

KEMO-TV Channel Sharing Engineering STA Application

HC2 Station Group, Inc. (“HC2”) requests authorization for KEMO-TV (Fremont, CA; Facility ID 34440) (“KEMO”) to channel share with KCNS(TV) (San Francisco, CA; Facility ID 71586) (“KCNS”).

On January 1, 2018, NRJ TV San Fran OpCo, LLC and NRJ TV San Fran License Co, LLC (collectively the “Licensees of KCNS”) and NRJ TV SF OpCo, LLC and NRJ TV SF License Co, LLC (collectively the “Licensees of KTNC-TV”) (Concord, CA; Facility ID 21533) (“KTNC”) entered into an Amended and Restated Channel Sharing and Facilities Agreement (the “CSA”), according to which KCNS is the Sharer station and KTNC is the Sharee station, operating on channel 39, until KCNS is required to move to channel 32 as a result of the post-incentive auction repack. Both KCNS and KTNC are licensed by the FCC to channel share pursuant to the CSA¹ and the minor license modification related thereto.²

Recently HC2 and the Licensees of KTNC-TV entered into an agreement (the “Assignment Agreement”) pursuant to which at closing, the Licensees of KTNC-TV will assign their interests in the CSA to HC2. HC2 plans to move its station KEMO to operate on that portion of KCNS’ channel currently being used by KTNC. The parties are not modifying the CSA as part of this assignment.

HC2 is filing this Engineering STA application based on staff guidance that the FCC’s Licensing and Management System will not allow HC2 to file a construction permit application for KEMO under the current circumstances. The Assignment Agreement and the CSA are consistent with all Commission rules and policies applicable to channel sharing agreements. KEMO and KCNS are both in the San Francisco-Oakland-San Jose designated market area, and KEMO’s community of license, Fremont, is fully within KCNS’s 48 dBu contour. Allowing KEMO to channel share with KCNS will not have a significant environmental impact, and KEMO’s operations will comply with all applicable Part 73 rules.

HC2 respectfully requests that the Media Bureau grant this Engineering STA application and permit KEMO to implement channel sharing with KCNS.

¹ A copy of the Amended and Restated Channel Sharing and Facilities Agreement is included as an exhibit to this application. HC2 Station Group has redacted the schedules from the agreement to protect proprietary and confidential information, as allowed for under the FCC’s rules. See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 32 FCC Rcd 2637 ¶ 32, n.107 (2017).

² Modification of a Licensed Facility for DTV Application, FCC file no. 0000029156.

EXECUTION VERSION

AMENDED AND RESTATED CHANNEL SHARING AND FACILITIES AGREEMENT

THIS AMENDED AND RESTATED CHANNEL SHARING AND FACILITIES AGREEMENT (this "**Agreement**") is made as of January 1, 2018 among NRJ TV SAN FRAN OPCO, LLC and NRJ TV SAN FRAN LICENSE CO, LLC, each a Delaware limited liability company (collectively, "**Sharer**") and NRJ TV SF OPCO, LLC and NRJ TV SF LICENSE CO, LLC, each a Delaware limited liability company (collectively, "**Sharee**"). Sharer and Sharee may be referred to herein individually as a "**party**" and collectively as the "**parties**".

Recitals

A. Sharer owns and operates the following television broadcast station, including its primary and all multicast streams ("**Sharer's Station**") pursuant to licenses issued by the Federal Communications Commission (the "**FCC**"):

KCNS(TV), San Francisco, California (FCC Facility ID #71586)

B. Sharee owns and operates the following television broadcast station, including its primary and all multicast streams ("**Sharee's Station**") pursuant to licenses issued by the FCC:

KTNC-TV, Concord, California (FCC Facility ID #21533)

C. Sharee previously relinquished the spectrum of Sharee's Station, and Sharer and Sharee are sharing Sharer's Station's channel (the "**Shared Channel**") pursuant to licenses issued by the FCC to Sharer and Sharee.

D. Sharer owns or operates certain assets, including the transmitter, located at Sutro Tower, 1 La Avanzada St., San Francisco, CA (the "**Transmitter Site**"), which Transmitter Site is leased pursuant to that certain Lease dated March 1, 1995, as amended, by and between Sharer and Sutro Tower, Inc. (the "**Transmission Facilities Lease**"), and other equipment necessary for channel sharing that will be used by Sharer and Sharee in the operation of their respective stations broadcasting on the Shared Channel (the "**Shared Equipment**," and together with the Transmitter Site, the "**Transmission Facilities**").

E. Sharer and Sharee desire to enter into an agreement that is in accordance with existing and future FCC rules and published policies governing 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**") and channel sharing agreements, including without limitation the Report and Order adopted in ET Docket No. 10-235, released April 27, 2012 (the "**Channel Sharing Order**"), the Report and Order adopted in GN Docket No. 12-268, released June 2, 2014 (the "**Incentive Auction Order**"), the First Order on Reconsideration and Notice of Proposed Rulemaking adopted in GN Docket No. 12-268, released June 12, 2015 (the "**First Order**"), the Second Order on Reconsideration adopted in GN Docket No. 12-268, released June 19, 2015 (the "**Omnibus Order**"), the Second Order on Reconsideration in GN Docket No. 12-268, adopted October 21, 2015 (the "**Second Order**"), the Public Notices adopted in MB Docket No. 16-306 and GN Docket No. 12-268, released January 27, 2017 (the "**Transition Public Notices**"), the Report and Order adopted in GN

Docket No. 12-268, MB Docket No. 03-185, and MB Docket No. 15-137, released on March 24, 2017 (the “**Expanded Sharing Order**”), the Public Notice adopted in AU Docket No. 14-252, GN Docket No. 12-268, WT Docket No. 12-269, and MB Docket No. 16-306, released on April 13, 2017 (the “**Auction Closing Public Notice**”), and the FCC regulations adopted at 47 C.F.R. §§ 1.2200-1.2209 and 73.3700, as amended (together with the Channel Sharing Order, the Incentive Auction Order, the First Order, the Omnibus Order, the Second Order, the Transition Public Notices, and the Expanded Sharing Order, and any other FCC orders or public notices relating to the Incentive Auction and channel sharing, the “**Channel Sharing Rules**”) on the terms set forth in this Agreement.

F. Sharer and Sharee are parties to a Channel Sharing and Facilities Agreement dated April 27, 2017 with respect to Sharer’s Station and Sharee’s Station (the “**Prior Agreement**”) and desire to amend and restate the Prior Agreement in its entirety.

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:

Article 1: COMMENCEMENT AND COMPENSATION

1.1. Prior Agreement. Sharer and Sharee hereby amend and restate the Prior Agreement in its entirety, which shall no longer be of any force or effect.

1.2. Term. The term of this Agreement (the “**Term**”) will begin on the date of this Agreement and will continue in perpetuity, unless earlier terminated in accordance with this Agreement.

1.3. Compensation. In consideration for the right to use the Shared Channel as set forth in this Agreement, Sharee has paid to Sharer the amount set forth in the Prior Agreement (the “**Sharing Payment**”).

1.4. Commencement of Shared Operations. The parties shall cooperate to transition to the Shared Channel and the Transmission Facilities and make any modifications necessary for the shared use contemplated by this Agreement. Each party shall be responsible for its own transition costs, including any cost to move to or install equipment at the Transmitter Site and any cost to discontinue duplicative transmission operations.

1.5. FCC Filings. Sharee has promptly and timely filed with the FCC and thereafter diligently prosecute a minor change application for a construction permit for Sharee’s Station in order to implement this Agreement. The parties shall cooperate in good faith to prepare, submit, and prosecute any other applications with the FCC that may be necessary to implement the sharing arrangement contemplated by this Agreement, including without limitation license applications for the Shared Channel.

