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7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF LOS ANGELES

10  
11 FRASERSIDE HOLDINGS LIMITED, a  
Cyprus limited liability company,

12 Plaintiff,

13 v.

14 COLORADO SATELLITE  
BROADCASTING, INC., a Colorado  
15 corporation,  
NEW FRONTIER MEDIA, INC., a Colorado  
16 corporation, and  
DOES 1-10.,  
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18 Defendants.  
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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

JUL 27 2012

John A. Clarke, Executive Officer/Clerk  
BY Mary Flores, Deputy

BC 489210

Case No.

COMPLAINT FOR:

- (1) BREACH OF CONTRACT;
- (2) BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING;
- (3) OPEN BOOK ACCOUNT; AND
- (4) ACCOUNTING

1 Plaintiff Fraserside Holdings Limited (“Plaintiff” or “Fraserside”), alleges the following  
2 with personal knowledge as to its own actions, and on information and belief as to all other matters.

3 **PARTIES**

4 1. Fraserside is a limited liability company organized under the laws of Cyprus.

5 2. Defendant Colorado Satellite Broadcasting, Inc. (“CSB”) is a corporation organized  
6 under the laws of the State of Colorado.

7 3. Defendant New Frontier Media, Inc. (“NFM”) is a corporation organized under the  
8 laws of the State of Colorado. NFM owns one hundred percent of the stock of CSB. NFM has  
9 failed to operate CSB as a separate corporate entity and CSB is the alter ego of NFM. To treat  
10 CSB and NFM as separate and distinct legal entities would sanction a fraud and promote injustice  
11 in that it would prevent Fraserside from recovering on the claims asserted herein.

12 4. Defendants Doe 1 through Doe 10 are sued herein by these fictitious names because  
13 their true names are unknown. Plaintiff will seek leave to amend this complaint to add their true  
14 names when these names are ascertained. These fictitiously-named defendants are liable as agents,  
15 principals, co-conspirators, alter egos or otherwise for the claims alleged in this complaint.

16 **GENERAL ALLEGATIONS**

17 5. Fraserside and defendants entered into a License Agreement as of July 27, 2007 (the  
18 “License Agreement”), a true and correct copy of which is attached hereto as Exhibit A. Under the  
19 License Agreement, defendants agreed to license from Fraserside and broadcast motion pictures for  
20 viewing by adult audiences. The parties agreed “that any dispute shall be resolved in the County of  
21 Los Angeles and the parties shall submit themselves to the sole and exclusive venue and  
22 jurisdiction of the courts therein without protest or challenge.” Section 16.

23 6. The License Agreement was to last three years, until July 27, 2010. Defendants  
24 agreed to make “payments in the amount of One Hundred Fifty Thousand Dollars (\$150,000) each  
25 ninety (90) days during the Term (each a Quarterly Payment).” Section 5.1. In addition,  
26 defendants agreed to share equally in the net revenue they received for each title they licensed from  
27 Fraserside, over and above \$20,000 (the “Revenue Sharing Payments”). Section 5.2.

1           7. Pursuant to the License Agreement, each calendar quarter Fraserside provided  
2 defendants with a list of the motion pictures contained in Fraserside's library. Defendants were  
3 then to select at least forty-five motion pictures that they wished to preview, from which defendants  
4 would compile fifteen titles for broadcast. Each title would be comprised of five scenes from one  
5 or more of the motion pictures. Sections 1.24, 4.1, 4.2.

6           8. The License Agreement obligated defendants to preview the motion pictures they  
7 selected, to "determine whether fifteen (15) usable Titles can be assembled using good faith  
8 efforts." Section 4.4. "In the event that fifteen (15) usable Titles cannot be assembled in CSB's  
9 reasonable discretion," then defendants would select forty-five or more additional motion pictures  
10 from plaintiff's library to preview, and the process would repeat. Section 4.4. If Defendants still  
11 could not compile fifteen usable titles from plaintiff's library, then defendants were entitled to  
12 terminate the agreement if they determined, "after written notice request to Fraserside and a fifteen  
13 (15) days cure period in which [Fraserside's] suggestions have to be considered," that they were  
14 "unable to assemble fifteen (15) Titles from the Motion Pictures provided by [Fraserside]."  
15 Section 6.2.

16           9. Defendants made the Quarterly Payments required under the License Agreement  
17 through the third quarter of 2008. However, defendants failed to make the Quarterly Payment due  
18 in for the Fourth Quarter of 2008, which fell due on January 17, 2009, or any Quarterly Payment  
19 due thereafter.

20           10. On February 17, 2009, Fraserside inquired into the status of the fourth quarter 2008  
21 Quarterly Payment. The same day, NFM's Chief Financial Officer, Grant Williams, responded,  
22 "We are paying our vendors in order of operations priority and will provide you with notice as soon  
23 as possible." On February 18, 2009, February 23, 2009, March 10, 2009, Fraserside sent additional  
24 emails requesting immediate payment of the fourth quarter 2008 Quarterly Payment.

25           11. On March 16, 2009, NFM's Vice President of Programming, Matthew McClelan,  
26 wrote to Fraserside, alleging that "in spite of using good faith efforts," defendants were unable to  
27 derive usable content from the library of material that Fraserside had provided - even though  
28 defendants had themselves selected the titles. Although defendants had licensed Fraserside's titles

1 for nearly eighteen months, this was the first time that defendants voiced any concern about the  
2 material.

3 12. In response, on March 23, 2009, Fraserside advised defendants “we have hundreds  
4 of motion pictures never sent to you for review that we can send immediately.” Fraserside sent  
5 approximately seventy more titles, and asked “[w]e would much appreciate your help in  
6 understanding why the scenes already chosen by you, are now being rejected.” In fact, Fraserside  
7 repeatedly sought clarification regarding the nature of defendant’s concerns about the materials and  
8 suggested that the parties meet to discuss the matter.

