue until the later of (i) three (3) years after the last commercial use of the Specification or DTCP by Licensor or any entity licensed to use the technology described in the Specification; and (ii) the expiration of the last copyright that protects any Commercial Entertainment Content which then exists in any country adhering to the Agreement on Trade Related Aspects of Intellectual Property Rights of the World Trade Organization dated April 15, 1994.

### 4 Other Terms

2 Reverse Engineering. Content Participant shall under no circumstances reverse engineer, decompile, disassemble or otherwise determine the operation of the Specification. Nothing herein shall be construed as an inducement for Content Participant to reverse engineer any products or components in which the Specification is implemented.

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July 10, 2001 EXHIBIT D

## INTELLECTUAL PROPERTY CLAIMS

(a) Hitachi, Ltd. ("Hitachi") represents that as of July 9, 2001, the General Manager, U.S./European IP Licensing Department, Intellectual Property Group has not received any written notice or claims, threatened or pending, from a third party that the use of DTCP in

accordance with the terms of this Agreement infringes any third party's patent rights or that the licensing by Hitachi of any patent claims that would otherwise be "Necessary Claims" but for the fact that the licensing of such claims requires the payment of royalties to unaffiliated parties would require the payment of such royalties.

(b) Intel Corporation ("Intel") represents that as of July 9, 2001, Intel's Director of Litigation has not received any written notice or claims, threatened or pending, from a third party that the use of DTCP in accordance with the terms of this Agreement infringes any third party's patent rights or that the licensing by Intel of any patent claims that would otherwise be "Necessary Claims" but for the fact that the licensing of such claims requires the payment of royalties to unaffiliated parties would require the payment of such royalties.

(c) Panasonic Corporation ("Panasonic") represents that as of July 9, 2001, Panasonic's Director, Legal Affairs Center, Intellectual Property Rights Operations Company has not received any written notice or claims, threatened or pending, from a third party that the use of DTCP in accordance with the terms of this Agreement infringes any third party's patent rights or that the licensing by Panasonic of any patent claims that would otherwise be "Necessary Claims" but for the fact that the licensing of such claims requires the payment of royalties to unaffiliated parties would require the payment of such royalties.

(d) Sony Corporation ("Sony") represents that as of July 9, 2001, Sony's Deputy General Manager, Corporate Intellectual Property Department has not received any written notice or claims, threatened or pending, from a third party that the use of DTCP in accordance with the terms of this Agreement infringes any third party's patent rights or that the licensing by Sony of any patent claims that would otherwise be "Necessary Claims" but for the fact that the licensing of such claims requires the payment of royalties to unaffiliated parties would require the payment of such royalties.

(e) Toshiba Corporation ("Toshiba") represents that as of July 9, 2001, Toshiba's General Manager, Intellectual Property Division, Digital Media Network Company, has not received any written notice or claims, threatened or pending, from a third party that the use of DTCP in accordance with the terms of

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this Agreement infringes any third party's patent rights or that the licensing by Toshiba of any patent claims that would otherwise be "Necessary Claims" but for the fact that the licensing of such claims requires the payment of royalties to unaffiliated parties would require the payment of such royalties.

(f) The Parties and each of the Founders agree that in the event that a court of competent jurisdiction renders a final, non-appealable, judgment against any of the Founders for breach of the representations set forth in this Exhibit D, the liability of such Founder to Content Participant in connection with such breach shall in no event exceed the fees paid by Content Participant to Licensor under this Agreement in the immediately preceding two (2)-year period.

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IN WITNESS WHEREOF, the Founders have executed this Exhibit as of  
the respective dates specified below.