Article 2: CAPACITY AND FCC LICENSES

2.1. Allocation of Channel Capacity. Pursuant to the Channel Sharing Rules, Sharer and Sharee shall share channel capacity on the 6 MHz Shared Channel (19.39 Megabits per second (“**Mbps**”) consistent with the capacity allocation set forth in *Schedule 2.1* (“**Capacity Allocation**”),

which may be modified from time to time by mutual written agreement of the parties but which, at a minimum, shall provide that Sharer's Station and Sharee's Station 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 parties shall meet and confer in good faith from time to time to review and revise the engineering plan for the Shared Channel, as mutually agreed. Sharer and the Sharee shall implement a mutually beneficial weighting system as allowed by the encoding pool. However, the intent of the parties is to share the capacity on a *pro rata* basis, while taking advantage of the software optimization technology of statistical multiplexing, or ("**Stat Mux**"). The parties shall cooperate to devise a system that produces the best results for each party with minimum picture degradation; provided, however that, in the event the parties are unable to agree on such a system, then the parties shall implement a fixed allocation of bits on the Shared Channel of an equal basis for their respective broadcast needs. Unless otherwise mutually agreed by the parties, the Shared Channel will be divided into three priority levels: Priority 1, Priority 2 and Priority 3. Each of the initial Sharer and Sharee may designate up to one of its allotted programming streams as Priority 1 for the Shared Channel and may similarly designate an allotted stream to each of Priority 2 and Priority 3 (each a "**Priority Programming Stream**"). The Priority Programming Streams will be reflected in the encoding pool maintained by Sharer.

2.2. Encoding. In order to take advantage of a Stat Mux pool, Sharer and Sharee must implement a shared encoding pool. Each party shall have the right to monitor and audit the Shared Channel's encoding system to ensure compliance with Section 2.1 and *Schedule 2.1*. Each party shall make all records of such encoding available to the others upon written request during normal business hours.

2.3. Changes to Allocation. In the event that a new standard of modulation is implemented by Sharer, the parties shall cooperate to allocate the available bandwidth on a basis consistent with the Capacity Allocation.

2.4. Commitment to Provide Capacity. During the Term and any Sharer Wind-Down Period specified in Article 5, Sharer shall transmit content provided by Sharee using the Transmission Facilities. Except as provided herein, Sharer shall not alter the content provided by Sharee; provided, however that Sharer may (a) encode, compress and/or modulate the content as required to multiplex together Sharer and Sharee content streams using the parameters agreed to in this Agreement, and (b) combine the Event Information Table ("**EIT**") information and other information into a common Program and System Information Protocol ("**PSIP**") format for transmission as agreed to in this Agreement; provided, however that with respect to the foregoing clauses (a) and (b), the content transmitted on the spectrum allocated to Sharee shall be treated substantially in the same manner as the content of Sharer.

2.5. Capacity Use; Further Sharing Agreements

(a) Capacity Use. Sharer and Sharee shall have the right to use its allocated capacity on the Shared Channel in any way it sees fit, in accordance with this Agreement (subject to compliance with the Channel Sharing Rules, the Communications Act of 1934, the Telecommunications Act of 1996, the Children's Television Act of 1990, and the rules and written policies of the FCC promulgated thereunder (collectively, the "**Communications Laws**") and all other applicable laws), including, to the extent feasible and without further approval of any other party to this Agreement, (i) broadcasting one High Definition ("**HD**") stream and/or multiple SD streams, and (ii) the right to air multicast streams or other licensed third party content, provided that a third party programmer (A) shall not have any rights of access to the Transmission Facilities without Sharer's

prior approval, which such approval shall not be unreasonably withheld, delayed or conditioned; (B) Sharee shall be responsible for the capital or operating costs directly associated with adding its multiple program streams to the encoding pool; and (C) Sharee shall remain responsible for its compliance obligations herein and any acts or omissions of a third party programmer.

(b) Further Sharing Arrangements. Sharer and Sharee shall have the right to add to this Agreement up to two (2) other television broadcast stations as channel sharees within its Capacity Allocation (each a "**Further Sharing Partner**"), on terms and conditions as may be agreed by such Sharer or Sharee (as the case may be) (hereafter a "**Sub-Sharer**") and the Further Sharing Partner in their sole discretion, with prior written notice to all other parties hereto, provided that the Sub-Sharer may assign its existing right to designate a program stream as Priority 1, Priority 2 or Priority 3 under Section 2.1, but may not offer any Further Sharing Partner any other program stream prioritization rights. In such notice, the Sub-Sharer shall notify the other parties as to (i) the amount of its Capacity Allocation to be made available for use by the Further Sharing Partner ("**Further Sharee Capacity Allocation**") and (ii) any conditions precedent to the effectiveness of the Further Sharing Agreement negotiated between Sub-Sharer and Further Sharing Partner, including if required, FCC approval and the Priority Programming Stream assigned to the Further Sharee Capacity Allocation. Each Further Sharing Partner shall execute a joinder ("**Joinder**") that will make it a Sharee under this Agreement, with the right to use the Capacity Allocation on the Shared Channel assigned to it by its Sub-Sharer. The Sub-Sharer shall provide a copy of the executed Joinder to each party, which Joinder shall describe the Capacity Allocation and Capacity Allocation Percentage (defined below) of the Sub-Sharer and Further Sharing Partner as a result of the Joinder. A Further Sharing Partner shall not have the right to further sharing with respect to its Further Sharee Capacity Allocation. Use of the Shared Channel by any Further Sharing Partner shall not (i) interfere with, degrade or otherwise adversely affect (A) the broadcast transmissions or operations of any other party to this Agreement or (B) the Transmission Facilities or the Shared Channel (ii) require any party (other than Sub-Sharer) to make any capital expenditure or incur any operating cost not otherwise provided for under this Agreement or (iii) require the creation of any additional program stream prioritization rights under Section 2.1.

2.6. FCC Licenses.

(a) Authorizations. Each party shall maintain all main station FCC and any other material governmental licenses, approvals and authorizations necessary for its operations on its respective television station in full force and effect during the Term. Each party shall prepare, file and prosecute in good faith the necessary applications for FCC construction permits for its station in order to implement this Agreement, within the time period required by the FCC rules, and the parties shall cooperate in good faith to prepare, submit, and prosecute any other applications with the FCC that may be necessary to implement the sharing arrangement contemplated by this Agreement. No party shall make any filing with the FCC to modify the Shared Channel without the prior written consent of the other parties.

(b) Compliance with Law. Each party shall comply with this Agreement and all applicable laws, including the Communications Laws, with respect to its ownership and operation of its station subject to this Agreement and its use of the Shared Channel. Each party shall be solely responsible for all content it transmits or provides for transmission on the Shared Channel. The obligations of the parties under this Agreement are subject to the Communications Laws and all other applicable laws. In addition, Sharer and Sharee shall comply with all laws and leases, licenses or similar agreements applicable to the Transmission Facilities.

(c) Control. Consistent with the Communications Laws, each party shall control, supervise and direct the day-to-day operation of its own station (including that station's employees, programming and finances), and nothing in this Agreement affects any such respective responsibilities. No party shall hold itself out as the licensee of any other party's television station using the Shared Channel, and nothing in this Agreement shall give any party an ownership interest in any other party's station. No party shall use the call letters of any other party's station in any public medium with respect to the identification of its station or in a manner reasonably likely to cause confusion as to the ownership of any other party's station, except in correspondence with the FCC related to the performance of this Agreement.

(d) FCC Fees. Subject to Section 3.7(b), each party shall be responsible for timely payment of all fees owed by it to the FCC with respect to its television station using the Shared Channel. The parties shall split any joint fees, if any, assessed by the FCC on the Shared Channel rather than the individual stations, based on the Capacity Allocation on the Shared Channel (expressed as a percentage of the total capacity of the licensed spectrum of the Shared Channel in Mbps as provided in *Schedule 2.1*) ("**Capacity Allocation Percentage**") for each party.

(e) Cooperation. Each party shall cooperate with one another in good faith as to any reasonable requests made by any other with respect to operation of and transition to the Shared Channel or the Transmission Facilities and no party shall take any action or which interferes with or is reasonably likely to interfere with another party's use of capacity on the Shared Channel or the Transmission Facilities, or fail to take any action which would have the same effect.