9 13. In truth, defendants’ claim that the content was unusable was a false pretext that  
10 defendants invented to terminate the License Agreement. Plaintiff has been in business since 1964  
11 and provides hundreds of titles annually to broadcasters on three continents, generating well in  
12 excess of \$100 million in sales, including all of the content contracted for by defendants. Plaintiff  
13 has never had a technical or legal issue which has not been cured within fifteen days. Defendants  
14 provided no substantive information about the basis of their supposed newfound concerns or  
15 offered any suggestions as to how Fraserside could meet defendants’ needs. Defendants even  
16 refused to meet with Fraserside to discuss the matter.

17 14. On April 15, 2009, Fraserside sent another follow-up email requesting payment of  
18 the Quarterly Payments then due, which by then had increased to \$300,000 (excluding interest).

19 15. On May 15, 2009, NFM’s general counsel, Marc Callipari sent Fraserside a letter  
20 falsely claiming that “CSB, in spite of using good faith efforts and taking into account  
21 [Fraserside’s] suggestions, remains unable to assemble fifteen (15) Titles from the Motions  
22 Pictures it recently received from [Fraserside].” In the same letter, Defendants announced their  
23 intention to terminate the License Agreement “if this matter is not cured by Licensor within fifteen  
24 days from receipt of this notice.”

25 16. On June 2, 2009, NFM purported to terminate the License Agreement. At the time,  
26 defendants owed \$375,000 in Quarterly Payments under the License Agreement, excluding interest.

27 17. CSB has failed to make quarterly payments due and owing to Fraserside in the  
28 amount of \$1,050,000, exclusive of interest. In addition, CSB has failed to pay Fraserside fifty

1 percent of the net revenues they received for each title they licensed from Fraserside, over and  
2 above \$20,000.

### 3 **FIRST CAUSE OF ACTION**

#### 4 **(For Breach of Written Contract Against All Defendants)**

5 18. Fraserside incorporates herein by reference paragraphs 1 through 17 of this  
6 complaint, as if set forth fully herein.

7 19. Fraserside has performed all conditions and covenants to be performed on its part  
8 pursuant to the License Agreement, except for those obligations for which performance has been  
9 excused.

10 20. On January 18, 2009 and thereafter, defendants breached the License Agreement by,  
11 among other things: (1) failing to make Quarterly Payments to Fraserside; (2) failing to make  
12 adequate Revenue Sharing Payments to Fraserside; (3) failing to use good faith efforts to assemble  
13 usable titles from Fraserside's library for broadcast; and (4) purporting to terminate the License  
14 Agreement.

15 21. As a direct result of defendants' breaches of the License Agreement, Fraserside has  
16 been damaged in an amount exceeding \$1,050,000, excluding interest.

17 22. The Licence Agreement provides, in section 16, that "[i]n the event of any dispute  
18 between the parties, the prevailing party shall be entitled to recover all costs (including reasonable  
19 attorneys' fees) from the other party."

20 23. In bringing this action to enforce its rights under the License Agreement, Fraserside  
21 has incurred and will incur reasonable attorneys' fees and court costs, according to proof.

### 22 **SECOND CAUSE OF ACTION**

#### 23 **(For Breach of the Implied Covenant of Good Faith And Fair Dealing Against All** 24 **Defendants)**

25 24. Fraserside incorporates herein by reference paragraphs 1 through 23 of this  
26 complaint, as if set forth fully herein.

25. The License Agreement contains an implied covenant of good faith and fair dealing requiring defendants to use good faith and their best efforts to try to compile usable titles from the motion pictures in Fraserside's library.

26. Fraserside has performed all conditions, covenants, and promises required on its part to be performed in accordance with the terms and conditions of the License Agreement, except for those for which performance has been excused.

27. On January 18, 2009 and thereafter, defendants breached the implied covenant of good faith and fair dealing contained in the License Agreement by failing to exercise good faith and their best efforts to assemble usable titles from Fraserside's library for broadcast and by purporting to terminate the License Agreement.

28. As a result of defendants' breach of the implied covenant of good faith and fair dealing in the License Agreement, Fraserside has suffered damages exceeding \$1,050,000, excluding interest.

29. The Licence Agreement provides, in section 16, that “[i]n the event of any dispute between the parties, the prevailing party shall be entitled to recover all costs (including reasonable attorneys’ fees) from the other party.”

30. In bringing this action to enforce its rights under the License Agreement, Fraserside has incurred and will incur reasonable attorneys' fees and court costs, according to proof.

### THIRD CAUSE OF ACTION

**(Open Book Account Against All Defendants)**

31. Fraserside incorporates paragraphs 1 through 30 of this complaint, as if set forth fully herein.

32. Within the last four years, defendants became indebted to Fraserside on an open book account for money due in the sum of \$1,050,00.00, excluding interest.

33. Neither the whole nor any part of the debt has been paid, although demand therefore has been made. Accordingly, there is now due, owing, and unpaid from defendants to Fraserside the sum of \$1,050,000.00, plus interest thereon.

1 **FOURTH CAUSE OF ACTION**

2 **(For Accounting Against All Defendants)**

3 34. Fraserside incorporates paragraphs 1 through 33 , as if set forth fully herein.

4 35. Defendants have made only sporadic Revenue Sharing Payments to Fraserside and  
5 have falsely claimed that they are entitled to deduct all of their expenses from Fraserside's share of  
6 the Net Revenues generated under the License Agreement.

7 36. Fraserside is entitled to an accounting of the revenues defendants received and the  
8 expenses defendants incurred in connection with the materials defendants licensed from Fraserside.  
9 Such an accounting is necessary to determine the amount of the Revenue Sharing Payments that  
10 defendants should have provided to Fraserside.

