

AGREEMENT TO FORM
NAGRASTAR LLC
BY AND BETWEEN
ECHOSTAR COMMUNICATIONS CORPORATION
AND
KUDELSKI S.A.

CASE NO.
SA CV 03-950 DOC (JTLA)
ECHOSTAR SATELLITE CORP., et al.,

vs.

NDS GROUP PLC, et al.

DEFENDANT'S EXHIBIT 535

DATE _____ IDEN.

DATE _____ EVID.

BY _____
Deputy Clerk

HIGHLY CONFIDENTIAL

Case No. SA CV03-950 DOC (JTL)

AGREEMENT TO FORM
NAGRASTAR LLC
BY AND BETWEEN
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AND
KUDELSKI S.A.

EXHIBIT 535
Rachel A. Ferner
CSR No. 6948
Date: 8/9/07
Witness:
Guggenheim

HIGHLY CONFIDENTIAL

Case No. SA CV03-950 DOC (JTL)

ESC0158642

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AGREEMENT TO FORM NAGRASTAR LLC

THIS AGREEMENT TO FORM NAGRASTAR LLC ("Agreement"), made and entered into as of the twenty-third day of June, 1998, by and between Kudelski S.A. (hereinafter referred to as "Kudelski"), incorporated under the laws of Switzerland with principal place of business at 1033 Cheseaux Switzerland, and EchoStar Communications Corporation, a Nevada corporation with its principal place of business at 5701 S. Santa Fe Drive, Littleton, Colorado 80120 USA (hereinafter referred to as "EchoStar") and EchoStar Satellite Corporation, a Colorado corporation with its principal place of business at 5701 S. Santa Fe Drive, Littleton, Colorado 80120 USA (hereinafter referred to as "ESC").

INTRODUCTION

- A. ESC, EchoStar, and Kudelski have Pre-Existing Contracts for the provision of certain services and products by Kudelski to ESC and EchoStar.
- B. The parties desire to restructure their rights, duties, and obligations under the Pre-existing Contracts, in the manner set forth in this Agreement.
- C. Kudelski desires that upon completion of the transactions contemplated by this Agreement: (i) Kudelski will be a party to certain agreements with NagraStar and EchoStar, and (ii) except for all duties and obligations with respect to indemnification and warranty, the Pre-existing Contracts shall terminate and be null and void and Kudelski shall have no rights, duties, or obligations under the Pre-existing Contracts.
- D. ESC and EchoStar desire that upon completion of the transactions contemplated by this Agreement: (i) EchoStar will be a party to certain agreements with NagraStar and Kudelski, and (ii) except for all rights with respect to indemnification and warranty, the Pre-existing Contracts shall terminate and be null and void and ESC and EchoStar shall have no rights, duties, or obligations under the Pre-existing Contracts.

NOW, THEREFORE, in consideration of the mutual agreements hereinafter set forth, the Parties represent, warrant, covenant and agree as follows:

ARTICLE I DEFINITIONS

For purposes of this Agreement, where written with an initial capital letter, the following terms, words and phrases shall have the following meanings:

- 1.1 Affiliate. The term "Affiliate" shall mean any person or entity directly or indirectly controlling, controlled by or under common control with, a specified person or entity.

- 1.2 Ancillary Agreement(s). The term "Ancillary Agreement(s)" shall mean the EchoStar Agreements, the Kudelski Agreements, the Escrow Agreement, and the Residual Agreement.
- 1.3 Closing. The term "Closing" shall mean the actions taken to effect the transactions contemplated herein, all as more specifically described in Article V hereof.
- 1.4 Closing Date. The term "Closing Date" shall mean the date and time at which the Closing is held.
- 1.5 EchoStar Agreement(s). The term "EchoStar Agreement(s)" shall mean the following agreements, by and between EchoStar and NagraStar, to be agreed upon by EchoStar and Kudelski prior to the Closing Date: the EchoStar Software License Agreement (Appendix E-1 to this Agreement), the EchoStar Service and Development Agreement (Appendix E-2), and the EchoStar Smart Card Purchase Agreement (Appendix E-3).
- 1.6 EchoStar Service and Development Agreement. The term "EchoStar Service and Development Agreement" shall mean that certain agreement by and between EchoStar and NagraStar pursuant to which NagraStar shall service and develop for EchoStar and its Affiliates various uplink datastream management and other systems, and which shall at Closing be executed and attached hereto as Appendix E-2.
- 1.7 EchoStar Smart Card Purchase Agreement. The term "EchoStar Smart Card Purchase Agreement" shall mean that certain agreement by and between EchoStar and NagraStar pursuant to which NagraStar shall sell Smart Cards to EchoStar and its Affiliates, and which shall at Closing be executed and attached hereto as Appendix E-3.
- 1.8 EchoStar Software License Agreement. The term "EchoStar Software License Agreement" shall mean that certain agreement by and between EchoStar and NagraStar pursuant to which NagraStar shall grant EchoStar and its Affiliates certain rights to use certain systems and technology, and which shall at Closing be executed and attached hereto as Appendix E-1.
- 1.9 Escrow Agreement. The term "Escrow Agreement" shall mean that certain agreement by and between Kudelski, EchoStar, NagraStar, and an escrow agent, to be agreed upon prior to the Closing Date, pursuant to which Kudelski shall place certain Kudelski technology into escrow for the benefit of NagraStar and EchoStar, and which shall at Closing be executed and attached hereto as Appendix C-2.
- 1.10 Kudelski Agreement(s). The term "Kudelski Agreement(s)" shall mean the following agreements by and between Kudelski and NagraStar, to be agreed upon by Kudelski and EchoStar prior to the Closing Date: the Kudelski Software License Agreement (Appendix

