

CHANNEL SHARING AGREEMENT

THIS CHANNEL SHARING AGREEMENT (this "Agreement") is made as of November 23, 2015 among KOCE-TV Foundation (the "Foundation") and NRJ TV LA License Co, LLC and NRJ TV LA OpCo, LLC (collectively, "NRJ").

Recitals

WHEREAS, the Foundation owns and operates the following noncommercial television broadcast station, including its primary and all multicast streams ("KOCE") pursuant to licenses issued by the Federal Communications Commission (the "FCC"):

KOCE-TV, Channel 48, Huntington Beach, California (FCC Facility ID #4328)

WHEREAS, NRJ owns and operates the following television broadcast station, including its primary and all multicast streams ("KSCI") pursuant to licenses issued by the FCC:

KSCI(TV), Channel 18, Long Beach, California (FCC Facility ID #35608)

WHEREAS, the Foundation desires to participate in the broadcast incentive auction conducted by the FCC under Section 6403 of the Middle Class Tax Relief and Job Creation Act (Pub. L. No. 112-96, § 6403, 126 Stat. 156, 225-230 (2012)) ("Incentive Auction") under the channel sharing rules;

WHEREAS, if the Foundation's participation in the Incentive Auction is Successful (as defined in Section 2(a) below), KOCE will relinquish the television channel currently licensed to it by the FCC, and the Foundation and NRJ will share the bandwidth currently licensed to KSCI (the "Shared Channel"), which is currently exclusively licensed to NRJ;

WHEREAS, the Foundation and NRJ desire to set forth their agreement as to the matters set forth herein, including the minimum reserve price and how revenue received from the Incentive Auction will be applied; and

WHEREAS, the Foundation and NRJ desire to enter into an agreement that is in accordance with the FCC Report and Order adopted in GN Docket No. 12-268, released June 2, 2014, together with the First Order on Reconsideration and Notice of Proposed Rulemaking adopted in GN Docket No. 12-268, released June 12, 2015 (collectively, the "Incentive Auction Order") and the Report and Order adopted in ET Docket No. 10-235, released April 27, 2012 ("Channel Sharing Order"); including without limitation the FCC regulations adopted at 47 C.F.R. §§ 1.2200-1.2209 and 73.3700, as amended, and the Procedures Public Notice adopted in AU Docket No. 14-252, GN Docket No. 12-268, WT Docket No. 12-269, and MB Docket No. 15-146, released August 11, 2015 (with the Incentive Auction Order and the Channel Sharing Order and all other current or subsequently adopted FCC rules, orders and public notices pertaining to channel sharing agreements, the "Channel Sharing Rules"), on the terms set forth in this Agreement.

Agreement

NOW, THEREFORE, taking the foregoing recitals into account, and in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. Term. The term of this Agreement (the "Term") will begin on the date of this Agreement and, unless extended or earlier terminated in accordance with this Agreement, will continue until:

(a) December 31, 2038, which Term shall thereafter automatically renew concurrent with Term set forth in the Facilities Agreement attached hereto as *Schedule 1* (the "Facilities Agreement"); or

(b) if the Foundation is not Successful in the Incentive Auction, the first to occur of: (i) the date the FCC notifies the Foundation it is not a qualified bidder in the Incentive Auction or (ii) the date the FCC's price for KOCE in the Incentive Auction drops below the Reserve Price set forth in *Schedule 2(a)*.

Notwithstanding the foregoing, this Agreement shall automatically terminate upon any termination of the Facilities Agreement in accordance with its terms.

2. Auction Participation.

(a) Definition of Successful Auction Participation. For purposes of this Agreement, "Successful" participation in the Incentive Auction is defined as a binding commitment whereby the FCC will purchase KOCE's channel at a price equal to or greater than the Reserve Price set forth in *Schedule 2(a)*. If the Foundation's bid is not Successful, then this Agreement shall automatically terminate in accordance with Section 1(b) and each party shall be free to pursue any other Incentive Auction participation options that remain available to it.