11  
12 WHEREFORE, Fraserside prays for judgment against defendants as follows:

13 **On the First, Second and Third Causes of Action:**

14 1. For compensatory damages in an amount exceeding \$1,050,000, plus interest at the  
15 legal rate according to proof;

16 **On the Fourth Cause of Action:**

17 2. For an accounting;

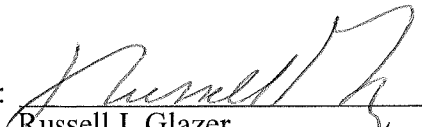
18 **On each cause of action:**

19 3. For Fraserside's attorneys' fees and costs of suit incurred herein; and

20 4. For such other and further relief as the court deems just and proper.

21  
22 Dated: July 27, 2012

TROYGOULD PC

23  
24 By:   
25 Russell I. Glazer  
26 Attorneys for Fraserside Holdings Limited

## LICENSE AGREEMENT

This License Agreement (the "Agreement") is made and entered into this 27th day of July, 2007 (Effective Date) by and between: **FRASERSIDE HOLDINGS LIMITED**, company affiliated to the Private Media Group, located at Thessalonika street, Nicolaou Pentadromos Center, 10<sup>th</sup> floor, Office 1002, PC 3310 Limassol, Cyprus ("Licensor") and **COLORADO SATELLITE BROADCASTING, INC.**, located at 7007 Winchester Circle, Suite 200, Boulder, CO 80301 ("CSB").

WHEREAS, Licensor owns or controls certain exclusive rights to a number of motion pictures and related content intended for viewing by adult audiences;

WHEREAS, CSB performs, displays and broadcasts motion pictures and other content intended for viewing by adult audiences; and

WHEREAS, CSB desires to obtain from Licensor, and Licensor desires to grant to CSB, the right to publicly perform, display and broadcast certain of said motion pictures, subject to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the promises and mutual covenants and agreements set forth herein, the parties agree as follows:

### 1. DEFINITIONS

As used in this Agreement, certain capitalized terms not otherwise defined in the body of the Agreement shall have the following meanings:

1.01 "Cable Systems" means systems by which Content is delivered by or through fiber optic, twisted pair and/or coaxial cable for display on television receivers or video monitors located in Private Dwellings, including without limitation Content delivered by Satellite Master Antenna Television system, Multipoint Distribution system, Multi-channel Multipoint Distribution system, Local to Multipoint Distribution system, and Open Video System (as all such terms are commonly utilized in the industry); whether such Content is provided at some times, at all times, or upon demand, for free or for consideration, and regardless of the billing or payment method (if any) used.

1.02 "Compilation" means any scenes that have appeared in other previously distributed Motion Pictures.

1.03 "Content" means text, graphics, still images, promotional materials, video, including without limitation, behind the scenes segments, or DVD extras, audio, music and/or other data or information contained in or related to a Motion Picture or Title.

1.04 "CSB Internet Site" means www.ten.com website, or one replacement website should CSB elect, in its sole discretion, to no longer

1.05 "Documentation" means: (i) any and all documentation required by U.S. law or regulation, including without limitation copies of photo identification reflecting the age of each individual appearing in each Motion Picture or any related Content at the time of production, and all related documentation required by 18 U.S.C. §2257 and 28 C.F.R., Part 75, as amended from time to time; and (ii) talent releases containing all customary consents, representations, and waivers (including without limitation waivers of claims based on rights of privacy, publicity, and false light) signed by each individual appearing in each Motion Picture or any related Content. *Exhibit Title on www.ten.com during the term.*

1.06 "Download" means to copy data from a source to a peripheral device.

1.07 "Dub" means a broadcast quality first generation copy of an Edit Master in the English language that is electronically stored, and that is furnished by Licensor in compliance with the specifications set forth in Schedule B, which is attached hereto and incorporated herein by this reference.



1.08. "Edit Master" means the original version of a Motion Picture, created exclusively from original camera footage shot in connection with the Motion Picture.

1.09. "Exhibit" or "Exhibition" means to publicly display, publicly perform, transmit, sell, sublicense, distribute, Download, stream or otherwise make available a Title and the Content.

1.10. "Internet" means the global network of interconnected computer networks utilizing the Transmission Control Protocol/Internet Protocol (TCP/IP), and/or such other standard network interconnection protocol(s) as may be adopted from time to time, to transmit Title and Content to a computer or other digital electronic device for display to an end user, whether such Title or related Content is delivered through online browsers, offline browsers, "push" technology, "on demand" technology, electronic mail, streaming media, satellite, wireless or cellular device, cable, or otherwise, and including without limitation Titles and Content provided to end users for free or for consideration, at some times, all times or upon demand, and regardless of the billing or payment method (if any) used. Delivery of Titles and Content via the "Internet" shall also mean and refer to Titles and Content delivered to and displayed on devices or computers, whether hand-held or portable or not, utilizing extensible markup language (XML).

1.11. "Late Rate" means simple interest calculated at the rate of one and a half percent (1.5%) per month or the highest rate permitted by law, whichever is less.

1.12. "Licensor Internet Site" means the subscription website owned and/or controlled by Licensor or one of its then existing affiliates using the domain [www.private.com](http://www.private.com).

1.13. "Mark" means all registered and common law names, trademarks, service marks, trade names, trade dress, or logos owned or licensed by either Licensor or CSB.

1.14. "Motion Picture" means each motion picture video asset that is owned, controlled, produced, caused to be produced, licensed or possessed by Licensor or any of its current or future affiliates.

1.15. "Net Revenue" means gross revenues actually received by CSB from the Exhibition of a Title on Satellite Systems, Cable Systems and/or Stand Alone Systems via Video on Demand only, less CSB's sales, processing and transportation costs which the parties stipulate is \$2,500 per Title.