2.7. Carriage Rights. Sharer shall be solely responsible for exercising must-carry and retransmission consent rights for Sharer's Station or any other right of distribution. Sharee shall be solely responsible for exercising must-carry and retransmission consent rights for Sharee's Station or any other right of distribution. Neither Sharer nor any Sharee shall have any use, claim, or benefit of, or derive any carriage rights under or have any obligation under any carriage agreement of any other party. Neither Sharer nor any Sharee nor any Further Sharing Partner shall have any use, claim, or benefit of, or derive any carriage rights under or have any obligation under any carriage agreement of any other party hereto or any Further Sharing Partner. If a party electing must-carry rights becomes subject to a "market modification" or similar petition filed by any MVPD with respect to carriage of its station, it shall promptly notify the other parties hereto and provide a copy of such petition.

Article 3: SHARED OPERATIONS

3.1. Transmission Facilities. The parties agree to share Transmission Facilities on the terms herein and consistent with the Channel Sharing Rules for the operation of their respective stations.

(a) Transmitter Site Lease; Access to Shared Equipment. Subject to the requirements of the Transmission Facilities Lease and upon consent by the tower owner, if necessary, Sharer shall provide each party with reasonable access to the Transmitter Site and the Shared Equipment in accordance with the access afforded under the Transmission Facilities Lease, including a right to ensure ongoing broadcast operations in the ordinary course consistent with past practice, *provided* that each party shall refrain from taking any action that shall disrupt or impair any other party's use of the Transmission Facilities. No party may make material alterations to the Transmission Facilities, or interfere with the business and operation of any other party's television station or another's use of such facilities without the prior written consent of the other parties. Except as provided in Section 2.5, each party may use the Transmission Facilities only for the operation of its television station in the ordinary course of business (including all purposes permitted under the

Communications Laws and its station's FCC authorizations) and for no other purpose. Each party shall comply in all material respects with the terms of the Transmission Facilities Lease and with all federal, state and local laws applicable to its operations from the Transmission Facilities. Except as provided in Section 3.1(d), no party shall move, damage or interfere with the Transmission Facilities. Sharer shall designate and establish the "control point" at the Transmitter Site for use of the Shared Channel under applicable FCC rules. Each party shall be solely responsible for all costs associated with the delivery of its signal in a mutually agreeable format to the Transmitter Site (or such other location reasonably determined by Sharer), where such signal will be encoded and sent for transmission.

(b) Shared Equipment. A list of all material items of Shared Equipment as of the date of the Prior Agreement has been provided by Sharer to Sharee. The Shared Equipment shall include any replacements of such items or additions thereto as mutually agreed by the parties from time to time in accordance with this Agreement.

(c) Shared Transmission Facilities. During the Term, Sharer shall (i) operate, maintain and repair the Transmission Facilities in accordance with good engineering practices customary in the television broadcasting industry ("**Good Engineering Practices**"), (ii) keep the other parties reasonably informed as to all material repairs required to be made to such Transmission Facilities; (iii) make timely utility payments required for the operation of the Shared Equipment; (iv) maintain the insurance specified in Section 3.1(j); and (v) comply with all laws applicable to the operation of the Transmission Facilities in all material respects. Title to the Shared Equipment shall remain with Sharer. Except as provided in Section 3.1(a) or elsewhere in this Agreement, no party shall move, damage or interfere with such Transmission Facilities without the consent of the other parties or to comply with such party's obligations under this Agreement.

(d) Initial Capital Expenditures; Transmitter Modifications. The parties shall work together cooperatively and in good faith to identify and develop a cost estimate for any equipment purchases, equipment upgrades or other capital expenditures necessary for the parties to perform their respective obligations to channel share under this Agreement, which may include modifications to the Transmission Facilities in order to accommodate the insertion of multiple program streams on the Shared Channel, including at least 2 HD streams and implement facilities on any new channel assigned by the FCC to the Shared Channel in the television band repacking following the Incentive Auction. The costs allocated to such capital expenditures shall be shared by each of the parties in proportion to such party's Capacity Allocation Percentage on the Shared Channel as provided in *Schedule 2.1*. Capital expenditures required for the modifications shall be paid for in accordance with Section 3.7(b).

(e) Technical Failures. In the event that the Transmission Facilities suffer an unexpected failure, such that Sharer or Sharee's Station must temporarily cease broadcasting or operate at reduced power levels, Sharer shall promptly notify Sharee and shall use commercially reasonable efforts, consistent with past practices, to repair the Transmission Facilities to return Sharer and Sharee's Station, as quickly as practicable, to operations at its full authorized power.

(f) Exclusive Equipment. Sharer and Sharee shall maintain, repair and replace any equipment owned solely by such party (or its subsidiary or affiliate) located at the Transmitter Site in accordance with Good Engineering Practices. Title to all equipment (other than the Shared Equipment owned by Sharer) (the "**Exclusive Equipment**") shall remain with that party, and no other party shall move, repair, damage or interfere with such Exclusive Equipment except in accordance with this Agreement or with the prior written consent of the other party; provided that Sharer may access and operate any party's Exclusive Equipment as reasonably needed in the event of an emergency in

accordance with Good Engineering Practices. Sharee shall be solely responsible for all costs associated with terminating its current transmitter site lease(s), relocating any of its own equipment to the Transmitter Site, and the relay of its signal to the Transmitter Site for insertion into the Shared Channel.

(g) Contractors. All contractors and subcontractors hired by any party to perform any service for such party at the Transmitter Site or any Transmission Facilities shall hold licenses or governmental authorizations appropriate to and necessary for the work being performed, and meet any additional requirements imposed by the Transmission Facilities Lease and/or the tower owner. Any such contractor shall carry commercially reasonable insurance issued by companies licensed in the state where the Transmitter Site or such other Transmission Facilities are located.

(h) Hazardous Materials. Each party and any contractor and subcontractor hired by any party who performs any service at the Transmitter Site shall: (i) comply in all material respects with all environmental laws applicable to its operations from the Transmitter Site and any other Transmission Facilities, (ii) not cause or permit the release of any hazardous materials on, to or from the Transmitter Site or any other Transmission Facilities in violation of any applicable environmental laws, (iii) not take any action that would subject the Transmitter Site or any other Transmission Facilities to new or additional permit requirements for storage, treatment or disposal of hazardous materials and (iv) not dispose of hazardous materials on the Transmitter Site or any other Transmission Facilities except in compliance with applicable law.

(i) Termination. Upon a reasonable time following any termination of this Agreement with respect to any Sharee following commencement of channel sharing, such Sharee shall (i) vacate the Transmitter Site and any other Transmission Facilities, (ii) move all of its assets and employees (if any) from the Transmitter Site, (iii) surrender its rights to use the Shared Equipment, (iv) ensure the Shared Equipment is left in substantially the same condition existing on the date of commencement of its channel sharing contemplated by this Agreement (reasonable wear and tear excepted) and (v) return all keys and other means of entry to Sharer. A termination of this Agreement with respect to one Sharee shall not cause a termination of this Agreement with respect to Sharer or any other Sharee.

(j) Insurance. Each party, at its own expense, shall maintain or cause to be maintained commercially reasonable insurance in the normal and customary amounts with respect to its use of the Shared Equipment and operations from the Transmission Facilities to enable it to meet its obligations created by this Agreement provided that each party shall provide certificates of insurance to any requesting party promptly upon request. All such insurance policies covering the Transmission Facilities shall contain a standard loss payable clause and shall be endorsed to provide that, in respect of the interests of each party that (A) each party shall be an additional insured and loss payee, (B) thirty (30) days' prior written notice of any cancellation, reduction of amounts payable, or any changes and amendments shall be given to each party, and (C) each party shall have the right, but not the obligation, to pay any premiums due or to acquire other such insurance upon the failure of a party to pay the same or to so insure. In the event that any party at any time fails to obtain or maintain any of the policies of insurance required hereby or to pay any premium in whole or part relating thereto except to the extent that such failure would not have a material adverse effect on the operation of the Transmission Facilities, each party may, without waiving or releasing any obligation or liability of such party hereunder, in its sole discretion, obtain and maintain such policies of insurance and pay such premium and take any other actions with respect thereto as such party deems advisable. All sums disbursed by Sharer (or any other party) in connection with this Section, including reasonable

attorneys' fees, court costs, expenses and other charges relating thereto, shall be payable, upon demand, to the party who advanced the funds.