(b) Division of Auction Revenue. The parties shall apply the revenue received from Successful participation in the Incentive Auction as set forth in *Schedule 2(b)*. If permitted under the FCC's rules and procedures, the Foundation shall request the FCC to pay Incentive Auction proceeds directly to an escrow agent or a "qualified intermediary" (as defined in Section 19(b)) to be mutually determined by the parties (the "Escrow Agent").

(i) If the Foundation receives any payment from the FCC as a result of its Successful participation in the Incentive Auction, then within two (2) business days after receipt of such payment, the Foundation shall disburse to the Facilities LLC (as defined in the Facilities Agreement) and to NRJ, the amounts allocated to NRJ and the Facilities LLC in *Schedule 2(b)* (without offset or deduction) by wire transfer of immediately available funds in accordance with *Schedule 2(b)*.

(ii) If the Escrow Agent receives any payment from the FCC as a result of the Foundation's Successful participation in the Incentive Auction, then the parties shall jointly direct the Escrow Agent to, within two (2) business days after receipt of such payment, disburse to the Facilities LLC, NRJ and the Foundation, the amounts allocated to the Facilities LLC, NRJ and the Foundation in *Schedule 2(b)* (without offset or deduction) by wire transfer of immediately available funds in accordance with *Schedule 2(b)*.

(iii) Funds to be disbursed to NRJ shall be disbursed to account number 488031421306 maintained at Bank of America (the "NRJ Account").

(c) FCC Application. The Foundation shall timely file and thereafter diligently prosecute an application (the "FCC Application") to relinquish KOCE's channel and participate in the Incentive Auction as a channel sharee with KSCI and specifying to "go off-air" as a bid option. The Foundation shall thereafter make an initial commitment to such option by the date and in the manner prescribed by the FCC. If there is an FCC filing fee for such FCC Application, the Foundation shall pay such fee and NRJ shall promptly reimburse the Foundation for 50% of such FCC Application filing fee. The Foundation shall provide NRJ a reasonable opportunity to review the FCC Application prior to filing. NRJ shall provide the Foundation with all certifications required of a sharer in the Incentive Auction in a timely fashion as necessary for the filing of the FCC Application consistent with the certifications that are required to be given. The parties shall cooperate in good faith with respect to the FCC Application and the Incentive Auction, and each party shall promptly provide the other with a copy of any pleading, order or other document served on it relating to the FCC Application, and shall furnish all information required by the FCC. Each party shall notify each other of all documents filed with or received from the FCC with respect to this Agreement or the transactions contemplated hereby. NRJ shall furnish the Foundation with such information and assistance as the Foundation may reasonably request in connection with its preparation of the FCC Application. Neither party shall take any action that would reasonably be expected to result in the dismissal of the FCC Application. For purposes of clarification, nothing in this Agreement shall preclude the Foundation from registering for an additional option with respect to the Incentive Auction, such as moving to a High VHF or Low VHF channel (each an "Alternative Participation Option"), provided that the Foundation may only pursue an Alternative Participation Option if this Agreement is terminated in accordance with its terms. Sharer shall not file an application to participate in the Incentive Auction with respect to KSCI.

(d) Facilities Agreement. Within two (2) business days after the FCC determines that the Foundation is Successful in the Incentive Auction, the Foundation and NRJ shall implement the Facilities Agreement, including establishing the limited liability company contemplated therein.

(e) Related Agreements. NRJ shall make the payments set forth on *Schedule 2(e)* attached hereto.

(f) Engineering Study. NRJ shall pay the third party charges for the engineering study being commissioned by the parties to analyze the best way for the parties to combine their facilities as part of a channel sharing arrangement. The parties shall agree on the

scope of such study, and no party shall commission any such study without the prior written consent of the other.