1.16. "Pay Per View" means the Exhibition of a Title and any Content delivered to Private Dwellings by all means now known or hereafter discovered including but not limited to the Internet, Satellite Systems, Cable Systems and/or Stand Alone Systems where a charge is made to the viewer for the right to use a decoding device to view the Exhibition of the Title and any Content at a time designated by the broadcaster for each viewing.

1.17. "Person" means any natural person, legal entity, or other organized group of persons or entities. (All pronouns, whether personal or impersonal which refer to Persons include natural persons and other Persons.)

1.18. "Private Dwellings" means: (i) residential dwellings (including but not limited to houses, private residential apartments, cooperatives, condominiums, and mobile homes); (ii) individual private rooms and bars and lounges in hotels and motels, inns and lodges and other venues; and (iii) other locations and institutions not accessible to the general public such as corporations, firms, panel institutions, oil rigs, military bases, ships, dormitories, fraternity and sorority houses, hospitals, nursing and convalescent homes, schools and libraries.

1.19. "Satellite Systems" means systems by which Titles and Content are delivered via satellite transmission for display on television receivers or video monitors located in Private Dwellings, including without limitation Titles and Content delivered by or through digital broadcast satellite systems, C-Band

satellite direct to home systems, and scrambled low power television stations.

1.20 "Stand Alone Systems" means systems whereby Titles and Content are delivered to a system operator on tape or other technology, and the tape or other technology is inserted in a playback system at the system headend for delivery at a predetermined time over a closed network utilizing fiber optic, twisted pair and/or coaxial cable, for display on television receivers or video monitors located in Private Dwellings.

1.21 "Still Images" include, but are not limited to, images contained in the following media or medium: negatives, prints, transparencies, slides, chromes, and digital images in any and all formats, Internet-based images capable of transfer in any protocol, and all other formats (including, without limitation, VHS, DVD and/or any other technical formats) and/or transfer protocols now known or hereafter created or discovered, depicting, or promoting a Motion Picture or Title and any Persons appearing in a Motion Picture or Title whether such images are actually depicted in a Motion Picture or Title or created separately for the purposes of advertising and/or publicizing a Motion Picture or Title.

1.22 "Term" means the term specified in Section 3.1 below and any extensions agreed to by the parties hereto in accordance with the terms hereof.

1.23 "Territory" means the United States of America and Puerto Rico, except with respect to the exercise of the Rights in connection with the Internet, in which case "Territory" shall mean the entire universe.

1.24 "Title" means five (5) sexually explicit scenes that are assembled from one or more Motion Pictures and edited to a XX Programming Standard in a manner that maintains a thematic flow within each scene and from one scene to the next and which results in each edited scene being at least twelve (12) minutes in duration. Each Title shall be identified with reasonable particularity in Schedule A which is attached hereto and incorporated herein by this reference.

1.25 "United States of America" means the federal constitutional republic comprising fifty (50) states and one federal district.

1.26 "Version" means any version of a Title that is created by CSB from a Dub, including without limitation, what is traditionally referred to as a "soft cable master" that contains no explicit sex material, male erections or close-ups of male and/or female genitalia.

1.27 "Video on Demand (VOD)" means the Exhibition of Titles and Content delivered by all means now known or hereafter discovered including but not limited to the Satellite Systems, Cable Systems and/or Stand Alone Systems, and unless otherwise indicated in this Agreement, the Internet, capable of video storage which in turn enables Persons to manipulate the Exhibition of Titles and Content at the Person's discretion, including but not limited to pausing, reversing, forwarding and stopping the Exhibition.

1.28 "XX Programming Standard" means scenes that do not depict the penetration, touching, fingering or licking of the anus. Notwithstanding the foregoing, anal contact that is deemed by CSB to be "accidental" may meet the XX Programming Standard. Accidental contact occurs when the anus is not the apparent target but is unintentionally brushed or touched in the course of other sexual acts, not including penetration.

## 2. GRANT OF RIGHTS

2.1 Licensor hereby grants to CSB, in the relevant Territory during the Term (as defined below) and subject to the terms and conditions contained herein:

(a) The access to Licensor's entire library of available Motion Pictures and the license to Exhibit a total of one hundred and eighty (180) Titles and Content by all means now

known or later discovered by means of Satellite Systems, Cable Systems and Stand Alone Systems;

(b) The access to Licensor's entire library of available Motion Pictures and the non-exclusive right and license to Exhibit a total of one hundred and eighty (180) Titles and Content by all means now known or later discovered via the CSB Internet Site. Such right and license are subject to Section 2.2, below;

(c) The non-exclusive right and license to advertise, promote and publicize CSB's Exhibition of the Titles and all matters relating thereto in all media and/or medium now known or hereafter devised, to use Content and/or excerpts from the Titles in connection with such advertising, promotion, and publicity, in the sole discretion of CSB, and to market, advertise, promote, publicize and brand CSB's exhibition of Titles under any trade name selected by CSB or under any trade name of any 3<sup>rd</sup> party designated by CSB, being agreed that the Titles will be at all time Private branded titles;

(d) The non-exclusive, non-transferable, worldwide license to use the Licensor's Marks in connection with the rights granted to CSB in this Agreement;

(e) The right and license to duplicate the Titles and the Content;

(f) The right and license to use the names and likenesses of all Persons appearing in the Titles and the Content; and the names of those Persons who rendered services in connection with the Titles and Content;

(g) The right and license to edit and modify each Motion Picture for the purpose of creating Titles and the right and license to further edit and modify each Title in order to create derivative Versions to the extent necessary to meet the specifications set forth in Schedule B and to meet any time, length and programming standards, in CSB's sole discretion; and

2.2 CSB's rights under Section 2.1(b) are conditioned upon it providing a hyperlink on the CSB Internet Site that will enable a Person who views one of Licensor's Titles to click such hyperlink to open the Licensor Internet Site in a new Internet window. In the event that such Person becomes a subscriber to or member of the Licensor Internet Site regardless of duration, the payment terms set forth in Section 4.3 shall apply. In this case, CSB shall be treated at all effects as Licensor's affiliate and the terms and conditions (www.privatecash.com) applicable to Private's affiliates will apply.