D-1 to this Agreement), the Kudelski Service and Development Agreement (Appendix D-2), and the Kudelski Smart Card Purchase Agreement (Appendix D-3).

- 1.11 Kudelski Service and Development Agreement. The term "Kudelski Service and Development Agreement" shall mean that certain agreement by and between Kudelski and NagraStar pursuant to which each shall provide service and development services for the other on an ad hoc basis, and which shall at Closing be executed and attached hereto as Appendix D-2.
- 1.12 Kudelski Smart Card Purchase Agreement. The term "Kudelski Smart Card Purchase Agreement" shall mean that certain agreement by and between Kudelski and NagraStar pursuant to which Kudelski shall sell Smart Cards to NagraStar, and which shall at Closing be executed and attached hereto as Appendix D-3.
- 1.13 Kudelski Software License Agreement. The term "Kudelski Software License Agreement" shall mean that certain agreement by and between Kudelski and NagraStar pursuant to which NagraStar shall be granted certain rights to Kudelski technology, and which shall at Closing be executed and attached hereto as Appendix D-1.
- 1.14 NagraStar. The term "NagraStar" shall mean that certain limited liability company formed by the Parties pursuant to Section 3.1 hereof, which shall be named "NagraStar LLC".
- 1.15 Operating Agreement. The term "Operating Agreement" shall mean those policies, practices and procedures which shall govern the operation of NagraStar, to be agreed upon by EchoStar and Kudelski prior to the Closing Date and which at Closing shall be attached hereto as Appendix B.
- 1.16 Party, Parties. The terms "Party" or "Parties" shall mean Kudelski and/or EchoStar as the context requires.
- 1.17 Pre-Existing Contracts. The term "Pre-existing Contracts" shall mean: (a) the Digital NASP Offer for EchoStar, by and between ESC and the Nagra Kudelski Group, dated February 2, 1995; (b) the Information Management System Offer for EchoStar, by and between EchoStar and the Nagra Kudelski Group, dated April 7, 1995; and (c) the NagraVision Offer for Support of EchoStar Operations, by and between Kudelski, and either EchoStar or ESC (the agreement is not clear on the precise party), dated February 5, 1997.
- 1.18 Product(s). The term "Products" shall mean the Smart Cards, the decoder conditional access task, uplink datastream management systems, and any other products or services within the scope of NagraStar's general purpose, which the Parties may agree that NagraStar shall design, manufacture, or distribute in accordance with Section 2.2 hereof.

- 1.19 Residual Agreement. The term "Residual Agreement" shall mean a Service and Development Agreement by and between Kudelski and EchoStar pursuant to which Kudelski shall agree to provide service and development for EchoStar and its Affiliates on an ad hoc basis at EchoStar's request, and which shall at Closing be executed and attached hereto as Appendix C-1.
- 1.20 Subsidiary. The term "Subsidiary" shall mean any corporation more than fifty percent (50%) of whose outstanding shares or stock representing the right to vote (except by reason of the occurrence of a contingency) for the election of directors or members of a similar managing body are owned or controlled, directly or indirectly, by a specified party.

ARTICLE II PURPOSE AND SCOPE

- 2.1 General Purpose and Initial Scope. Subject to and upon the terms and conditions hereinafter set out, the Parties shall take all necessary steps required to cause the formation of a limited liability company, pursuant to the Colorado Limited Liability Company Act, to be named "NagraStar LLC". The purpose and initial scope of NagraStar, notwithstanding the generality of the purposes enumerated in the Articles of Organization of NagraStar, shall be as set forth in the Operating Agreement.
- 2.2 Future Scope. In general, the future scope of the Company shall be as set forth in the Operating Agreement.