3. Allocation of Bandwidth. Pursuant to the Channel Sharing Rules, if the parties are Successful in the Incentive Auction, the Foundation and NRJ shall share the 6 MHz Shared Channel (or 19.39 Megabits per second ("Mb/s")) as allocated under the current ATSC system), as set forth in the Engineering Plan set forth as *Schedule 3*, which may be modified from time to time by mutual written agreement of the parties but which, at a minimum, shall provide that each channel sharing licensee shall retain spectrum usage rights adequate to ensure a sufficient amount of the shared channel capacity to allow it to provide at least one Standard Definition (SD) program stream at all times (the "SD Allocation"). Each party shall have the right to use its allocated capacity on the Shared Channel in such party's sole determination in accordance with the terms of this Agreement and all FCC rules and regulations, including without limitation broadcasting one stream or multiple streams and broadcasting content provided by third parties; provided that (i) a third party programmer shall not have the right to access the Transmission Facilities (as defined in the Facilities Agreement) without the Foundation's prior written approval (as manager of the Facilities LLC), such approval not to be unreasonably withheld, conditioned, or delayed, and (ii) a party shall be solely responsible for all costs associated with adding multiple program streams requested by it to the encoding pool.

4. FCC Licenses.

(a) Authorizations. Each of the Foundation and NRJ represents and warrants to the other that it has obtained all FCC and any other material governmental licenses, approvals and authorizations necessary for its operations on its respective station. Each of the Foundation and NRJ shall maintain all such main station FCC licenses, approvals and authorizations in full force and effect during the Term. Until any execution of the Facilities Agreement, neither the Foundation nor NRJ may seek FCC consent to modify the main station FCC license of its station subject to this Agreement without the prior written consent of the other party, which shall not be unreasonably delayed, withheld or conditioned.

(b) Compliance with Law. The Foundation shall comply with this Agreement, the Channel Sharing Rules and with all FCC and other applicable laws with respect to its ownership and operation of KOCE and its use of the Shared Channel, and NRJ shall comply with this Agreement, the Channel Sharing Rules and with all FCC and other applicable laws with respect to its ownership and operation of KSCI and its use of the Shared Channel. The Foundation shall be solely responsible for all content it transmits on the Shared Channel, and NRJ shall be solely responsible for all content it transmits on the Shared Channel. The obligations of the parties under this Agreement are subject to the rules, regulations and policies of the FCC and all other applicable laws.

(c) Control. Consistent with FCC rules, the Foundation shall control, supervise and direct the day-to day operation of KOCE, including the Foundation's employees, programming and finances, and NRJ shall control, supervise and direct the day-to day operation of KSCI, including NRJ's employees, programming and finances, and nothing in this Agreement affects any such respective responsibilities. Neither the Foundation nor NRJ shall hold itself out

as the licensee of the other's television station using the Shared Channel. and nothing in this Agreement shall give either party a present ownership interest in the other party's station.

5. Confidentiality. Subject to the requirements of applicable law, and subject to the FCC's anti-collusion rules, all non-public information regarding the Foundation and NRJ and their respective businesses and properties that is disclosed in connection with the performance of this Agreement (including without limitation any financial information) shall be confidential and shall not be disclosed to any other person or entity. Notwithstanding the foregoing, the parties intend that this Agreement shall be filed with the FCC. This Section shall survive any termination of this Agreement.

6. Authority. Each of the Foundation and NRJ represents and warrants to the other that (i) it has the power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, (ii) it is in good standing in the jurisdiction of its organization, (iii) it has duly authorized this Agreement, and this Agreement is binding upon it, and (iv) the execution, delivery and performance by it of this Agreement does not conflict with, result in a breach of, or constitute a default or ground for termination under any agreement to which it is a party or by which it is bound.

7. Indemnification. Subject to Section 8, each of the Foundation and NRJ shall indemnify, defend and hold the other harmless from and against any and all loss, liability, cost and expense (including reasonable attorneys' fees) arising from: (i) any breach of any representation or warranty made by it under this Agreement, (ii) failure to comply with the covenants and obligations to be performed by it under this Agreement and (iii) in the event the parties are Successful in the Incentive Auction, its use of the Shared Channel. The Foundation hereby expressly disclaims any and all liability with respect to KSCI, and NRJ hereby expressly disclaims any and all liability with respect to KOCE. In any litigation, claim or dispute arising out of or relating to this Agreement, or its interpretation or enforcement, the prevailing party shall recover its reasonable attorneys' fees, expert fees and other costs of litigation from the non-prevailing party. The obligations under this Section shall survive any termination of this Agreement.