2.3 All of the rights granted under this Section 2 may be referred to collectively as the "Rights" and the Rights granted in this Section 2 are in addition to any other rights available to the parties under this Agreement, at law or in equity. Notwithstanding any other provisions set forth in this Agreement, CSB may exercise or refrain from exercising any or all of the Rights granted herein in its sole discretion as long as it does not exceed the Rights granted herein.

### 3. LICENSE PERIOD; TERM

3.1 The term of this Agreement shall commence on the Effective Date and shall continue for a period of three (3) years, unless sooner terminated as provided for in Section 6 (the "Term").

3.2 Each Title and related Content shall be subject to a "License Period" defined as follows:

(a) The License Period in which CSB may exercise its Rights pursuant to Section 2.1(a) with respect to each Title and any related Content is five (5) years and shall commence upon the first day of the calendar quarter that immediately follows the quarter in which a Title is first Exhibited in the Territory by CSB. With respect to the Exhibition of Titles in the domestic United States of America pursuant to Section 2.1(a), the Rights shall be on an exclusive basis during the first three (3) years of such License Period and on a non-exclusive basis for the

remaining two (2) years of the License Period. With respect to the Exhibition of Titles in Puerto Rico pursuant to Section 2.1(a), the Rights shall be on a non-exclusive basis during the entire License Period.

(b) The License Period in which CSB may exercise its Rights pursuant to Sections 2.1(b) through 2.1(g) with respect to each Title and any related Content is five (5) years and shall commence upon the first day of the calendar quarter that immediately follows the quarter in which a Title is first Exhibited in the Territory by CSB.

#### A. SELECTION AND DELIVERY

4.1 On the date of this Agreement, Licensor shall provide CSB with a complete list of Licensor's entire library of available Motion Pictures. Such list shall contain the title of each Motion Picture, the date of production, a designation of whether such Motion Picture is a Compilation, and a sufficiently detailed description of the content of each Motion Picture. Within five (5) days from the beginning of each month of the Term thereafter, Licensor shall provide CSB with an updated list containing titles and descriptions of any new Motion Pictures (the initial list and all updated lists provided to CSB by Licensor shall be collectively referred to as the "List").

4.2 Within fifteen (15) days following CSB's receipt of the List described in Section 4.1, CSB shall select a minimum of forty-five (45) Motion Pictures to preview and shall notify Licensor of the same in writing. CSB shall select a higher number of Motion Pictures if it deems that 45 Motion Pictures will not be enough to produce fifteen (15) Titles.

4.3 Following Licensor's receipt of the notice set forth in Section 4.2, Licensor shall provide, at its sole cost and expense, to CSB and in compliance with the technical requirements and specifications set forth in Schedule "B", the forty-five (45) or more Motion Pictures selected by CSB delivered as follows:

- (a) a Dub of each Motion Picture;
  - (b) complete and accurate Documentation for each Motion Picture;
  - (c) a Story Synopsis for each Motion Picture;
  - (d) cable-action pictures of each female performer, if and when available, in digital format over optical disk, hard drive or FTP;
  - (e) glamour-shot pictures of each female performer (non-nude), if and when available, in digital format over optical disk, hard drive or FTP;
  - (f) X-action pictures of each female performer; if and when available, in digital format over optical disk, hard drive or FTP;
  - (g) (1) picture of each performer as a facial close up or medium shot, if and when available, in digital format over optical disk, hard drive or FTP;
  - (i) (2) DVDs for each Motion Picture;
  - (j) (1) trailer in cable version, if available; and
  - (k) complete and accurate documents evidencing or otherwise supporting Licensor's representations under Section 7.2, if and when available.
- (h) five (5) additional language audio tracks produced for each Motion Picture in digital form with sync marks or electronic equivalent

4.4 Within forty-five (45) days following CSB's receipt of all of the delivery items set forth in Section 4.3, CSB shall preview each Motion Picture to determine whether fifteen (15) usable Titles can be

see *[initials]*

assembled using good faith efforts. Each usable Title assembled shall be identified in Schedule A by the new name of such Title as well as the identification of each Motion Picture scene used to create such Title. In the event that fifteen (15) usable Titles cannot be assembled in CSB's reasonable discretion, the process set forth in Sections 4.2 through 4.4 shall be repeated one (1) additional time. Thereafter, if CSB is unable to assemble fifteen (15) usable Titles, it may, at its sole election, repeat the process set forth in Sections 4.2 through 4.4 or terminate this Agreement pursuant to Section 6.2.

4.5 Unless the Agreement has been sooner terminated, at the beginning of each calendar quarter during the Term hereof, the process set forth in Sections 4.2 through 4.4 shall be repeated throughout all the Term.

4.6 Upon loss, theft or destruction of any Dub, CSB shall promptly advise the Licensor of such loss, theft or destruction by affidavit setting forth the facts thereof. Replacements will be provided if requested by CSB at the sole cost of CSB.

#### 5. CONSIDERATION AND AUDIT RIGHTS

5.1 Within ninety (90) days following the full execution of this Agreement, CSB shall tender payment to Licensor in the amount of One Hundred Fifty Thousand Dollars (\$150,000). CSB shall tender to Licensor subsequent payments in the amount of One Hundred Fifty Thousand Dollars (\$150,000) each ninety (90) days during the Term (each a "Quarterly Payment").

5.2 Once CSB has received a total of \$20,000 in Net Revenue from the Exhibition of a particular Title, CSB and Licensor shall equally split all Net Revenue subsequently received by CSB for such Title until the end of such Title's License Period. Any payment owed pursuant to this Section shall be paid to Licensor within no later than one hundred eighty days (180) days following the end of each quarter along with a statement to substantiate such payment. Licensor shall have Audit Rights as set forth in Section 5.4 with respect to payments owed pursuant to this Section 5.2 only.