(k) Liens. Sharee may not permit to exist any lien, claim or encumbrance on the Transmission Facilities.

3.2. Shared Operating Plan.

(a) Development of Shared Operating Plan. Sharer and Sharee have developed or will develop a formal plan to address technical planning considerations and ongoing operational matters (the "**Shared Operating Plan**"). The Shared Operating Plan shall:

(i) Reflect technical discussions between the parties as may be required to coordinate the transition of Sharee's Station's existing operations to the Shared Channel (e.g., proposed employee responsibility and technical considerations);

(ii) Include allocation of costs between the parties of any necessary equipment or other capital expenditures necessary to initiate channel sharing in accordance with Section 3.1(d);

(iii) Provide a mechanism to address the allocation of spectrum in the future (e.g., in the event of technological changes, including ATSC 3.0, etc.);

(iv) Contemplate appropriate pre-commencement testing for shared operations; and

(v) Provide for delivery of any notices to third parties (including consumers) that may be reasonably necessary or desirable.

(b) Review of Shared Operating Plan. The parties shall meet and confer periodically during the Term to review and revise the Shared Operating Plan, as further described below in Section 3.9.

3.3. Interference. Each party shall use commercially reasonable efforts to avoid interference by its respective operations from the Transmitter Site and to promptly resolve any interference that arises in connection with such operation. No party shall make changes or installations at the Transmitter Site or any other shared facilities or enter into any third-party arrangement that could reasonably be expected to impair, degrade or interfere in any material respect with any other party's signal or broadcast operations or use of the Shared Channel. In the event interference to such signals or operations does occur, the party experiencing interference shall notify the other party or parties in writing and the interfering party shall take all commercially reasonable steps to correct such interference in all material respects as promptly as possible, and in any event within two days of notice of such interference.

3.4. Cooperation; Maintenance and Repair.

(a) Sharer shall be obligated to maintain and repair the Transmission Facilities in accordance with Good Engineering Practices and, in all events, within the technical parameters set forth on the stations' FCC licenses, with any costs and expenses incurred in connection with such obligation being allocated based in proportion to each party's Capacity Allocation Percentage on the Shared Channel as provided in *Schedule 2.1*. In the event of planned repairs to the Transmission

Facilities, Sharer shall coordinate such repairs (and any related downtime) with Sharee, including by providing advance notice of such repairs, to the extent reasonably feasible. During the Term, Sharer shall (i) operate the Transmission Facilities in compliance with applicable law in all material respects, (ii) make timely utility payments for the Shared Equipment, and (iii) maintain the insurance specified in Section 3.1(j).

(b) In the event it is necessary for a party to reduce, limit or temporarily cease use of the Shared Equipment, the Shared Channel or its own equipment located at the Transmitter Site or any other shared facilities so that another party may install, maintain, repair, remove or otherwise work upon its broadcast equipment or the Shared Equipment at the Transmitter Site or any other shared facility, the non-requesting parties shall cooperate in a commercially reasonable manner. If necessary, the non-requesting parties shall temporarily reduce, limit or cease use of the Shared Equipment, the Shared Channel or its own equipment located at the Transmitter Site or any other shared facility, provided that the requesting party takes all reasonable steps to minimize the amount of time the non-requesting parties shall operate with reduced facilities and that the requesting party takes all reasonable steps to schedule such installation, maintenance, repairs, removal or work at a commercially reasonable time convenient to the non-requesting parties.

3.5. Alteration to Transmission Facilities.

(a) In the event that the FCC requires new standards of modulation or other technical or other modifications to the operation of the Transmission Facilities or the Shared Channel, the parties will timely make any such modifications in compliance with such requirements established by the FCC. The parties will share in the costs to implement such modulation or technical changes *pro rata* in accordance with the parties' Capacity Allocation Percentages. In the event that such changes alter the available bandwidth of the Shared Channel, the parties shall cooperate to divide the available bandwidth following such modifications on a basis consistent with this Agreement.

(b) The parties shall discuss in good faith on an ongoing basis from time to time during the Term appropriate future capital expenditures that may be reasonably necessary or desirable to improve, upgrade or otherwise alter the Transmission Facilities.

(c) If Sharer agrees to make an investment to upgrade or replace the Transmission Facilities which would benefit all parties using the Shared Channel, the installation costs shall be allocated in proportion to each party's Capacity Allocation Percentage (unless otherwise agreed by the parties at such time), and the parties shall reasonably cooperate as needed to permit the prompt installation of any necessary equipment in accordance with this Agreement. For clarity, in the event that Sharer desires to make such an investment, all parties to this Agreement using the Shared Channel will be required to share in the costs of such investment according to each party's Capacity Allocation Percentage.

(d) If there are two parties to this Agreement, and both parties agree to make an investment to upgrade or replace the Transmission Facilities which would benefit all parties using the Shared Channel, the installation costs shall be allocated in proportion to each party's Capacity Allocation Percentage (unless otherwise agreed by the parties at such time), and the parties shall reasonably cooperate as needed to permit the prompt installation of any necessary equipment in accordance with this Agreement.

(e) In the event one party wishes to make an investment to upgrade or replace the Transmission Facilities that would only be to the benefit of any investing parties, and the other party or

parties do not wish to participate, the investing party shall have the right to purchase and install the desired equipment, at its sole cost and expense, and shall retain title to such equipment after the termination or expiration of this Agreement, provided that (i) such equipment is not reasonably expected to (A) interfere with or materially adversely affect the Transmission Facilities, the Shared Channel or other operations of Sharer's Station or either Sharee's Station (or require another party to make a material change in its operations) or (B) degrade the signal of any other party, (ii) the ongoing maintenance and repair of such equipment does not place an undue or disproportionate burden on any party, (iii) the investing party shall be responsible for the installation and maintenance of such equipment, which shall be undertaken in accordance with Good Engineering Practices, and (iv) such installation is permitted by the Transmission Facilities Lease or otherwise approved by the landlord thereunder.

(f) For the avoidance of doubt, any alteration of the Transmission Facilities that could degrade, materially reduce or change the stations' coverage areas (such as by a reduction in the stations' authorized power or the use of a broadcast antenna with a different pattern) shall require the consent of Sharer and Sharee.

3.6. Force Majeure. No party shall be liable to any other party for any failure or delay in the performance of its non-monetary obligations under this Agreement to the extent that the default or delay is caused by an event outside of its reasonable control, including without limitation a fire, flood, earthquake, war, act of terrorism, labor dispute, government or court action, failure of facilities or act of God.

3.7. Payment Terms.

(a) Relocation and Repacking Costs. Sharer has and, if applicable, will continue to timely seek reimbursement from the TV Broadcaster Relocation Fund (or other appropriate governmental authority) for the costs of relocating Sharer's Station to a new channel as a result of the FCC's repacking process following the Incentive Auction. Sharee shall pay Sharer in proportion to that Sharee's Capacity Allocation Percentage on the Shared Channel for any amounts that are (i) incurred by Sharer in relocating to a new shared channel that are required and solely associated with the transmission portion of station broadcast expenses and (ii) not reimbursed by the TV Broadcaster Relocation Fund (or other appropriate governmental authority). Any costs incurred by Sharee associated with its move to the Transmission Facilities and the installation or modification of any dedicated Sharee equipment (including exciters, direct fiber feeds to MVPDs, labor, etc.) in connection with the repacking of Sharer's Station will be borne solely by that Sharee. Sharer shall seek reimbursement from the TV Broadcaster Relocation Fund (or other appropriate governmental authority) before incurring such capital expenditures; provided, the parties may jointly agree to pre-fund capital expenditures in accordance with an invoice (together with reasonable supporting documentation) from Sharer which reflects Sharee's estimated *pro rata* portion of such expenditures based on its Capacity Allocation Percentage. Sharer shall not be obligated to incur capital expenditures for the required modifications until it has received the funds from the TV Broadcaster Relocation Fund or if the parties agree to pre-fund from the Sharee. In the event of any shortfalls in the required modification costs on the one hand and the reimbursed and pre-funded amounts on the other hand, each party will pay for its *pro rata* share of such shortfall. In the event the actual costs of the capital expenditures is less than the amount Sharer receives from the TV Broadcaster Relocation Fund and any pre-funded payments, Sharer shall reimburse Sharee for its *pro rata* portion of such overages in accordance with the parties' Capacity Allocation Percentages.