ARTICLE III ENTITY FORMATION

- 3.1 Formation. The Parties have agreed upon the form of NagraStar's Articles of Organization and shall ensure that such Articles have been filed with the appropriate authorities of the State of Colorado. Such Articles of Organization shall, at Closing, be substantially in the form of the attached Appendix A. In addition, the Parties shall adopt the Operating Agreement of NagraStar, which shall be attached hereto at Closing as Appendix B. No change shall be made in or to said Articles of Organization or said Operating Agreement prior to the Closing Date, except with the prior written consent of the Parties.
- 3.2 Contributions. EchoStar shall be issued at Closing a certificate representing a fifty percent (50%) ownership interest in NagraStar in consideration for a contribution of One Million U.S. Dollars (\$1,000,000.00) paid by EchoStar to NagraStar. Kudelski shall be issued at Closing, a certificate representing a fifty percent (50%) ownership interest in NagraStar in consideration of Kudelski's grants, contributions and other obligations as more fully defined in the Kudelski Agreements

- 3.3 Expenses of Formation. Each Party will pay its respective costs and expenses of consummating the transactions contemplated hereby including, without limitation, attorney fees, obtaining all necessary consents and approvals, and effectuating contributions to NagraStar under Section 3.2 hereof; it being agreed, however, that all taxes and fees levied on or in respect of the transactions contemplated to occur at the Closing, however designated and whenever levied, including without limitation, sales, customs, excise, purchase, use, turnover, securities transfer, mortgage registration, deed and other property transfer fees and taxes (excluding any income taxes incurred by any Party by virtue of said transactions) or amounts levied in lieu thereof by any government or agency thereof shall be borne by Kudelski and EchoStar equally.

ARTICLE IV REPRESENTATIONS AND WARRANTIES

Each party hereto shall, effective as of the Closing Date, represent and warrant as appropriate to the other parties as follows:

- 4.1 Organization and Standing. It is duly organized and validly existing under the laws of the jurisdiction of its organization, has all requisite corporate authority to carry on its business as now being conducted by it, and is in good standing in each jurisdiction in which the nature of business conducted therein by it requires it to be qualified therein to do business.
- 4.2 Authority. It will have taken prior to the Closing Date all corporate action necessary for the authorization, execution, delivery and performance of this Agreement, and when accepted by the other parties, this Agreement will constitute a valid and binding obligation, enforceable against it in accordance with the terms hereof.
- 4.3 Litigation. It has no actual knowledge of any material and adverse actions, suits, or proceedings pending, threatened, or reasonably likely to be brought with respect to, or which may have a material effect upon, the technology to be made available to NagraStar, except as identified and delivered in accordance with Section 5.4 hereof.
- 4.4 Absence of Conflict. Neither the execution nor delivery of this Agreement, nor the consummation of the transactions herein contemplated, nor the fulfillment of or compliance with the terms and conditions hereof will conflict with its Articles of Incorporation, Statutes, By-laws, or any similar instrument or result in a breach of or constitute a default under or conflict with any material contract, agreement or instrument to which it is a party or by which it or its Subsidiaries are bound (or if any of the same may be breached or put into default, that the other parties thereto shall have consented to or otherwise waived in writing any such breach or default effective as of the Closing Date).

- 4.5 Investment Intent. The Parties are acquiring the membership interests in NagraStar for investment purposes and not with a view to distribution thereof, and each party hereto agrees that NagraStar certificates shall bear an appropriate legend to represent this intent, and that NagraStar shall not permit such membership interests to be transferred unless and until both Parties receive an opinion from their respective counsel that such transfer will not violate all applicable securities laws, and both Parties have approved the transfer in writing.
- 4.6 Undisclosed Liabilities. There will be as of the Closing Date, no debts, liabilities, contracts or other obligations with respect to the technology to be made available to NagraStar by Kudelski pursuant to the NagraStar Agreements, which will impair the right and ability of NagraStar to fully utilize and derive all benefits from such technology.
- 4.7 Nagra Kudelski Group Warranty. Kudelski represents, warrants, and covenants to ESC and EchoStar that as of the Closing Date: (i) Nagra Lysis S.A. and Nagra Plus S.A. will have no rights under the Pre-Existing Contracts and will assert no claims arising therefrom against ESC or EchoStar; and (ii) Kudelski is the sole owner of all of the intellectual property (including without limitation any applicable patents) which it is obligated to provide in whole or in part under the Operating Agreement and the Ancillary Agreements.

ARTICLE V CLOSING AND CONDITIONS THEREOF

- 5.1 Determination of Closing Date. The Closing of the transactions provided for in this Agreement shall take place at 2:00 p.m. on June 23, 1998, at EchoStar's main offices in Littleton, Colorado, or at such other time and place as may be mutually agreed upon by the Parties.
- 5.2 Events of Closing. Subject to the fulfillment of the requirements of each party set forth herein which are to be fulfilled on or before the Closing Date, EchoStar and Kudelski shall take such action and execute and deliver such certificates, documents and instruments as may be reasonably required by counsel for either Party to complete the transactions contemplated by this Agreement in accordance with its purpose and intent including, but not limited to, the payment by each Party of the consideration for, and the issuance of their respective certificates representing membership interests in NagraStar as provided for in Section 3.2 hereof.
- 5.3 Conduct of Business Pending Closing. Between the date hereof and the Closing Date, except as otherwise consented to or approved in writing by the other parties or provided for herein, each party shall: (a) conduct its business with respect to the technology to be made available to NagraStar pursuant to the Kudelski Agreements solely in a manner consistent with the intent and purpose of this Agreement and shall promptly notify the other parties in the event

it has knowledge of any facts which would adversely affect its ability to fulfill its obligations hereunder, and (b) comply with all applicable laws and regulations.