5.3 With respect to any new subscriptions to the Licensor Internet Site created as a result of Section 2.2, CSB shall receive payment that is consistent with Licensor's best affiliate cash program ([www.privatecash.com](http://www.privatecash.com)) for such period of time in which a subscriber remains a member of the Licensor Internet Site. For reference purposes only, as of the Effective Date, Licensor's affiliate cash program pays affiliates up to seventy percent (70%) of all net revenues generated from referred subscribers during the entire duration of subscribers' membership to the Licensor Internet Site. The parties agree to enter into any additional agreements relating to Licensor's affiliate cash program provided that such agreement does not alter the terms and conditions set forth in this Agreement. Payment shall be made to CSB within thirty (30) days following the end of each month along with a statement to substantiate such payment. Licensor shall have Audit Rights as set forth in Section 5.4 with respect to payments owed pursuant to this Section 5.3 only.

5.4 Each party shall keep or cause to be kept at its address full, true and accurate business records from which the payments owed pursuant to Section 5.2 and 5.3, as applicable, may be determined by an audit conducted in accordance with generally accepted accounting principles without any unusual cost or expense and any records necessary to verify compliance with applicable laws ("Audit Records"). Each party and their respective employees, agents and any auditor or auditors appointed by such party shall have access to the Audit Records for the purpose of examination or audit. Any such examination or audit: (i) shall only take place upon thirty (30) days prior written notice to the other party during normal business hours and in such manner as not to interfere with such party's normal business activities; (ii) shall not occur more than once per year; (iii) shall not continue for more than five (5) consecutive business days so long as the auditing party is given timely and reasonable access to the Audit Records; and (iv) shall only pertain to Audit Records for the immediately preceding twelve (12) month period. All applicable Audit Records shall be kept by each party for twelve (12) months from the delivery to the party of the pertinent payment statement.

5.5 If, as a result of an examination or audit performed pursuant to the previous Section, it is

determined that an underpayment of five percent (5%) or greater occurred during the relevant period, then the reasonable direct expenses of such examination or audit shall be payable by the audited party within thirty (30) days after receipt of a written demand by the auditing party together with evidence supporting the expenses, but otherwise such expenses shall be borne by the auditing party.

5.6 Forthwith after the parties' receipt and review of an examination or audit report and in accordance therewith, such underpayment shall be paid by the audited party within thirty (30) days, together with interest thereon from the date payment should have been made until the date payment is made at the Late Rate.

## 6. TERMINATION

6.1 Either party may terminate this Agreement if the other party is in breach of any material obligation contained herein and such breach has not been cured within fourteen (14) days after receipt of written notice to cure the same.

6.2 CSB may terminate this Agreement if it determines, after written notice request to Licensor and a fifteen (15) days cure period in which Licensor's suggestions have to be considered, that it is unable to assemble fifteen (15) Titles from the Motion Pictures provided by Licensor to CSB provided that CSB has complied with Section 4.4.

6.3 Any termination under this Section 6 shall be without prejudice to any other rights or remedies that the party terminating this Agreement might have under this Agreement, at law, in equity or otherwise.

6.4 Upon termination, CSB shall either return or destroy, at its sole expense and election, all Motion Pictures, Titles and Content it has in its possession within thirty (30) days. Notwithstanding the aforementioned, during the first ten (10) days after termination, Licensor shall have the right to get from CSB the Motion Pictures, Titles and Content CSB has in its possession, at Licensor's sole expense.

## 7. REPRESENTATIONS AND WARRANTIES OF LICENSOR

7.1 Licensor hereby represents and warrants that it owns or holds a valid license to all relevant and necessary broadcast and exploitation rights in and for the Rights in the Titles and Content licensed hereunder. Licensor hereby represents and warrants to CSB that all persons depicted in each Title and Content were 18 years of age or older at the time each was produced, and that all Documentation is maintained by Licensor and may be inspected by CSB or its designated agent upon request upon 24-hour notice.

7.2 Licensor represents and warrants that it has obtained and will maintain all necessary licenses for the production, synchronization, Exhibition, performance, distribution, marketing and exploitation of the Titles and all Content, specifically including but not limited to direct licenses to publicly perform all of the music therein throughout the Territory and during the applicable License Period(s) for any and all purposes licensed to CSB hereunder and required for the full, complete and unlimited exercise and enjoyment by CSB of each and all of the rights herein granted to CSB in this Agreement, and Licensor further represents and warrants that all costs of production of the Titles and Content, and all artists, actors, musicians and persons rendering services in connection with the production of the same have been or will be paid any sums due to them by Licensor. Licensor further represent and warrants that it has acquired all music rights and music clearances which are required with respect to the music contained in the Titles and Content and that no supplemental or additional use payments shall be required with respect to the exploitation and Exhibition of the same and/or any advertising or promotion thereof which contains the music embodied in the Titles and Content.

7.3 Licensor represents and warrants that it has the right to grant all Rights granted to CSB hereunder. Licensor has not previously and will not during the Term assign, license, pledge, or otherwise encumber, restrict or diminish the Rights granted to CSB hereunder, the Titles do not violate any right of

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privacy; the Titles are not defamatory; neither the Titles, the Documentation, nor any parts thereof, nor any materials contained therein or synchronized therewith, nor the exercise of any right granted hereunder, violates or will violate or will infringe any trademark, trade name, contract, agreement, copy-right (whether common-law or statutory), patent, literary, artistic, dramatic, personal, private, civil or other property right or right of privacy or any law or regulation or other right whatsoever of, or slander or libels, any person, firm, corporation, or association whatsoever; all Motion Pictures shall be of quality suitable for CSB's exploitation of and all Rights granted to CSB by Licensor pursuant to this Agreement.