**Hitachi, Ltd. Intel Corporation**

By: \_\_\_\_\_ By: \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

**Panasonic Intellectual Property Corporation  
of America Sony Corporation**

By: \_\_\_\_\_ By: \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

**Toshiba Corporation**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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EXHIBIT E

FORM ADOPTER AGREEMENT

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EXHIBIT F

FORM OF  
CONFIDENTIALITY AGREEMENT  
FOR HIGHLY CONFIDENTIAL INFORMATION

This Confidentiality Agreement For Highly Confidential Information (the “HCI Confidentiality Agreement”) is effective as of \_\_\_\_\_ by and between: Digital Transmission Licensing Administrator, LLC, a Delaware limited liability company (“Licensor”); and \_\_\_\_\_ (together with its Affiliates, “Content Participant”):

WITNESSETH:

WHEREAS, Content Participant and Licensor have entered into that certain Content Participant Agreement (the “CPA”), effective as of July 9, 2001;

WHEREAS, Content Participant wishes to obtain, pursuant to Section 3.7 of the CPA, Highly Confidential Information, as such term is defined in the CPA;

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements set forth herein and in the CPA, the parties hereto hereby agree as follows:

1. General

Capitalized terms used in this HCI Confidentiality Agreement and not otherwise defined herein shall have the meanings given in the CPA. This HCI Confidentiality Agreement shall be deemed an addendum to, and is hereby incorporated into, the CPA. Without limiting the foregoing, this HCI Confidentiality Agreement in no way limits Content Participant’s obligations under the Confidentiality Agreement (Exhibit C to the CPA).

2. Permitted Use

Content Participant shall use Highly Confidential Information (and tangible embodiments thereof) solely as may be necessary for Content Participant’s review thereof pursuant to Section 3.7 of the CPA, and shall not use any mentally-retained recollections thereof to circumvent or copy the methods disclosed in the Specification or any Proprietary Information, Highly Confidential Information or other Confidential Information or to circumvent any obligations under the CPA.

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3.1 Highly Confidential Information. Content Participant shall maintain the confidentiality of Highly Confidential Information in the following manner:

3.1.1 Content Participant shall employ procedures for safeguarding Highly Confidential Information at least as rigorous as Content Participant would employ for its own most highly confidential information, such procedures to include, at a minimum: (i) maintaining on Content Participant's premises a secure location in which any and all Highly Confidential Information shall be stored; (ii) such secure location shall be accessible only by authorized employees; (iii) employees shall sign in and out each time such employees visit such secure location; and (iv) when Highly Confidential Information is not in use, such information shall be stored in a locked safe at such secure location.

3.1.2 Content Participant may disseminate Highly Confidential Information only to the strictest minimum possible number of regular employees of Content Participant: (i) who have an absolute need to know such Highly Confidential Information in order to effectively carry out Content Participant's review thereof pursuant to Section 3.7 of the CPA; and (ii) who are bound in writing by obligations of confidentiality sufficient to protect the Highly Confidential Information in accordance with the terms of this HCI Confidentiality Agreement.

1 Content Participant shall not make any copies of any Highly Confidential Information. Content Participant may request additional copies of such information. Licensor may in its sole discretion fulfill any such request.

2 General

4.1 Improper or Unauthorized Acts. Content Participant shall make all reasonable efforts to assist Licensor in relation to any claim, action, suit, proceeding, or litigation with respect to any improper or unauthorized acts of any of its former employees.

4.2 Contact Person and Provision of DTCP Information. Content Participant shall designate a single employee and an alternate employee who shall receive all Highly Confidential Information disclosed by Licensor.

4.3 Notification of Unauthorized Use or Disclosure. Content Participant shall notify Licensor immediately upon discovery of any unauthorized use or disclosure of Highly Confidential Information, and will cooperate with Licensor in every reasonable way to regain possession of Highly Confidential Information and prevent its further unauthorized use or disclosure.

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July 10, 2001

4.4 Disclosure Required by Law. If Content Participant is required by law, regulation or order of a court or other authority of competent jurisdiction to disclose Highly Confidential Information, Content Participant shall notify Licensor as promptly as possible, and shall,

upon Licensor's request, reasonably cooperate in challenging or restricting the scope of such required disclosure.