5.4 Conditions Precedent to Each Party's Obligations. All obligations of the parties hereunder are subject to the fulfillment, prior to or at the Closing, of each of the following conditions:

- a Each party shall have obtained all requisite internal corporate approvals and all consents which may be required from its shareholders and/or board of directors in order to fully perform its obligations hereunder;
- b The representations, warranties and covenants of the parties contained in this Agreement shall be true and correct in all material respects at the Closing Date;
- c Each party shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by it prior to or at Closing;
- d Each party shall have been furnished with a certificate of the appropriate officers of the other parties hereto, dated the Closing Date, certifying to the best of their knowledge, in such detail as the receiving Party may reasonably request, the fulfillment of the conditions set forth in this Section 5.4;
- e All of the agreements and other documents to be concluded and/or delivered by the parties prior to the Closing Date and attached hereto as appendices shall have been mutually agreed upon and shall have been executed at Closing;
- f Each party shall have been furnished with an opinion satisfactory to it of counsel for the other parties hereto dated the Closing Date, and addressed to the receiving party, to the effect that:
 - i The party is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction in which it was organized and incorporated.
 - ii The execution, delivery and performance by such party of this Agreement, and the sale, transfer, conveyance, assignment and deliveries contemplated hereby, have been duly authorized by all requisite corporate action; this Agreement constitutes the valid and binding obligation of such party, enforceable in accordance with its terms (subject to limitations as to enforceability which might result from bankruptcy, insolvency or other similar laws affecting creditors' rights generally); and all other actions and proceedings required by law or by the provisions of this Agreement to be

taken by such party prior to the Closing Date in connection with this Agreement have been duly and validly taken.

iii Such Party's contribution to the share capital of NagraStar under this Agreement does not require as of the Closing Date any action by the stockholders of such Party and does not violate any of the provisions of such Party's Articles of Incorporation, Statutes, or By-laws;

g It shall have received from its counsel approval with respect to all legal matters in connection with this Agreement, including specifically assurances satisfactory to it that nothing contained herein shall constitute a violation of any indenture agreement pursuant to which it has issued publicly held bonds or any credit or loan agreement, and there shall have been furnished to its counsel by the other parties such corporate and other records and information as they may reasonably have requested for such purposes;

h It shall have received from the other parties prior to the Closing Date a list of all actions, suits or proceedings which are pending, against or with respect to, or which may have a material adverse effect upon, the technology to be made available to NagraStar pursuant to the Kudelski Agreements; and no material suit, action or other proceeding shall be pending before any court or governmental agency in which it is sought to restrain or prohibit or to obtain damages or other relief in connection with this Agreement or the consummation of the transactions contemplated hereby;

i All authorizations, consents, waivers, approvals or other action required in connection with the execution, delivery and performance of this Agreement by the other parties and the consummation by the other parties of the transactions contemplated hereby, shall have been duly obtained and shall be in form and substance satisfactory to the receiving party's counsel;

j All filings with any governmental department, agency or instrumentality which are reasonably required in connection with the transactions contemplated by this Agreement, and all required governmental consents and approvals, including the expiration of any notice periods or extensions thereof without objection by any governmental department or agency to the transactions contemplated by this Agreement, will have been at Closing completed or obtained by the parties together or by the party obligated to complete such filing or obtain such consent and written evidence thereof shall have been delivered to such party; and

k Each party shall have conducted its business pending Closing strictly in accordance with Section 5.3 hereof. No party hereto shall be obligated, in the event it is advised by its counsel in accordance with Subsection (g) above that any term of this Agreement constitutes a violation of any of any indenture, credit or loan agreements,

to seek consents or waivers from any trustee or third party lender under such agreements, and such party shall be entitled to terminate this Agreement pursuant to Section 5.5 hereof.

5.5 Failure to Close. In the event that any of the above conditions precedent have not been fulfilled as of the scheduled date of Closing, the Closing shall be postponed; provided, however, that if the Closing does not, for any reason, occur within sixty days of execution of this Agreement, unless otherwise agreed upon by the Parties in writing, any party may, upon written notice to the other parties, terminate this Agreement and no party shall be liable for damages to the other parties or have the right to request specific performance of this Agreement or any of the above conditions of Closing. Further, the Pre-existing Contracts shall continue in full force and effect.