7.4 Licensor represents and warrants that it shall not during the Term of this Agreement Exhibit or authorize or license any third party to Exhibit any Motion Picture(s) or Motion Picture Segments, whether or not assembled into a Title, by (a) any Satellite Systems, Cable Systems and Stand Alone Systems means in the United States of America; or (b) Video On Demand via the Internet unless (i) such Motion Picture(s) or Versions thereof are exhibited only in their original XXX or X versions and (ii) such XXX or X versions are transmitted directly by Licensor on its own Internet website, for viewing via computer internet browser applications to its end users and/or is transmitted from a third party Internet website licensed or authorized by Licensor (e.g. DVD Empire.com) which transmits directly to its end users.

## 8. INDEMNIFICATION AND LIMITATION OF LIABILITY

8.1 Licensor agrees to fully indemnify and hold CSB harmless from and against any proceeding, action or claim brought by a Person that may arise out of or relate to CSB exploiting the Rights granted to CSB pursuant to this Agreement or due to Licensor's breach of any material obligations set forth in this Agreement, including, but not limited to, any and all damages, claims, losses and/or expenses (including reasonable attorneys' fees and costs) incurred by CSB arising out of any such proceeding, action or claim.

8.2 CSB agrees to fully indemnify and hold Licensor harmless from and against any proceeding, action or claim brought by any Person that may arise out of or relate to CSB's breach of any material obligations set forth in this Agreement including, but not limited to, any and all damages, claims, losses and/or expenses (including reasonable attorneys' fees and costs) incurred by Licensor arising out of any such proceeding, action or claim.

8.3 EXCEPT FOR EACH PARTY'S INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS, NEITHER PARTY OR ANY AFFILIATE OR REPRESENTATIVE OF EITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES TO THE OTHER PARTY OR ANY THIRD PARTY (INCLUDING WITHOUT LIMITATION, ANY PAYMENT FOR LOST REVENUES, LOST DATA, LOST PROFITS OR LOSS OF GOODWILL), WHETHER FORESEEABLE OR NOT, FOR ANY CAUSE WHATSOEVER WHETHER OR NOT CAUSED BY A PARTY'S NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. UNDER NO CIRCUMSTANCES SHALL ANY PROJECTIONS OR FORECASTS BY EITHER PARTY BE BINDING AS COMMITMENTS OR PROMISES BY EITHER PARTY OR OTHERWISE GIVE RISE TO ANY LIABILITY.

## 9. FORCE MAJEURE

Neither party shall be liable or responsible for any failure or inability to perform or delay caused by reason of one or more so-called "force majeure" contingencies (e.g. any act of God, fire, earthquake, strike, labor disturbance, civil commotion, acts of government, its agencies, or governmental officers, any order, regulation, ruling or action of any labor union or association affecting such party or the industry in which the parties are engaged, delays in the delivery of materials or supplies, satellite transponder failure, terrorist attack, any act of sabotage, etc.). The Term of this Agreement and any applicable License Period or Option Period for a particular Title shall be extended hereunder for a period equal to the duration of any such contingencies to the extent that such contingencies interfere with or disrupt CSB's exercise of its Rights hereunder.

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**10. SEVERABILITY**

Subject to this Section, if any provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be invalid and/or unenforceable, the remainder of this Agreement and the application of such provision to any other parties or circumstances other than those as to which it is held invalid and/or unenforceable, shall not be affected thereby, and each such other term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

**11. FURTHER DOCUMENTS**

The Licensor and CSB shall promptly execute, acknowledge, and deliver or promptly procure the execution, acknowledgment and delivery of any and all further assignments, agreements and instruments which may be deemed necessary or expedient to effectuate the purposes of this Agreement.

**12. WAIVERS**

No waiver by either party of any breach or default under this Agreement shall be deemed to be a waiver of any proceeding or subsequent breach or default.

**13. NOTICES**

All notices or remittances which either Party may wish to serve or may be required to serve on the other under this Agreement shall be in writing, and shall be served by personal delivery thereof, or by prepaid certified mail, return receipt requested, or by prepaid overnight courier, addressed to the other Party at its respective address herein above set forth. Either Party may change its notice address upon written notice to the other Party. All notices shall be deemed to have been given on (i) the date delivered if delivered personally, (ii) the business day after dispatch if sent by overnight courier, or (iii) the third business day after posting if sent by U.S. Postal Service (or other applicable postal delivery service). All notices to Licensor shall be faxed, for information purposes, to Milcap Media Group, S.L. Legal Department (+34 93 675 17 01).

**14. RELATIONSHIP OF THE PARTIES**

Nothing contained in this Agreement shall be deemed to constitute either of the parties a joint venturer, partner, or agent of the other. Neither party shall hold itself out contrary to the terms of this Agreement and neither party shall become liable by reason of any representation, act or omission of the other contrary to the provisions hereof.

**15. ENTIRE AGREEMENT**

This Agreement contains the full and complete understanding between the parties hereto and supersedes all prior understandings, whether written or oral, pertaining to the subject matter hereof and cannot be modified except by a written instrument signed by the parties hereto.

**16. APPLICABLE LAWS**

This Agreement shall be governed by the laws of the State of California and the federal law of the United States of America applicable therein. In the event of any dispute between the parties, the prevailing party shall be entitled to recover all costs (including reasonable attorneys' fees) from the other party. The parties agree that any dispute shall be resolved in the County of Los Angeles and the parties shall submit themselves to the sole and exclusive venue and jurisdiction of the courts therein without protest or challenge. Neither party shall commence any action or proceeding in any other court or forum; provided, however, nothing contained in this Section 16 shall limit the right of any party regardless of the location of the court or other forum, to: (i) assert any defense or mandatory counterclaim in any court or other forum; or (ii) to make any motion, objection or otherwise participate in any bankruptcy, insolvency or similar proceeding.