(b) Ongoing Shared Costs. Sharee shall reimburse Sharer for its *pro rata* share (based on its Capacity Allocation Percentage) of the out-of-pocket costs reasonably incurred by Sharer in the ordinary course of business in accordance with this Agreement, including payment of any FCC fees as set forth in Section 2.6(d) ("**Shared Costs**"). *Schedule 3.7(b)* lists the categories of costs that the parties agree to share under this Agreement.

(c) Funding of Costs. Prior to the end of each calendar year during the Term, the parties shall cooperate in good faith to develop and agree on an estimated annual budget (broken down by quarters to account for periodic costs) for the ordinary course operational costs described in Section 3.7(b) (the "**Budget**"). On or prior to the first day of each calendar quarter during the Term, Sharee shall disburse to Sharer an amount equal to its *pro rata* share (based on its Capacity Allocation Percentage) of the Budget for the upcoming calendar quarter. Within sixty (60) days of the end of each calendar year during the Term, the parties shall true up the difference between Sharer's actual operating expenses incurred in accordance with Section 3.7(b) and the quarterly amounts prepaid by Sharee to Sharer pursuant to this Section, and all appropriate parties shall make prompt payments to the others in the amount of any such differences. In accordance with such true up, Sharer shall provide Sharee with reasonably requested supporting documentation for its expenses incurred. Sharee shall reimburse Sharer for its *pro rata* share (based on its Capacity Allocation Percentage) of the out-of-pocket costs reasonably incurred by Sharer in accordance with this Agreement with respect to non-routine costs within thirty (30) days after invoice (provided that such invoice includes reasonable supporting documentation).

(d) Uninsured Costs. Any uninsured repair or replacement cost that is reasonably necessary to maintain the operation of the Transmission Facilities as contemplated by this Agreement shall be shared *pro rata* in accordance with each party's Capacity Allocation Percentage, provided, that the parties approve any such cost in advance in writing, which approval shall not be unreasonably withheld, delayed or conditioned.

3.8. Regulatory Obligations. Each party shall use commercially reasonable efforts to ensure ongoing operations of its Station subject to this Agreement, consistent with past practice and in a manner compliant with the Communications Laws. Such commercially reasonable efforts shall include, at minimum, prompt notice to the other parties of material communications to and from the FCC that may relate to a station's technical operations and coordination to minimize any necessary disruptions to operations that may affect any station subject to this Agreement. Each party shall be responsible for compliance with provisions of the Communications Laws pertaining to their respective programming, personnel, finances and regulatory reporting obligations.

3.9. Review and Consultation for Operational Matters. In order to address ongoing operational, technical or engineering issues that may arise in the course of channel sharing (such as spectrum allocation, improvements to the Transmission Facilities, etc.), each party shall identify an officer or employee with sufficient authority and technical experience to address such issues independently or otherwise expeditiously (the "**Principal Liaisons**"). The Principal Liaisons shall meet as frequently as any party may reasonably request (but no less frequently than once every year), upon appropriate notice, to assess and modify the Shared Operating Plan in good faith in order to address technological, logistical or marketplace changes that may affect the Transmission Facilities, ongoing shared costs of the Transmission Facilities and to generally facilitate cooperation with respect to channel sharing. In addition, the Principal Liaisons shall meet at agreed upon intervals (but no less frequently than once every year) to review the technical parameters of this Agreement and to make any adjustments to such technical parameters that the Principal Liaisons deem necessary or advisable in

good faith in light of technological, marketplace or regulatory changes. Meetings of the Principal Liaisons may include such other employees or designees of a party as may be necessary or desirable.

3.10. Modifications to Site Lease.

(a) Sharer shall not, without the prior written consent of all parties to this Agreement, surrender the leasehold estate created by the Transmission Facilities Lease or terminate or cancel the Transmission Facilities Lease, either orally or in writing.

(b) Sharer shall not, without the prior written consent of parties to this Agreement who collectively hold a majority of the Shared Channel spectrum capacity, modify, change, supplement, alter or amend the Transmission Facilities Lease, either orally or in writing, provided that Sharer may enter into:

(i) amendments, supplements or modifications to the Transmission Facilities Lease that do not (A) have a material adverse effect on the use, value or operation of the Transmission Facilities or (B) change material terms of the Transmission Facilities Lease, (which material terms include access to the Transmission Facilities, material charges or changes related to the Transmission Facilities, assignment and termination rights), or (C) waive or release any of its rights or remedies under the Transmission Facilities Lease; and

(ii) extensions of the term of the existing Transmission Facilities Lease at the then-current rate and terms.

(c) Sharer shall promptly deliver to Sharee copies of any and all amendments, supplements, modifications, changes or other alterations to the Transmission Facilities Lease.

3.11. Sale of Shared Equipment. Sharer shall not, without the prior written consent of the parties to this Agreement who collectively hold a majority of the Shared Channel spectrum capacity, sell, license, convey, assign or otherwise dispose of any Shared Equipment, provided that the foregoing shall not prohibit the sale in the ordinary course of business of worn-out, obsolete, surplus or unnecessary equipment, and further provided that the proceeds from any sale of Shared Equipment shall be distributed to the parties according to their Capacity Allocation Percentage.

Article 4: ALLOCATION OF RISK

4.1. Representations and Warranties of Each Party. Each party hereto represents and warrants to the other parties as follows: (a) it is duly organized and validly existing under the laws of its state of incorporation or state of formation, as applicable; (b) it has full power and authority and has taken all company action necessary to enter into and perform this Agreement and to consummate the transactions contemplated hereby; (c) the execution, delivery and performance by it of its obligations hereunder will not constitute a breach of, or conflict with, any other material agreement or arrangement, whether written or oral, by which it is bound, (d) other than filings with the FCC and as required by the Transmission Facilities Lease, the execution, delivery and performance of this Agreement by such party does not require the consent, approval or authorization, or filing with, any third party (including any lender) or any court or governmental authority; (e) this Agreement is its legal, valid and binding obligation, enforceable in accordance with the terms and conditions hereof; and (f) it has obtained all FCC and any other material governmental licenses, approvals and authorizations necessary for its operations on its station as currently operated by it.

4.2. Additional Representations and Covenants. During the Term, Sharer shall maintain the Transmission Facilities Lease in full force and effect and shall comply with such lease. Sharer represents and warrants to Sharee that it has provided Sharee with a true, complete and correct copy of the Transmission Facilities Lease. During the Term, if Sharer loses its rights in the Transmitter Site for any reason, then Sharer and Sharee shall promptly cooperate in good faith to develop and implement a plan to replace such site. Any site relocation costs for the Shared Channel during the Term shall be shared on a *pro rata* basis by the parties in accordance with each party's respective Capacity Allocation Percentage.

4.3. Indemnification.

(a) General Indemnification. Subject to Section 4.4, Sharer and Sharee shall indemnify, defend and hold each of the other parties to this Agreement harmless from and against any and all loss, liability, cost and expense, including reasonable attorneys' fees (collectively, "Losses"), arising from: (i) any breach of any representation or warranty made by it under this Agreement; (ii) any failure to comply with the covenants and obligations to be performed by it under this Agreement; (iii) its business or operations or its acts or omissions (including its use of the Transmission Facilities or its use of the Shared Channel), and (iv) the negotiation and execution of any Joinders to this Agreement by such party's Further Sharing Partners (provided that any indemnity under this Section 4.3(a)(iv) shall not extend to such Further Sharing Partner's exercise of rights as a Sharee under this Agreement), as applicable.