5.6 Effect of Closing. Except as otherwise provided in this Section 5.6, upon completion of the Closing, the Pre-existing Contracts shall no longer have any validity or binding effect, and all rights, duties, and/or obligations of Kudelski, EchoStar, and ESC thereunder shall cease. Except as otherwise provided below, the rights, duties, and obligations of Kudelski, EchoStar, and NagraStar shall be as follows upon completion of the Closing:

- a EchoStar and Kudelski. Kudelski's relationship with EchoStar shall be defined solely by the Operating Agreement, the Residual Agreement, the Escrow Agreement, and any contract entered into by the Parties after the Closing Date.
- b Kudelski and NagraStar. Kudelski's relationship with NagraStar shall be defined solely by the Kudelski Agreements, the Operating Agreement, the Escrow Agreement, and any contract entered into after the Closing Date.
- c EchoStar and NagraStar. EchoStar's relationship with NagraStar shall be defined solely by the EchoStar Agreements, the Operating Agreement, the Escrow Agreement, and any contract entered into after the Closing Date.

Notwithstanding anything to the contrary in this Agreement, Kudelski shall remain liable to ESC and EchoStar after the Closing Date under all indemnification and warranty provisions contained in the Pre-Existing Contracts which pertain to products and services delivered to EchoStar and ESC prior to the Closing Date, and EchoStar and ESC shall remain liable to Kudelski after the Closing Date: (i) under all payment provisions contained in the Pre-Existing Contracts which pertain to products and services delivered to EchoStar and ESC by Kudelski prior to the Closing Date and remaining unpaid after the Closing Date; and (ii) under all other provisions contained in the Pre-Existing Contracts upon which Kudelski would be entitled to rely in connection with its ongoing indemnification and warranty obligations under the Pre-Existing Contracts.

ARTICLE VI
PERSONNEL

- 6.1 Initial Personnel. Prior to the Closing Date and to the extent possible, the Parties shall identify in the Operating Agreement those employees of each Party if any, whose employment shall be initially transferred from the Party to NagraStar. In addition, the Parties shall, to the extent possible, make available those persons, if any, who, although remaining in the employ of the Parties, shall become available to render services to NagraStar. The Parties shall be reimbursed for the services rendered to NagraStar by employees described in the preceding sentence in accordance with the Operating Agreement.
- 6.2 Benefit Program. The benefits available to employees of NagraStar shall be as set forth in the Operating Agreement.

ARTICLE VII
COMMITMENTS TO NAGRASTAR

- 7.1 Technology. Kudelski shall make available or cause to be made available to NagraStar certain rights to inventions, patents, know-how, proprietary data and other intellectual property, excluding trademarks, required for or relevant to the Products within the scope of NagraStar, as well as all relevant documentation within its possession and which it has the right to deliver to NagraStar, in accordance with the Operating Agreement and the Kudelski Agreements.

ARTICLE VIII
TERMINATION

- 8.1 Events Permitting Termination. Notwithstanding anything to the contrary contained herein, in the event of a failure to close pursuant to Section 5.5, this Agreement, including any Ancillary Agreements, may be terminated by Kudelski or EchoStar upon written notice to the other in accordance with Section 5.5 hereof.
- 8.2 Automatic Termination. Upon completion of the Closing, this Agreement (except the provisions of Section 5.6 which shall survive indefinitely), but not the appendices attached hereto, shall terminate.
- 8.3 Rights upon Automatic Termination. Upon termination pursuant to Section 8.2, all of the agreements and other documents attached as appendices hereto shall survive termination of this Agreement and shall continue in full force and effect according to the respective terms of each such agreement or other document. The relationship of the parties shall be as set forth in Section 5.6, which shall survive termination of this Agreement.

ARTICLE IX
MISCELLANEOUS

- 9.1 Notices. The parties choose the following addresses as the addresses at which they will accept service of all documents and notices relating to this Agreement:

As to EchoStar and ESC: EchoStar Communications Corporation
5701 S. Santa Fe Drive
Littleton, CO 80120
USA
Attn: David Moskowitz
Fax: (303) 723-1699

As to Kudelski: Kudelski SA
1033 Cheseaux
SWITZERLAND
Attn: Nicolas Goetschmann
Fax: 41 21/732 0300

Any notice to be given by a party to the other parties pursuant to this Agreement shall be given in writing in the English language by prepaid registered post, by facsimile or shall be delivered by hand (delivery by hand must be acknowledged by written receipt from a duly authorized person at the office of the addressee), provided that:

- a any notice given by prepaid registered post shall be deemed to have been received by the addressee, in the absence of proof to the contrary, 14 days after the date of postage;
- b any notice delivered by hand during normal business hours shall be deemed to have been received by the addressee, in the absence of proof to the contrary, at the time of delivery; and
- c any notice given by facsimile shall be deemed to have been received by the addressee, in the absence of proof to the contrary, immediately upon the issuance by the transmitting facsimile machine, of a report confirming correct transmission of all the pages of the document containing the notice or upon receipt by the transmitting facsimile machine, at the end of the notice being transmitted, of the automatic answer-back of the receiving facsimile machine.