8. Liability. In no event shall either party have any liability (except for the obligation to participate in and pay any proceeds from the Incentive Auction due under this Agreement), whether based on contract, tort (including negligence or strict liability), warranty or any other legal or equitable grounds, for any punitive, consequential, indirect, exemplary, special or incidental loss or damage suffered by the other arising from or related to the performance or nonperformance of this Agreement, including loss of data, profits, interest or revenue or interruption of business, even if such party has been informed of or might otherwise have anticipated or foreseen the possibility of such losses or damages.

9. Termination. Either party may terminate this Agreement upon thirty (30) days written notice to the other in the event of a material breach of this Agreement by the other party. A material breach is one that frustrates the purpose of this Agreement (*i.e.*, in accordance herewith, to be Successful in the Incentive Auction, to share in the proceeds of the Incentive Auction, and to have available for its use its portion of the Shared Channel fit and usable for the

broadcast of its designated programming) unless said breach is cured within said thirty (30)-day notice period. This Agreement shall terminate automatically if the FCC authorization to operate on either KOCE or KSCI is revoked, withdrawn, rescinded, canceled or not renewed. Either party may terminate this Agreement by written notice to the other upon: (i) the institution by or against the other party of insolvency, receivership or bankruptcy proceedings, (ii) the other party making an assignment for the benefit of creditors or (iii) the other party's dissolution or ceasing to do business. No termination shall relieve a party of liability for failure to comply with this Agreement prior to termination. Notwithstanding anything herein to the contrary, Sections 5, 7 and 8 shall survive any termination of this Agreement.

10. Specific Performance. In addition to any other available remedies, in the event of failure or threatened failure by either party to comply with the terms of this Agreement, either party shall be entitled to seek injunctive relief where the other party's actual or threatened breach would deny or make commercially infeasible the non-breaching party's ability to participate in channel sharing or the Incentive Auction through a channel sharing agreement (as either a "sharer" or "sharee" station). The available relief shall include obtaining a temporary restraining order, on an expedited basis, restraining such failure or threatened failure and, subject to obtaining any necessary FCC consent, to enforcement of this Agreement by a decree of specific performance requiring compliance with this Agreement.

11. Assignment. Except as set forth in Section 19(b), neither party may (i) assign this Agreement (except to a commonly controlled affiliate of a party which assumes this Agreement in a writing delivered to the other party to this Agreement) or (ii) assign or transfer control of its station that is subject to this Agreement (except pursuant to a pro forma FCC application) prior to the Foundation's participation in the Incentive Auction. If the Foundation's participation in the Incentive Auction is Successful, subject to the right of first offer set forth in Section 12, this Agreement shall be assigned or transferred to any FCC-approved assignee or transferee of the FCC license of a party. The terms of this Agreement shall bind and inure to the benefit of the parties' respective successors and any permitted assigns. No assignment shall relieve any party of any obligation or liability under this Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to give any rights to any person or entity other than the parties hereto and their successors and permitted assigns.

12. Right of First Offer. In the event NRJ decides to transfer, dispose or sell the capital stock of, or its interest in all or substantially all of the assets comprising, KSCI to a third party during the Term, NRJ shall give the Foundation written notice of such decision and grant the Foundation an exclusive right to negotiate with NRJ for the purchase of KSCI for a period of thirty (30) days after receipt of such notice. If the Foundation and NRJ do not enter into a definitive purchase agreement for the purchase of KSCI by the Foundation within such thirty (30) day period, then NRJ may sell or transfer KSCI to any third party.

13. Severability.

(a) The transactions contemplated by this Agreement are intended to comply with the Communications Act of 1934, as amended, and the rules of the FCC. If any court or governmental authority holds any provision of this Agreement invalid, illegal, or unenforceable

under any applicable law, then so long as no party is deprived of the benefits of this Agreement in any material respect, this Agreement shall be construed with the invalid, illegal or unenforceable provision deleted and the validity, legality and enforceability of the remaining provisions contained herein shall not be affected or impaired thereby, and the parties shall negotiate in good faith to amend this Agreement, if necessary and as appropriate, to accommodate such ruling.