(b) Specific Indemnification. Subject to Section 4.4, and without limiting the terms of Section 4.3(a), Sharee shall indemnify, defend and hold each of the other parties to this Agreement harmless from and against any and all Losses arising from the termination by that Sharee of its current transmitter site lease(s).

(c) Programming Indemnification. Subject to Section 4.4, and without limiting the terms of Section 4.3(a) or Section 4.3(b), each party shall indemnify, defend and hold each of the other parties to this Agreement harmless from and against any and all Losses arising from or related to the operation of its television station using the Shared Channel and the content broadcast on such station, including without limitation Losses for indecency, libel, slander, infringement of trademarks or trade names, infringement of copyrights and proprietary rights, violation of rights of privacy and other violations of rights, the Communications Laws or other applicable law.

(d) Indemnification Procedures. The party seeking indemnification hereunder will (i) give the indemnifying party written notice of the relevant claim, (ii) cooperate with the indemnifying party, at the indemnifying party's expense, in the defense of such claim, and (iii) give the indemnifying party the right to control the defense and settlement of any such claim, except that the indemnifying party shall not enter into any settlement without the indemnified party's prior written approval. The indemnified party shall have no authority to settle any claim on behalf of the indemnifying party.

4.4. LIMITATIONS OF LIABILITY. IN NO EVENT SHALL ANY PARTY HAVE ANY LIABILITY, 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. SHARER HEREBY EXPRESSLY DISCLAIMS ANY AND ALL LIABILITY WITH RESPECT TO ANY SHAREE'S STATION, AND SHAREE HEREBY EXPRESSLY DISCLAIMS ANY AND ALL LIABILITY WITH RESPECT TO SHARER'S STATION. EXCEPT AS PROVIDED IN THIS AGREEMENT, NO PARTY SHALL HAVE ANY OBLIGATION OR LIABILITY RESULTING FROM ANOTHER PARTY'S OWNERSHIP OR OPERATION OF ITS RESPECTIVE STATION ON THE SHARED CHANNEL.

4.5. Indemnification. The parties' obligations under Sections 4.3 and 4.4 shall survive any termination of this Agreement.

Article 5: OPERATING BREACH; MATERIAL BREACH; TERMINATION AND OTHER REMEDIES

5.1. Operating Breaches. The following shall constitute an "Operating Breach" for purposes of this Agreement:

(a) Any breach by Sharer or any Sharee of its obligations (i) under the following Sections of this Agreement: Section 2.1, Section 2.2, Section 2.3, Section 3.3 or Section 3.5 or (ii) under any other provision of this Agreement which breach results in the degradation of any party's signal or impairment of any party's ability to broadcast on the Shared Channel pursuant to the terms of this Agreement, which remains uncured for at least thirty (30) days after delivery of written notice of such Operating Breach to such breaching party;

(b) Any breach by Sharer of its obligations (i) under the following Sections of this Agreement: Section 2.4, Section 3.1(a), Section 3.1(c), Section 3.1(e) or Section 3.4(a) or (ii) under any other provision of this Agreement which breach impairs Sharee's rights to access the Transmission Facilities, which remains uncured for at least thirty (30) days after delivery of written notice of such Operating Breach to Sharer; or

(c) The failure to pay any monies owed to any other party under this Agreement (i) within forty five (45) days of the due date or (ii) on a systemic basis (as evidenced by payments which are more than thirty (30) days past due on at least three (3) occasions during any calendar year).

Any notice of an Operating Breach must be provided in writing and describe such Operating Breach with reasonable specificity. A courtesy copy of any such notice shall be delivered to all parties to this Agreement (whether or not any such party is the subject of such breach).

5.2. Remedies for Operating Breaches.

(a) Operating Breach by Sharee. In the event of an Operating Breach by any Sharee,

(i) Sharer may take remedial actions to cure the breach on Sharee's behalf, the cost of which shall be borne solely by such Sharee; or

(ii) Sharer or any non-breaching Sharee may take the dispute to binding arbitration, pursuant to Section 6.3.

(b) Operating Breach by Sharer. In the event of an Operating Breach by Sharer:

(i) Sharee may take the dispute to binding arbitration, pursuant to Section 6.3; or

(ii) Sharee may exercise its Self-Help Rights (defined below).

(c) Self-Help. Beginning fourteen (14) days after Sharee delivers notice of an Operating Breach to Sharer, Sharee may, at its option and without any interference or objection from Sharer, have as a remedy (in addition to the other rights and remedies set forth in this Agreement or available at law or in equity) the right to take such actions in the same manner and to the same extent as Sharer might do in order to cure such Operating Breach, including without limitation making any maintenance or repairs to the Transmission Facilities ("**Self-Help Rights**"), subject to any applicable law and regulations, including the Communications Laws, and subject to reimbursement of its reasonable and documented out-of-pocket expenses by Sharer and any other Sharee in proportion to their respective Capacity Allocation Percentages; provided that any such actions shall be undertaken by appropriately experienced individuals and in a manner consistent with Good Engineering Practices, and permitted by the Transmission Facilities Lease. Notwithstanding any other provision herein, Sharee shall not:

(i) take any action pursuant to this Agreement that would reasonably be expected to constitute or result in the voluntary or involuntary assignment of any FCC license or a voluntary or involuntary change of control (as defined for purposes of the Communications Laws) of any entity holding FCC licenses for stations subject to this Agreement;

(ii) assign, lease, pledge, sell or otherwise transfer any of the Shared Equipment or Sharer's interests in the Transmission Facilities Lease while exercising its Self-Help Rights; or

(iii) upon Sharer's cure of such Operating Breach, be permitted to continue exercising Self-Help Rights over the Shared Equipment or Sharer's interests in the Transmission Facilities Lease except as permitted under this Agreement or unless a subsequent Operating Breach occurs that continues uncured for thirty (30) days after written notice to Sharer.

5.3. Termination. This Agreement shall be subject to the following termination rights:

(a) FCC Conditions. If the FCC imposes a condition on the approval of this Agreement that (i) has the effect of materially increasing the cost of performance by a party of its obligations under this Agreement, or (ii) that cancels, changes or supersedes any material term or provision of this Agreement (collectively "**Regulatory Condition**"), then the parties shall negotiate in good faith to modify this Agreement in a manner consistent with the form, intent, and purpose of this Agreement and as necessary to comply with such Regulatory Condition, while maintaining to the greatest extent possible the benefit of the bargain of this Agreement prior to the imposition of such Regulatory Condition. Should the parties not be able to agree on modifications necessary to comply with such Regulatory Condition, then, upon prior written notice, any party may elect to submit the matter to binding arbitration pursuant to Section 6.3, such that arbitrators shall determine what modifications shall be necessary to comply with the Regulatory Condition and to maintain, to the greatest extent possible the benefit of the bargain of this Agreement. In the event that the arbitrator determines that no modification is possible that would both satisfy the Regulatory Condition and reasonably maintain the benefit of the bargain of this Agreement, any party may terminate this Agreement by providing written notice to the other parties.

(b) Procedures for Material Breach. Subject to Section 5.3(d) and Section 5.3(e), any party may terminate this Agreement in the event of a Material Breach (defined below) by any other party and subject to the following terms and conditions:

(i) a "**Material Breach**" means (A) an Operating Breach that results in a fundamental impairment of another party's ability to broadcast its programming on the Shared Channel or (B) a default of a payment obligation hereunder in excess of \$25,000 which has been uncured for at least 45 days after delivery of written notice of such payment deficiency;

(ii) a non-breaching party shall have provided at least 45 days prior written notice of such Material Breach to the party in alleged Material Breach, describing such Material Breach with reasonable specificity (with a courtesy copy of any such notice delivered to all parties to this Agreement, whether or not any such party is the subject of such breach), and complied or stood ready to comply with the procedures set forth in Section 6.2; and

(iii) such Material Breach shall have been determined and declared by binding arbitration, pursuant to Section 6.3.