- 9.2 Term. This Agreement shall take effect on the date first above written and shall terminate upon completion of the Closing.

- 9.3 Assignment. This Agreement shall not be assigned by any party, except upon the prior written consent of the other parties.
- 9.4 Confidentiality. The parties agree that this Agreement is confidential and no party shall disclose any of the commercial, business, technical, operational, or legal details of this Agreement (the "Confidential Information") in any manner, including but not limited to press releases or other publicity of any nature without the prior written approval of the other parties. The obligations imposed upon the parties herein shall survive termination of this Agreement indefinitely, but shall not apply to Confidential Information which is:
- a or becomes generally available to the public through no wrongful act of the party receiving the Confidential Information (the "Receiving Party");
 - b already lawfully in the possession of the Receiving Party and not subject to an existing agreement of confidentiality between the parties;
 - c received from a third party without restriction and without breach of this Agreement;
 - d independently developed by the Receiving Party; or
 - e released pursuant to the requirements imposed on the party by U.S. or Swiss securities laws, or the binding order of a government agency or court, so long as prior to any such release the releasing party provides the other parties with the greatest notice permitted under the circumstances, so that the party disclosing the Confidential Information may seek a protective order or other appropriate remedy. In any such event, the releasing party will disclose only such Confidential Information as is legally required and will exercise reasonable efforts to obtain confidential treatment for any Confidential Information being disclosed.
- 9.5 Further Assurances. The parties agree to execute such other instruments and documents and to take such other action as may be necessary to effect the purposes of this Agreement.
- 9.6 Amendment. Any and all agreements by the parties to amend, change, extend, review or discharge this Agreement, in whole or in part, shall be binding on the parties only if such agreements are in writing and executed by the party agreeing to be bound thereby.
- 9.7 Headings, Sections, Etc. The various headings in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or any Section or provision hereof. References in this Agreement to any Section are to such Section of this Agreement.

- 9.8 Successors. All covenants, stipulations and promises in this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, assigns and legal representatives.
- 9.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which shall constitute together one and the same agreement. The parties may each execute this Agreement by signing any such counterpart.
- 9.10 Governing Law; Arbitration. This Agreement, and the performances of the parties hereunder, shall be governed by the laws of the State of New York without giving effect to the principles of conflicts of laws that would otherwise provide for the application of the substantive law of another jurisdiction. Should any dispute between the parties arise, the parties agree that the sole jurisdiction and venue for the resolution of any such dispute shall be English language binding arbitration conducted in the New York City metropolitan area in accordance with the Commercial Rules of the American Arbitration Association, which rules shall include the right to seek appropriate injunctive relief in such arbitration and are deemed to be incorporated by reference into this clause. Unless the arbitrators determine otherwise, the losing party in any arbitration shall pay the costs of the prevailing party.
- 9.11 Construction. Wherever possible, each provision of this Agreement and each related document shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement, or any related document, shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement or such related documents.
- 9.12 Waivers. No failure on the part of any party to exercise and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise or any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy granted hereby or by any related document or at law or in equity.
- 9.13 Commitments from Subsidiaries. The parties agree that they will cause their Subsidiaries to act in a manner as to effect the purposes, provisions and obligations of such party under this Agreement.
- 9.14 Entire Agreement. This Agreement, including the appendices attached hereto, constitute and express the entire agreement of the parties to all the matters herein referred to, all previous discussions, promises, representations and understandings relative thereto, including all Pre-existing Contracts between the parties are herein merged and superseded.

- 9.15 Brokers. The parties acknowledge and agree that all negotiations relative to this Agreement and to the transactions contemplated hereby have been carried on without the intervention of any broker or finder, and no such person or entity has any valid claim against it for a brokerage commission or other like payment. Each party shall hold the other parties and NagraStar harmless from any claim in respect thereto arising out of its respective actions or conduct, but shall not be responsible for such claims arising with respect to the conduct of the other parties and NagraStar.
- 9.16 Survival. Any provision of this Agreement which logically would be expected to survive termination or expiration, shall survive for a time period reasonable under the circumstances, whether or not specifically provided in the Agreement.
- 9.17 Special Indemnification. Kudelski shall indemnify, defend and hold EchoStar and ESC, the Affiliates of each, and its and their respective officers, directors, employees, agents and shareholders, and its and their respective assigns, successors and legal representatives harmless from and against, any and all costs, losses, liabilities, damages, lawsuits, judgments, claims, actions, penalties, fines and expenses (including, without limitation, interest, penalties, reasonable attorneys' fees and all monies paid in the investigation, defense or settlement of any or all of the foregoing, "Claims") that arise out of, or are incurred in connection with a breach of the representation and warranty Kudelski makes in Section 4.7 hereof, including without limitation any claim by Nagra Lysis S.A. or Nagra Plus S.A. arising out the Pre-Existing Contracts.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

ECHOSTAR COMMUNICATIONS CORPORATION

KUDELSKI S.A.