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**17. ASSIGNMENT**

Neither party may assign this Agreement to any person, firm, or entity without the express written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed.

**18. 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. This Agreement, and any amendments hereto, to the extent signed and delivered by means of a facsimile machine, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of a Party, the other Party hereto shall re-execute original forms thereof and deliver them to the other Party. No Party hereto shall raise the use of a facsimile machine to deliver a signature or the fact that any signature or agreement was transmitted or communicated through the use of a facsimile machine as a defense to the formation or enforceability of a contract and each such party forever waives any such defense.

**19. CONFIDENTIALITY**

Neither Licensor nor CSB shall disclose to any third party (other than their respective employees, agents or representatives in their capacity as such), any information with respect to the financial terms and provisions of this Agreement except: (i) to the extent necessary to comply with law or SEC regulations or the valid order of a court of competent jurisdiction, in which event, the party making such disclosure shall so notify the other, in writing, within five (5) business days, and shall seek confidential treatment of such information; (ii) as part of its normal reporting or review procedure to its parent company, its auditors and its attorneys, provided, however, that such parent company, auditors, and attorneys agree to be bound by the provisions of this Section 19; (iii) in order to enforce its rights pursuant to this Agreement; and (iv) to any bona fide prospective purchaser of the stock or assets of such party. Notwithstanding the foregoing, either party may issue a press release concerning the subject matter of this Agreement upon obtaining the written approval of the other party, such approval not to be unreasonably withheld or delayed.

**20. PARTIES BOUND BY AGREEMENT**

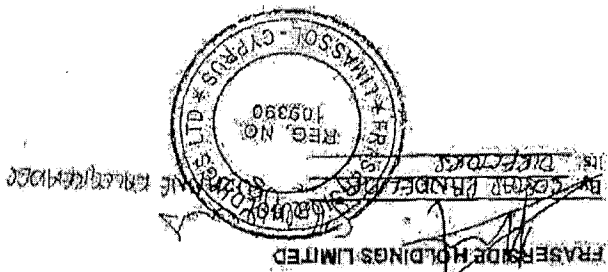
This Agreement is binding upon the parties hereto and upon their respective successors and permitted assigns.

**21. GENDER AND NUMBER CAPTIONS**

Wherever the context requires, the gender of all words used in this Agreement shall include the masculine, and feminine, and the number of all words shall include the singular and the plural. The captions and section headings contained in this Agreement were inserted for the convenience of reference only; they do not in any manner define, limit or describe the provisions of this Agreement or the intentions of the parties.

**22. INTERPRETATION**

This Agreement has been negotiated and written extensively as a result of good faith discussions between the parties and their counsel. Neither party shall be prejudiced in the construction or



BY: [Signature]  
IN: Chief Executive Officer  
COLORADO WATER BROADCASTING, INC.

Interpretation of this Agreement as a result of being the drafter of this Agreement.  
IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of the Effective Date set forth above.

**SCHEDULE "B"**  
**BROADCAST SPECIFICATIONS APPLICABLE TO ALL TITLES**

1. All Motion Pictures must be mastered onto new DVCam or Beta tape stock, or provided electronically via hard drive or File Transfer Protocol in DV25 with QuickTime .mov codec, recorded in NTSC format and carry a continuous time code of 30 frames per second (Drop Frame).

2. All masters must carry a standard split field EIA color bar test with an accompanying 1,000 or 400Hz tone on both audio channels.

3. Video levels (Luminance/White) must not exceed 100 IRE units at any time during the Program. Black levels will measure 7.5 IRE, Sync tip will measure -40 IRE, Color burst will measure between +20 IRE to -20 IRE and 3.58Mhz.

4. Chrominance Levels (saturation) must not register outside of legal areas located on the vectorscope and meet F.C.C. standards.

5. Hue marks must be in the appropriate 2.5 boxes and burst level noted as either 75% or 100%. Additionally, hue must provide an accurate and continuous skin tone throughout the program.

6. Audio must be recorded in stereo mix on Channel #1 and Channel #2. *as well as a split dialogue track when available*  
 Audio levels should average 0 dbm and not exceed 3 dbm, and all audio portions of the program must be clear in tone and easy to understand.

7. All masters shall be configured as follows:

			<u>Stop</u>
A.	Bar Test and Tone	00:58:30:00	00:59:30:00
B.	Black @ 7.5 units	00:59:30:00	01:00:00:00
C.	Statement of Compliance	01:00:00:00	01:00:08:00
D.	Program Start	01:00:08:00	<u>xx:xx:xx:xx</u>

8. No program may be less than 84 minutes in duration.

9. Line-drips, drop-outs, glitches and scratches must not appear in the video portion of the Program, and will be accepted only at the sole discretion of CSB.

**10. CHILD PROTECTION RESTORATION ACT COMPLIANCE (18 USC 2257)**

All Adult Titles Produced after July 5, 1995, must contain a notice of compliance for the Child Protection Restoration Act ("Act"). The production must contain disclosure notification or it must certify that the product is not subject to the Act because it was made prior to July 5, 1995. For any Adult Title and Still Image licensed to CSB, (after July 5, 1995), the following records must be provided to CSB FOR EACH PERFORMER engaged in a sexual performance:

- A. Copy of a government-issued I.D.;
- B. Listing of all professional and personal names used by the performer and;
- C. The name of the program in which the performer appeared.

The following information must appear on all Adult Titles:

- A. Title of program, unless set forth elsewhere;
- B. Date of program, manufacture, distribution, publication or duplication;
- C. Street address where the records are located;
- D. If the producer is an organization, then the name, title and business address responsible for maintaining the records. This notice should appear before the main title and/or after the end of the final credits, and;
- E. The duration for this head and tail notice MUST be 10 seconds for each.