(c) Material Breach by any Sharee. In the event of a Material Breach by Sharee:

(i) following arbitration, if Sharee is declared to be in Material Breach of this Agreement, Sharer or the non-breaching Sharee may terminate this Agreement solely with respect to the breaching Sharee by written notice to such breaching Sharee, provided that such notice of termination shall not take effect for a period of one hundred and eighty (180) days (the "**Sharee Wind-Down Period**") in order for the breaching Sharee to make the appropriate filings with the FCC and/or make alternative channel sharing arrangements with a third party. A courtesy copy of the termination notice shall also be delivered to any other parties to this Agreement;

(ii) during the Sharee Wind-Down Period and any arbitration period, Sharer shall continue to transmit content provided by the breaching Sharee using the Transmission Facilities, provided that Sharer may (i) reduce the spectrum allotted to such Sharee under the then-current engineering plan so that such Sharee only retains spectrum usage rights adequate to allow it to provide one SD program stream, and (ii) reallocate such reduced spectrum usage rights (A) with respect to any Sharee (other than a Further Sharing Partner) to Sharer and any non-breaching Sharee on a *pro rata* basis in accordance with their respective Capacity Allocation Percentages or (B) with respect to a Further Sharing Partner, to its respective Sub-Sharer; and

(iii) at the end of the Sharee Wind-Down Period, Sharer and the non-breaching Sharee(s) shall have no further obligations to such breaching Sharee under this Agreement (except for any obligations that expressly survive termination).

(d) Material Breach by Sharer. In the event of a Material Breach under this Agreement by Sharer:

(i) following arbitration, if Sharer is declared to be in Material Breach of this Agreement, any Sharee may terminate this Agreement with respect to Sharer by written notice, provided that such notice of termination shall not take effect for a period of one hundred and eighty (180) days (the "**Sharer Wind-Down Period**") in order for Sharer and Sharee to make the appropriate filings with the FCC and/or make alternative channel sharing arrangements with a third party. Any Sharee may exercise all Self-Help Rights during such period. A courtesy copy of the termination notice shall also be delivered to any other Sharee;

(ii) during the Sharer Wind-Down Period and any arbitration period, Sharer shall continue to transmit content provided by Sharee using the Transmission Facilities. If requested by Sharee, Sharer will (i) reduce the spectrum allotted to Sharer's Station under the then-current

engineering plan so that Sharer only retains spectrum usage rights adequate to allow it to provide one SD program stream, and (ii) reallocate such reduced spectrum usage rights to the Sharee on a *pro rata* basis in accordance with their respective Capacity Allocation Percentages; and

(iii) at the end of the Sharer Wind-Down Period, this Agreement will terminate and from and after such termination date, Sharer shall have no further obligations to any party under this Agreement (except for any obligations that expressly survive termination).

(e) Loss of License. During the Term, any party may elect to surrender its FCC license and terminate its participation in this Agreement subject to the terms below. If such surrender and termination is made by any party other than a Further Sharing Partner, then prior to making such election, such party shall provide the other parties hereto a reasonable opportunity to acquire a *pro rata* portion of such interest and its rights under this Agreement on fair market terms prior to any such termination. If the FCC authorization for any party's station is revoked, involuntarily relinquished, involuntarily withdrawn, rescinded, canceled, not renewed or otherwise lost, and the FCC order providing for such action is a Final Order (including upon completion of the Sharee Wind-Down Period or the Sharer Wind-Down Period), then simultaneously therewith such party's rights in this Agreement shall terminate, the spectrum usage rights associated with such party's station shall revert to the other parties on a *pro rata* basis and such party's Capacity Allocation shall be automatically reallocated to the remaining parties, all in accordance with their respective Capacity Allocation Percentages; provided, however, the spectrum usage rights and other rights and obligations in this Agreement held by any Further Sharing Partner shall accrete and revert to its respective Sub-Sharer. The parties shall make and prosecute such FCC filings and take such further actions as may be reasonably necessary to permit the applicable parties to assume (and thereafter be the holder of) the portion of the forfeited spectrum they are entitled to under this Agreement. For purposes of this Agreement, a "Final Order" is defined as an action taken by the FCC, including action duly taken by FCC staff under delegated authority, which has not been reversed, stayed, enjoined, set aside, annulled or suspended; with respect to which no timely request for stay, petition for rehearing or reconsideration, appeal or certiorari or sua sponte action of the FCC with comparable effect shall be pending; and as to which the time for filing any such request, petition, appeal, certiorari or for the taking of any such sua sponte action by the FCC shall have expired or otherwise terminated.

(f) Transfer of Transmission Facilities Lease and Shared Equipment. Unless otherwise agreed to by the parties, in the event this Agreement is terminated as to Sharer, one or more Sharees may elect to take the place of Sharer and manage the Transmission Facilities for the Shared Channel. In order to accomplish such substitution, Sharer agrees to assign and such Sharee will assume, the Transmission Facilities Lease (subject to any required landlord consent) and its rights and obligations as Sharer under this Agreement. Such Sharee that will be the new host shall also acquire title to the Shared Equipment from Sharer for two-thirds of then-current book value. All conveyances and assignments by Sharer pursuant to this Section shall be free and clear of liens, claims and encumbrances. Sharer also agrees to promptly remove its Exclusive Equipment from the Transmitter Site and cease all further use of the Shared Channel.

(g) Bankruptcy. The parties may terminate this Agreement with respect to any other party by written notice to the others upon (i) the institution by or against such party of insolvency, receivership or bankruptcy proceedings, (ii) such party making an assignment for the benefit of creditors or (iii) such party's dissolution or ceasing to do business.

(h) Survival. 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

3.7, 4.3, 4.4, 4.5, 5.3(f), 5.3(g), 7.1 (and the confidentiality obligation set forth in Section 7.2(a)), 7.3 and all other provisions related to obligations to pay expenses shall survive any termination of this Agreement.

Article 6: DISPUTE RESOLUTION

6.1. Governing Law. The construction and performance of this Agreement shall be governed by the laws of the State of Delaware without giving effect to the choice of law provisions thereof.

6.2. Tiered Dispute Resolution.

(a) Principal Liaisons: Executive Officer Conference. With respect to any issue, controversy or dispute between the parties, first the Principal Liaisons shall confer in good faith and endeavor to resolve such matter. If the parties are unable to come to an agreement on a given matter through the Principal Liaisons, the parties' respective executive officers (or their designees of appropriate seniority) shall meet and confer in good faith in an attempt to resolve the issue.

(b) Special Master Consultation. If such discussions are unsuccessful, upon mutual agreement of the parties, the 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 (the "Special Master") to serve as a non-binding mediator. All proceedings and decisions of a Special Master under this Section 6.2 shall be deemed Confidential Information of each party hereto in accordance with Section 7.1, subject to applicable law

(c) Arbitration. If the parties are unable to resolve an issue in consultation with the Special Master in a timely manner, any party may submit the issue to binding arbitration pursuant to Section 6.3.

6.3. Arbitration. Any controversy or claim arising from or relating to this Agreement or the breach hereof shall be settled by arbitration administered by the American Arbitration Association ("AAA") under its applicable Procedures for Large, Complex Commercial Disputes, and judgment on the award rendered by the arbitrator(s) shall be binding on the parties and may be entered in any court having jurisdiction thereof. The seat of the arbitration shall be New York. The arbitrators will be selected in the manner prescribed by AAA rules from a panel of persons having experience with and knowledge of broadcast television and the FCC rules applicable thereto. The parties shall equally split the costs of such arbitrator, provided, however, that the arbitrator may award any such portion of the arbitration costs and fees (including attorneys' fees) to the prevailing party or parties as it deems equitable. All proceedings and decisions of any arbitration under this Section 6.3 shall be deemed Confidential Information of each party hereto in accordance with Section 7.1, subject to applicable law.

6.4. Preliminary Relief. In addition to any other available remedies, any party may apply to the arbitrator seeking injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Any party also may, without waiving any remedy under this Agreement, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party, pending the establishment of the arbitral tribunal (or pending the arbitral tribunal's determination of the merits of the controversy).

6.5. Remedies: Specific Performance. The rights and remedies of the parties hereto shall be cumulative and not alternative. In the event of failure or threatened failure by any party to comply with

the terms of this Agreement, the other parties shall be entitled to seek an injunction 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. The prevailing party in an action or proceeding brought to enforce the performance or compliance of any provision of this Agreement may recover its arbitration costs and reasonable attorneys' fees and costs from the non-prevailing party or parties.