By
Title
Date



By
Title
Date



By signing below EchoStar Satellite Corporation hereby acknowledges its acceptance of the provisions of Section 5.6 of this Agreement.

ECHOSTAR SATELLITE CORPORATION

By
Title
Date



L:\SHN\RSW\NagraStar\Integrated\14 wpd

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[Appendix A]
ARTICLES OF ORGANIZATION
NAGRASTAR LLC

I, the undersigned natural person of the age of eighteen years or more, acting as organizer of a limited liability company under the Colorado Limited Liability Company Act, adopt the following Articles of Organization for such limited liability company:

FIRST: The name of the limited liability company is "NagraStar LLC".

SECOND: The principal place of business of the company is 90 Inverness Circle East, Englewood, Colorado 80112.

THIRD: The street address of the initial registered office of the limited liability company is NagraStar LLC, Legal Department, 5701 S. Santa Fe Drive, Littleton, Colorado 80120.

The mailing address of the initial registered office of the limited liability company is NagraStar LLC, Legal Department, 5701 S. Santa Fe, Littleton, Colorado 80120. The name of its proposed registered agent in Colorado at that address is David Moskowitz.

FOURTH: The management of the company is vested in the members.

FIFTH: The names and the business addresses of the members are:

EchoStar Satellite Corporation	Kudelski SA
90 Inverness Circle East	1033 Cheseaux
Englewood, Colorado 80112	SWITZERLAND

SIXTH: The name and address of the organizer is:

Nicholas R. Sayeedi
90 Inverness Circle East
Englewood, Colorado 80112

Nicholas R. Sayeedi

Date:

I, David Moskowitz, hereby consent to the appointment as initial registered agent for NagraStar LLC.

Date:

David Moskowitz

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HIGHLY CONFIDENTIAL

Case No. SA CV03-950 DOC (JTL)

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[APPENDIX B]

**OPERATING AGREEMENT
OF
NAGRASTAR LLC**

This Operating Agreement is made and entered into as of the twenty-third day of June, 1998 by and among NagraStar LLC, a Colorado limited liability company organized under the Colorado Limited Liability Act (the "Company"), EchoStar Communications Corporation, a Nevada corporation with principal office at 5701 S. Santa Fe Drive, Littleton, Colorado 80120 ("EchoStar"), and Kudelski SA, a Swiss corporation with principal office at 1033 Cheseaux, Switzerland ("Kudelski").

Certain terms used in this Operating Agreement are defined in Article 11.

The parties agree as follows:

Article 1. Formation of Company

1.1. Recognition of Organization of Company. The Company was organized as a Colorado limited liability company upon the filing of the Articles of Organization by the Colorado Secretary of State, effective as of the date of the Articles of Organization.

1.2. Name. The name of the Company is "NagraStar LLC".

1.3. Places of Business. The Company may locate its business at such place or places as the Members may from time to time deem advisable. The Company's principal place of business shall initially be located at 90 Inverness Circle East, Englewood, Colorado 80112, with a second office located in Cheseaux, Switzerland.

1.4. Registered Offices and Registered Agents. The Company's initial registered office in the State of Colorado shall be at the office of its registered agent at 5701 S. Santa Fe Drive, Littleton, Colorado 80120, and the name of its initial registered agent at such address shall be David Moskowitz. The registered office or registered agent, or both, in the State of Colorado may be changed from time to time by filing the address of the new registered office or the name of the new registered agent, as the case may be, with the Colorado Secretary of State pursuant to the Colorado Act. The Company shall appoint registered agents and maintain registered offices in other jurisdictions as may be required by law.

Article 2. Purposes of Company

2.1 General Purpose and Initial Scope. The purpose and initial scope of the Company shall be: (i) to support EchoStar's satellite broadcast operations through the ongoing maintenance and development of software and hardware for all software and hardware systems provided to EchoStar

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and its Affiliates by Kudelski and its Affiliates as of the date of this Operating Agreement, by entering into the Kudelski Agreements, the EchoStar Agreements, and the Escrow Agreement; and (ii) to pursue the development and enhancement of existing and future uplink datastream management systems and other systems to accommodate the future needs of EchoStar and its Affiliates in cooperation with Kudelski.

2.2 Future Scope. In general, the future scope of the Company shall be to expand the initial scope defined in Section 2.1, to include the provisions of other services and Products to the parties and their Affiliates, or to third parties. In particular, the parties agree that twelve months following execution of this Operating Agreement, the Company shall have the option to assume support responsibilities, similar to those provided EchoStar and its Affiliates, for all providers of satellite broadcast services in North America with which EchoStar and its Affiliates have a previously existing business relationship, subject to the approval of such potential customers and terms mutually agreeable to Kudelski and EchoStar.