1        Confidentiality Exceptions. The confidentiality restrictions contained in this HCI Confidentiality Agreement shall not apply to information that Content Participant can demonstrate: (i) is Highly Confidential Information which is or becomes or has become generally known to the public through no breach of Content Participant's obligations owed to Licensor or the Founders and which Licensor failed to remove from public availability or to enjoin such public disclosure within 120 days after the date such information is or becomes generally known as set forth above; (ii) is or has been developed by Content Participant's employees (whether independently or jointly with others) without having access (whether directly or through any intermediaries) to any Highly Confidential Information or other Confidential Information (or any translation, derivation or abstractions of Highly Confidential Information) and without any breach of Content Participant's obligations to Licensor or the Founders; or (iii) is or has been disclosed to Content Participant by a third party which had developed (whether independently or jointly with others) or obtained such information without any access (whether directly or through any intermediaries) to any Highly Confidential Information or other Confidential Information and without any breach of any such third party's obligations to Licensor or the Founders.

2        Liquidated Damages

The parties agree that it would be impossible to estimate the amount of damages in the event of certain breaches. In the event of a material breach by Content Participant of this HCI Confidentiality Agreement, Content Participant shall be liable for one million dollars (US\$1,000,000). For purposes of this Section 5, a series of substantially related events shall constitute a single material breach. A breach shall be "material" only if it has resulted in or would be likely to result in commercially significant harm to other users of DTCP, including but not limited to Adopters and Fellow Content Participants, or constitute a threat to the integrity or security of DTCP. In addition, the following is a non-exclusive list of circumstances in which, standing alone, there is no material breach of the applicable provisions: (i) if no Highly Confidential Information was released to a third party not permitted hereunder to have such information or could reasonably have been expected to have been released to such third party as a result of the breach; (ii) if Content Participant maintains an internal program to assure compliance herewith (including a program to assure maintenance of inventory, samples, and confidentiality of information for purposes in addition to compliance with this HCI Confidentiality Agreement), the breach was inadvertent or otherwise unintentional, and the breach did not have a material adverse effect on the integrity or

July 10, 2001 security of DTCP or the function of DTCP to protect Commercial Entertainment Content; or (iii) if Content Participant brought the breach to Licensor's attention in a timely manner as required by this HCI Confidentiality Agreement and such breach did not have a material adverse effect on the integrity or security of DTCP or the

function of DTCP to protect Commercial Entertainment Content.

6. Period

The confidentiality obligations set forth herein shall continue until the later of (i) three (3) years after the last commercial use of the Specification or DTCP by Licensor or any entity licensed to use the technology described in the Specification; and (ii) the expiration of the last copyright that protects any Commercial Entertainment Content which then exists in any country adhering to the Agreement on Trade Related Aspects of Intellectual Property Rights of the World Trade Organization dated April 15, 1994.

7. Reverse Engineering

Pursuant to Section 4.1 of the CPA, Content Participant shall under no circumstances reverse engineer, decompile, disassemble or otherwise determine the operation of the Specification, including, without limitation, any encryption/decryption or scrambling/descrambling algorithm or logic of DTCP.

**Digital Transmission Licensing  
Administrator, LLC:**

**Content Participant:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Addresses for notices

**Digital Transmission Licensing  
Administrator, LLC:**

**Content Participant:**

c/o License Management International, LLC. 380 Tennant Ave., Unit 4 Morgan Hill, CA 95037

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July 10, 2001

EXHIBIT G

DECEMBER 1999 VERSION OF ADOPTER AGREEMENT

## EXHIBIT H

### EPN ADDENDUM

Pursuant to the Content Participant Agreement executed on \_\_\_\_\_, 2001 (the “Agreement”), between Licensor and Content Participant (each, a “Party” and, together, the “Parties”), this Addendum to the Agreement (the “Addendum”) sets forth the Parties’ respective rights and obligations with respect to the use of EPN Encoding (defined below) in connection with EPN Eligible Non-Conditional Access Delivery.