(b) The Foundation and NRJ acknowledge that as of the date of this Agreement, the FCC may adopt additional rules and regulations with respect to the Incentive Auction. From time to time, promptly following the adoption of any such additional rules and regulations and prior to filing the FCC Application, the Foundation and NRJ shall reasonably cooperate and may (but are not required to, except as necessary to comply with applicable law) amend, modify or restate this Agreement to take into account such changes in FCC rules and regulations. The Foundation and NRJ agree to comply with the requirements of 47 C.F.R. § 73.3700(h)(4), the Incentive Auction Order and the Channel Sharing Order.

(c) In addition, this Agreement may be filed with and reviewed by the California Attorney General's office (the "CA AG"). The Foundation and NRJ shall cooperate in good faith to address any concerns raised by the CA AG.

(d) If necessary to comply with a change in FCC rules, a governmental order as described in Section 13(a) or a change required by the CA AG or the IRS, the Foundation and NRJ shall promptly amend this Agreement to comply with such rules, order or changes and preserve as closely as possible each party's economic and other rights and interests set forth in this Agreement; provided that neither party shall be required to accept an amendment that materially, adversely, and disproportionately affects its economic interests vis-à-vis the economic interests of the other party.

14. Notices. Any notice pursuant to this Agreement shall be in writing and shall be deemed delivered on the date of personal delivery or confirmed email or facsimile transmission or confirmed delivery by a nationally recognized overnight courier service, or on the third day after prepaid mailing by certified U.S. mail, return receipt requested, and shall be addressed as follows (or to such other address as any party may request by written notice):

if to the Foundation:

KOCE-TV Foundation

Attention: Andrew Russell, President
Facsimile No.: _____

with a copy (which shall not constitute notice to):

Wiley Rein LLP
1776 K Street, NW
Washington DC, 20006
Attention: Richard Bodorff
Jessica Rosenthal

Facsimile No.: (202) 719-7049

and to: Garvey Schubert Barer
1000 Potomac Street NW
Suite 200
Washington, DC 20007
Attention: John Crigler
Facsimile No.: (202) 965-1729

and to: St. George & Carnegie
21163 Newport Coast Drive Suite 576
Newport Coast, California 92657
Attention: Ardelle St. George
Facsimile No.: (949) 854-5445

if to NRJ: NRJ TV LA License, LLC
722 S. Denton Tap Road, Suite 130
Coppell, TX 75019
Attention: Bob Andrews
email address: bob@nrjventures.com

and to: NRJ TV LA OpCo, LLC
722 S. Denton Tap Road, Suite 130
Coppell, TX 75019
Attention: Ted Bartley
Email address: ted@nrjventures.com

15. Governing Law. The construction and performance of this Agreement shall be governed by the laws of the State of California without giving effect to the choice of law provisions thereof. Any action, suit or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with this Agreement shall be brought in the U.S. District Court for the Central District of California sitting in Santa Ana, California or, if there is no basis for federal court jurisdiction, then the Orange County California Superior Court (together, the "Orange County Courts"). The parties consent to the exclusive jurisdiction and venue of the Orange County Courts in any action, suit or proceeding arising out of or in connection with this Agreement, and the parties irrevocably waive, to the fullest extent permitted by law, any objection that they may now or hereafter have to the laying of exclusive jurisdiction and venue in the Orange County Courts and that any such action, suit or proceeding brought in the Orange County Courts has been brought in an inconvenient forum.

16. Exclusivity. Until any execution of the Facilities Agreement, neither the Foundation nor NRJ will directly or indirectly, through any representative or otherwise, solicit, discuss, negotiate or accept any offer from any third party relating to a channel sharing arrangement in the Incentive Auction with respect to its station that is subject to this Agreement.

17. Remedies Cumulative. All rights and remedies provided in this Agreement are cumulative and not exclusive of any other rights or remedies that may be available to the parties, whether provided by law, equity, statute, in any other agreement between the parties or otherwise.