Article 7: GENERAL PROVISIONS

7.1. Confidentiality. Subject to the requirements of applicable law or as otherwise agreed upon by the parties, all non-public information regarding Sharer and Sharee and their respective businesses and properties that is disclosed by one party to another in connection with the negotiation, execution or performance of this Agreement, including without limitation any financial information (collectively, "**Confidential Information**") shall be confidential and shall not be disclosed to any other person or entity. This Section 7.1 shall survive any termination or expiration of this Agreement. Notwithstanding the foregoing, a party may disclose Confidential Information of any other party:

(a) to its own directors, officers, employees, lenders, agents and advisors (the "**Representatives**") who need to know such information for the purpose of (i) evaluating and consummating the transactions contemplated by this Agreement and (ii) facilitating a party's performance hereunder, provided that such party informs such Representatives of the confidential nature of the Confidential Information, and such Representatives agree to act in accordance with the terms and conditions of this provision;

(b) to one or more prospective investors and their advisors, provided such prospective investor agrees to be bound by a non-disclosure agreement with Sharer or a Sharee, as appropriate;

(c) in the event a party hereto is requested or required by law, regulation, interrogatory, request for information or documents, subpoena, deposition, civil investigative demand or other process to disclose any Confidential Information; or

(d) to one or more prospective Further Sharing Partners and their advisors, provided such prospective Further Sharing Partner agrees to be bound by a non-disclosure agreement with the applicable Sub-Sharer.

7.2. Information.

(a) Each party shall provide the other parties, on a confidential basis, with copies of any FCC notice of violation or notice of apparent liability, or any other material written notice from the FCC or any other governmental entity, that it receives with respect to the technical operations of its station that subject to this Agreement. Sharer shall provide Sharee with copies of any notices it receives or delivers from the Tower lessor(s) with respect to the Transmission Facilities Lease, Transmitter Site or any back-up site.

(b) If any party becomes subject to litigation or similar proceedings before the FCC (including without limitation initiation of enforcement actions), Internal Revenue Service or other court or governmental authority that is reasonably likely to have a material adverse effect on such party or its television station using or proposed to be using the Shared Channel, then it shall promptly provide written notice of such proceeding to the other parties hereto and provide all information with respect thereto as reasonably requested by the other parties.

(c) If any party files a petition in bankruptcy, has an involuntary petition in bankruptcy filed against it, files for reorganization or arranges for the appointment of a receiver or trustee in bankruptcy or reorganization of all or a substantial portion of its assets or of the assets related to its television station using or proposed to be using the Shared Channel, or it makes an assignment for such purposes for the benefit of creditors, then it shall promptly provide written notice of such proceeding to the other parties and provide all information with respect thereto as reasonably requested by the other parties.

7.3. Fees and Expenses. Each party to this Agreement shall bear and pay all fees, costs and expenses (including all legal fees and accounting fees) that have been incurred or that are incurred by such party in connection with the transactions contemplated hereby.

7.4. Assignment and Subleasing. Except as otherwise provided in Section 2.5(b), no party may assign all of its rights and obligations under this Agreement without the prior written consent of the other parties hereto, except that (i) Sharer shall assign this Agreement to any FCC-approved assignee or transferee of Sharer's Station in connection with any assignment of FCC licenses or transfer of control with respect to Sharer's Station who assumes this Agreement, in a writing delivered to the other parties to this Agreement, (ii) Sharee shall assign this Agreement to any FCC-approved assignee or transferee of Sharee's Station in connection with any assignment of FCC licenses or transfer of control with respect to Sharee's Station who assumes this Agreement in a writing delivered to the other parties to this Agreement, and (iii) any party may assign this Agreement to an entity controlling, controlled by or under common control with such party upon written notice to (but without need for consent from) the other parties. For the avoidance of doubt, no party shall sell, transfer, convey or assign all or substantially all of the non-license assets of its station subject to this Agreement to an unaffiliated third party without the main station FCC licenses for such station and the obligation to assign this Agreement to any such assignee or transferee. The terms of this Agreement shall bind and inure to the benefit of the parties' respective successors and any permitted assigns. Except as provided in Section 2.5, no party may sublease its rights on its allocated portion of the spectrum under this Agreement to a third party without the prior written consent of the other parties hereto. Notwithstanding anything to the contrary herein, each party may collaterally assign its rights in this Agreement to its lender.

7.5. Third Party Beneficiaries. 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 permitted successors and assigns.

7.6. Severability. The transactions contemplated by this Agreement are intended to comply with the Communications Laws. Except as provided in Section 5.3(a), if any provision of this Agreement is (i) determined to be void or unenforceable in whole or in part, it shall not be deemed to affect or impair the invalidity of any other provision; (ii) so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable; or (iii) declared invalid or unenforceable for any reason other than overbreadth, the offending provision will be modified so as to maintain the essential benefits of the bargain between the parties hereto to the maximum extent possible, consistent with the Communications Laws.

7.7. Notices. Any notice pursuant to this Agreement shall be in writing and shall be deemed delivered on the date of personal delivery or confirmed 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 Sharer:

NRJ TV SAN FRAN OPCO, LLC
722 S. Denton Tap Road, Suite 130
Coppell, TX 75019
Attention: Ted Bartley
Email: ted@nrjventures.com

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

Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006
Attention: Jessica Rosenthal and Ari Meltzer
Email: JRosenthal@wileyrein.com and ameltzer@wileyrein.com

if to Sharee:

NRJ TV SF OPCO, LLC
722 S. Denton Tap Road, Suite 130
Coppell, TX 75019
Attention: Ted Bartley
Email: ted@nrjventures.com

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

Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006
Attention: Jessica Rosenthal and Ari Meltzer
Email: JRosenthal@wileyrein.com and ameltzer@wileyrein.com

7.8. Relationship of the Parties. The parties to this Agreement are independent contractors. No party shall have any right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind, any other party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture or partnership between the parties or to impose any liability attributable to such a relationship upon the parties.

7.9. Amendment. This Agreement may not be amended except in a writing executed by all 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.

7.10. Construction.

(a) For purposes of this Agreement, whenever the context requires: (i) the singular number shall include the plural, and vice versa; (ii) the masculine gender shall include the feminine and neuter genders; (iii) the feminine gender shall include the masculine and neuter genders; and (iv) the neuter gender shall include the masculine and feminine genders.

(b) Each of the parties hereto has been represented by legal counsel except to the extent that such party has declined legal counsel. Accordingly, the parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.

(c) As used in this Agreement, the words "include" and "including," and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words "without limitation."

7.11. Entire Agreement; Counterparts. This Agreement (together with all Schedules hereto) constitutes the entire agreement and understanding among the parties hereto with respect to the subject matter hereof and supersedes all prior communications, agreements and understandings with respect to the subject matter hereof, including without limitation the Prior Agreement. No party makes any representation or warranty with respect to the transactions contemplated by this Agreement except as expressly set forth in this Agreement. No party shall be authorized to act as agent of or otherwise represent the other parties to this Agreement. This Agreement may be executed in counterparts, and once signed, any reproduction of this Agreement made by reliable means (for example, .pdf or .TIFF format), will be considered an original, and all of which together constitute one and the same instrument.

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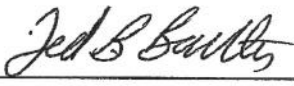
[SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE TO AMENDED AND RESTATED
CHANNEL AND FACILITIES SHARING AGREEMENT

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

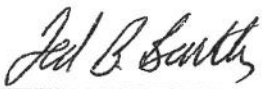
SHARER:

NRJ TV SAN FRAN OPCO, LLC
NRJ TV SAN FRAN LICENSE CO, LLC

By: 
Name: Ted B. Bartley
Title: CEO & President

SHAREE:

NRJ TV SF OPCO, LLC
NRJ TV SF LICENSE CO, LLC

By: 
Name: Ted B. Bartley
Title: CEO and President