#### 1. Definitions.

1.1 Where a capitalized term is used but not otherwise defined in this Exhibit H, the meaning ascribed thereto elsewhere in the Agreement shall apply.

1.2 “Effective Date” shall mean the date of execution of an EPN Addendum by a third EPN Eligible Content Participant.

1.3 “Effective Addendum Date” shall mean the second anniversary of the date upon which at least three EPN Eligible Content Participants have executed EPN Addenda that continuously have been maintained in effect over that two (2)-year period.

1.4 “EPN Addendum” means this Addendum and any other “EPN Addendum” included as an exhibit to any other AV Content Participant Agreement.

1.5 “EPN Content Participant” shall mean Content Participant upon and after Content Participant’s execution of this Addendum.

1.6 “Fellow EPN Content Participant” shall mean EPN Content Participant and any other Fellow AV Content Participant that executes an EPN Addendum.

1.7 “EPN Eligible Non-Conditional Access Delivery” shall mean the delivery or transmission of any service, Program, or schedule or group of Programs, that (a) is delivered or transmitted via a Commercially-Adopted Access Control Method and (b) does not fall within the definition of Conditional Access Delivery.

1.8 “EPN Encoding” shall mean encoding in accordance with the requirements set forth in Section 3(a)-(e) of this Addendum.

1.9 “EPN Eligible Content Participant” shall mean, during the course of any one (1) calendar year, any Fellow AV Content Participant that is (a) a Major AV Content

Participant and/or (b) a major United States broadcast television network (i.e., ABC, CBS, Fox, NBC, PBS and WB).

1 License Fees for EPN. Upon the Effective Date, EPN Content Participant shall be required to pay a supplemental administration fee (which fee shall be included in the Administration Fee) in the amount of \$250,000 on each of the next three (3) successive anniversaries of the Effective Date and \$125,000 on each of the next following three (3) anniversaries of the Effective Date. At the end of such six (6)-year period, Licensor will consider whether continuation, reduction or elimination of such supplemental administration fee is warranted based on such factors as continuing consumer complaints, and any costs and obligations incurred by Licensor, Adopters and retailers that arise from their support of EPN.

2 Encoding Rules for EPN. Following the Effective Addendum Date, and subject to the terms and conditions of the Agreement including this Addendum, EPN Content Participant only may encode, or direct to be encoded, using EPN, EPN Eligible Non-Conditional Access Delivery in accordance with this Section 3:

(a) EMI shall be set to Mode B encryption in accordance with Chapter 6 of the Specification.

(b) EPN shall be set to be asserted in accordance with Chapter 6 and Appendix B of the Specification.

(c) EmCCI shall be encoded as “Copy Freely” in accordance with the Specification.

(d) CGMS-A, if present, shall be encoded as “Copy Freely” in

accordance with the CGMS-A specifications contained in IEC 61880 (for inclusion on Line 20) or in EIA-608-B (for inclusion on Line 21) or in EIA-805 (for inclusion on Line 41), as applicable.

(e) APS trigger bits, if present, shall be encoded so as not to trigger the application of the Automatic Gain Control and Colorstripe copy control system, in accordance with the document entitled “Specification of the Macrovision Copy Protection Process for DVD Products, Revision 7.1.D1, September 30, 1999.”

1 Reciprocal Nonassertion Covenant. For avoidance of doubt, EPN Encoding is part of the Interface; and the covenants granted under Section 2.2 of the Agreement and any comparable provision of any AV Content Participant Agreement and under Section  
2 of the Form Adopter Agreement and any comparable provision of any Adopter Agreement apply to EPN Encoding.