18. Issue Resolution Process. If an issue arises under this Agreement which requires the agreement of the parties and the parties are unable to agree, the parties' respective executive officers (or their designees of appropriate seniority) will confer in an attempt to resolve the issue. If such discussions are unsuccessful, then executive committees of each of the parties (or their designees of appropriate seniority) will confer in an attempt to resolve the issue. If such discussions are unsuccessful, if either party so elects, the disputed matter may be submitted to a mutually agreeable independent third party with substantial experience and expertise in the business and operation of television broadcast stations to serve as a non-binding mediator, with venue for such mediation being in Orange County, California and with the costs thereof to be paid one-half by the Foundation and one-half by NRJ.

19. Tax Matters.

(a) Nothing contained in this Agreement is intended to or shall be construed to constitute the Foundation and NRJ as partners, joint venturers, or principal and agent. For United States federal income tax purposes or any other purpose, the parties intend for this Agreement to be treated as a cost-sharing arrangement and not as a partnership, and the parties agree to file all applicable tax returns consistent with that intent.

(b) If either party (an "Electing Party") elects to treat the spectrum so acquired or disposed pursuant to this Agreement as property transferred in a like-kind exchange pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended, the Electing Party shall notify the other party of such election in writing no later than date of the Success Ruling (as defined in the Facilities Agreement), after which the non-electing party shall undertake all actions reasonably requested by the Electing Party in writing in connection with the Electing Party's like-kind exchange, including consenting to Electing Party's transfer of its rights in this Agreement, including with respect to allocated proceeds from the Incentive Auction, to a "qualified intermediary," as defined in Treasury Regulation Section 1.1031(k)-1(g)(4); provided, however, that such actions do not impose any unreimbursed liabilities, including any monetary obligations or costs, on the non-electing party and do not release either party from its obligations under this Agreement and that the Electing Party shall promptly reimburse the non-electing party for any third-party costs reasonably incurred in connection with such election, including as a result of any subsequent review of such election or any attendant tax consequences by any governmental authority.

20. Miscellaneous. The respective obligations and liabilities of any party comprised of multiple entities under this Agreement are joint and several, and such entities shall be deemed a single party for purposes of this Agreement as the context requires. This Agreement may not be amended except in a writing executed by both parties. No waiver of compliance with any provision hereof or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by the party against whom enforcement of such waiver or consent is

sought. No party shall be authorized to act as an agent of or otherwise to represent the other party to this Agreement. Each party shall be solely responsible for all costs and expenses incurred by it in connection with the negotiation, preparation and performance of and compliance with the terms of this Agreement. This Agreement (including all Schedules hereto), together with the Facilities Agreement, constitutes the entire agreement and understanding among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings with respect to the subject matter hereof. Notwithstanding anything to the contrary, the Foundation and NRJ agree that the terms of Section 10.9 of the LLC Agreement (as defined in the Facilities Agreement) shall be effective on the date of this Agreement. This Agreement may be executed in separate counterparts.

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[SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE TO CHANNEL SHARING AGREEMENT

IN WITNESS WHEREOF, the parties have duly executed this Channel Sharing Agreement as of the date first set forth above.

FOUNDATION:

KOCE-TV FOUNDATION

By:



Name: ANDREW RUSSELL

Title: PRESIDENT & CEO

NRJ:

NRJ TV LA LICENSE CO, LLC

By: _____

Name:

Title:

NRJ TV LA OPCO, LLC

By: _____

Name:

Title:

SIGNATURE PAGE TO CHANNEL SHARING AGREEMENT

IN WITNESS WHEREOF, the parties have duly executed this Channel Sharing Agreement as of the date first set forth above.

FOUNDATION:

KOCE-TV FOUNDATION

By: _____
Name:
Title:

NRJ:

NRJ TV LA LICENSE CO, LLC

By: Ted B. Bartley
Name: **Ted B. Bartley**
Title: **Chief Executive Officer**

NRJ TV LA OPCO, LLC

By: Ted B. Bartley
Name:
Title: **Ted B. Bartley**
Chief Executive Officer