5.1 If a third party asserts against Licensor, any Founder, any Fellow EPN Content Participant or any Adopter, or any of its or their Affiliates (each, an “Alleged Infringer”) any claim that its intellectual property right is infringed or misappropriated by EPN Encoding in connection with EPN Eligible Non-Conditional Access Delivery (an “EPN Claim”), then:

(a) EPN Content Participant, on its own or with other Fellow EPN Content Participants, shall promptly and in good faith, after receiving notice from any Alleged Infringer of an EPN Claim, endeavor to negotiate a license with such third party enabling the continued licensing and use of EPN Encoding in connection with EPN Eligible Non-Conditional Access Delivery by Fellow EPN Content Participants and Adopters and shall pay any and all applicable license or other fees for such past and continued licensing by Licensor or use of EPN Encoding in connection with EPN Eligible Non-Conditional Access Delivery by any Alleged Infringer and any Adopter. Licensor will provide reasonable cooperation to EPN Content Participant, and any other Fellow EPN Content Participants, with respect to such negotiations.

(b) Notwithstanding any other term or condition of the Agreement, if EPN Content Participant and other Fellow EPN Content Participants are unwilling or unable to negotiate the license described in Section 5.1(a), Licensor, on its own initiative, can, or, at the request of EPN Content Participant and such other Fellow EPN Content Participants, shall, (i) delete EPN from the Specification without utilizing the procedures set forth in Section 3.7 of the Agreement and/or (ii) terminate all EPN Addenda then in effect.

(c) EPN Content Participant is jointly and severally responsible with each other Fellow EPN Content Participant (each, an “Indemnifying Party”) for indemnifying and holding harmless Licensor, the Founders, Adopters and each of its or their Affiliates (each, an “Indemnified Party”), and, at the Indemnified Party’s election, defending the Indemnified Party, from and against any and all losses, deficiencies, damages, liabilities, costs and expenses (including reasonable attorneys’ fees and expenses), claims, suits and actions with respect to any EPN Claim (“Costs or Actions”). In the event that any Indemnified Party elects to have an Indemnifying Party defend it, (i) the Indemnified Party will so notify the Indemnifying Party in writing; (ii) the Indemnified Party shall have the right to approve the Indemnifying Party's counsel, which approval shall not unreasonably be withheld, and to obtain its own counsel at the Indemnified Party’s own expense; and (iii) the Indemnifying Party shall obtain the approval of the Indemnified Party before entering into any settlement or compromise that would impose any liability or obligation on the Indemnified Party, which approval shall not be unreasonably withheld. If any Cost or Action is asserted against the Indemnified Party in respect of which the Indemnified Party proposes to demand indemnification from the Indemnifying

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Party pursuant to this Section 5.1(c), the Indemnified Party will promptly notify the Indemnifying Party in writing. No failure of the Indemnified Party to so notify the Indemnifying Party shall relieve the Indemnifying Party from the obligation to indemnify the Indemnified Party unless and to the extent the Indemnifying Party is actually prejudiced by such failure. In the event that an Indemnified Party elects to defend itself, EPN Content



Participant, and each other Fellow EPN Content Participant, shall have the right to participate in the defense and to approve any settlement or compromise that would impose any liability or obligation on EPN Content Participant or such other Fellow EPN Content Participants, which approval shall not be unreasonably withheld. Licensor and the Founders and EPN Content Participant agree to cooperate with each other in connection with the defense of any EPN Claim.

1 Licensor hereby represents that, in selecting the settings for EPN Encoding, it has used no less than the same degree of care that it has used in selecting the settings for the encoding of comparable protection capabilities provided under the Specification.

2 Cooperation and Public Relations.

6.1 Licensor and EPN Content Participant agree to cooperate in good faith so as to create and participate in an appropriate public relations campaign, including relations with other Fellow EPN Content Participants, service providers, source device manufacturers and any other parties affected by the implementation of EPN Encoding in connection with EPN Eligible Non-Conditional Access Delivery. The purpose of such campaign is to explain the reasons behind the adoption of EPN in the Specification in connection with EPN Eligible Non-Conditional Access Delivery, and to demonstrate the support of EPN Content Participant and other Fellow EPN Content Participants for the application of EPN Encoding to EPN Eligible Non-Conditional Access Delivery. EPN Content Participant and Licensor each agree that it will not issue any press release or make any public announcement concerning its execution of this Addendum or its use of EPN Encoding in connection with EPN Eligible Non-Conditional Access Delivery without prior disclosure to and written consent from the other Party.

6.2 EPN Content Participant agrees that it, with other Fellow EPN Content Participants, will fully fund the upgrade or replacement of devices that are subject to specific consumer complaints actually lodged with manufacturers or retailers of products, or distributors of content, because the consumers are no longer capable of making multiple generation copies using equipment manufactured prior to the Effective Addendum Date. Licensor agrees that it will encourage affected Adopters to work with such Fellow EPN Content Participants to minimize the cost of this obligation (e.g., by replacing boards or chips rather than by replacing devices). Licensor will not advertise or publicize the availability of this remedy to members of the general public, but consumers may be directed to contact a manufacturer or retailer so as to address their concerns.

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Licensor and EPN Content Participant will work together in good faith to establish the procedures and mechanisms by which Fellow EPN Content Participants will undertake their funding obligations pursuant to this Section. This obligation shall terminate three (3) years following the Effective Addendum Date.

1 Notice of Effective Addendum Date. Following the Effective Date, Licensor shall

give notice to Fellow EPN Content Participants and to Adopters of the date upon which any changes to the Operative Protection Agreements required in order to implement EPN Encoding in connection with EPN Eligible Non-Conditional Access Delivery shall come into force.

2 Term and Termination.

8.1 Termination. This Addendum shall come into force upon execution by both Parties, and shall remain in effect until terminated in accordance with the terms of this Section 8.

8.2 Termination by EPN Content Participant. EPN Content Participant shall have the right to terminate this Addendum upon notice to Licensor at any time.

8.3 Termination by Licensor. Licensor shall have the right to terminate this Addendum upon notice to EPN Content Participant upon any of the following occurrences:

(a) a material breach by EPN Content Participant of this Addendum or Section 5.3 of the Agreement, which breach remains uncured after, or is not capable of cure within, thirty (30) days of Licensor providing notice of such breach to EPN Content Participant;

(b) deletion of EPN from the Specification pursuant to Section 5.1(b) of this Addendum or as otherwise permitted under Section 5.1(b)(ii); or

(c) after the Effective Addendum Date, if there are fewer than three

(3) EPN Content Participants for any period exceeding twenty-four (24) months, provided that Licensor notifies Fellow EPN Content Participants of its intention to terminate at least six (6) month's prior to the effective date of termination.

8.4 Termination of Agreement. This Addendum shall terminate upon the termination of the Agreement in accordance with Section 8 thereof.

8.5 Effect of Termination. Immediately upon termination of this Addendum, EPN Content Participant shall cease, and shall direct others to cease, all use of EPN Encoding in connection with EPN Eligible Non-Conditional Access Delivery. In no

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event shall EPN Content Participant have any liability, after the termination of this Addendum, for any effects, after such termination, of EPN Content Participant having encoded, or directed to be encoded, using EPN, in accordance with the terms of this Addendum and Section 5 of the Agreement, EPN Eligible Non-Conditional Access Delivery prior to such termination.

8.6 No Refunds. No portion of any supplemental administration fees paid pursuant to this Addendum shall be refunded upon termination.

8.7 Survival. The terms of Sections 4 (with respect to the Founders and then-current

Fellow AV Content Participants and Adopters), 5.1(c) (with respect to any EPN Claims asserted prior to termination), 6.2 (with respect to any consumer complaints lodged prior to termination) and this Section 8 shall survive any termination of this Addendum.

IN WITNESS WHEREOF, the Parties have executed this Addendum as of the date first above written.

**Digital Transmission Licensing EPN Content Participant:  
Administrator, LLC:**

By: \_\_\_\_\_ By: \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_