Article 3. Rights, Duties, and Authority of Members

3.1. Management. The business and affairs of the Company shall be managed by its Members, who, together with the CEO, shall establish the priorities of the Company. Each Member shall be entitled to participate in that management, and shall be a Co-CEO of the Company. Except for cases in which a Member is expressly permitted by this Operating Agreement or by non-waivable provisions of applicable law to act alone, no action shall be taken by any Member on behalf of the Company unless the action: (a) is authorized by this Operating Agreement; (b) has been authorized by both Members acting in agreement; or (c) is inherent in or reasonably implied by authority granted by this Operating Agreement or by the Members acting together.

3.2. Certain Authority of Members. Except as otherwise provided in this Operating Agreement, no Member shall have, or delegate to any person, the authority to do any of the following without unanimous consent of the Members:

(a) Perform any act in contravention of this Operating Agreement;

(b) Knowingly perform any act that would cause the Company to conduct business in a state or other foreign jurisdiction which has not enacted legislation permitting the Company to transact business in the state as a foreign limited liability company with limited liability for its Members; or

(c) Cause the Company to admit any additional Members.

3.3. Further Restrictions. Except as authorized pursuant to this Operating Agreement (including the authority granted to the COO and CTO under Article 4) or by written authorization of both Members, no attorney-in-fact, employee, or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable monetarily for any purpose. Without limiting the generality of the foregoing, no debt shall be contracted or liability incurred by or on behalf of the Company except as provided in this Operating Agreement or as determined by

the Members, or, to the extent permitted under the Colorado Act, by agents or employees of the Company expressly authorized by the Members to contract such debt or incur such liability.

3.4. Conflicting Interest Transactions.

(a) As used in this Section 3.4, "conflicting interest transaction" means any of the following:

(1) A loan or other assistance by the Company to a Member or to a Related Entity, other than loans provided in accordance with the provisions of Section 5.3;

(2) A guaranty by the Company of an obligation of a Member or of an obligation of a Related Entity; or

(3) A contract or transaction between the Company and a Member or between the Company and a Related Entity.

(b) As used in this Section 3.4, "Related Entity" means, with respect to a Member, an Entity that is an Affiliate of the Member or has a financial interest therein.

(c) No conflicting interest transaction shall be void or voidable or be enjoined, set aside, or give rise to an award of damages or other sanctions in a proceeding by the Company or by any Member, directly or by or in the right of the Company, solely because the conflicting interest transaction involves a Member or a Related Entity or solely because the Member participates in vote of the Members with respect to such conflicting interest transaction, or solely because the Member's vote is counted for such purpose, if:

(1) The material facts as to the Member's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the other Member and the Members in good faith authorize, approve, or ratify the conflicting interest transaction; or

(2) The conflicting interest transaction is fair as to the Company as of the time it is undertaken by, or becomes binding upon, the Company.

3.5. Bank Accounts; Checks. The Company may from time to time open bank accounts, with such signatories thereon as the Members may determine. All checks and drafts on behalf of the Company shall be signed by both Members or, if the amount of such check or draft is \$100,000 or less, either both Members or their designees. EchoStar's initial designee for such purpose shall be Mike Dugan, and Kudelski's initial designee for such purpose shall be Xavier Carrel.

3.6. Indemnity of Members and Agents.

(a) Without limiting any other obligation of the Company to any Member, the Company shall indemnify each Member with respect to, and make advances for, the payments made, personal liabilities incurred, and expenses incurred by the Member in the ordinary and proper conduct of the

Company's business and affairs pursuant to the terms and conditions of this Operating Agreement (including the winding up thereof) or the preservation of the Company's business or property, to the maximum extent indemnification and advances are permitted under the Colorado Act.

(b) The Company may indemnify its employees and other agents who are not Members to the fullest extent permitted by law or to any lesser extent, as the Members may determine.

3.7. Compensation of Members. No Member shall be entitled to compensation for services rendered to the Company except as may be determined from time to time by agreement of the Members.

3.8. Right to Rely on Certificates of Members. Any Person dealing with the Company may rely, without duty of further inquiry, upon a certificate signed by any Member as to:

(a) The identity of the Member;

(b) The existence or nonexistence of any fact or facts which constitute a condition precedent to acts by any Member or which are in any other manner germane to the business or affairs of the Company; or

(c) The identity and authority of Persons who are authorized to act for, or to execute or deliver any instrument or document on behalf of, the Company, and the scope of such authority.

3.9. Member's Liability.

(a) No Member shall be liable under any judgment, decree, or order of a court, or in any other manner, for any debt, obligation, or liability of the Company.

(b) No Member shall be liable to the Company or to any Member for any loss or damage sustained by the Company or by any Member, unless the loss or damage is the result of fraud, deceit, gross negligence, willful misconduct, breach of this Operating Agreement or a wrongful taking by the Member. It is expressly recognized that no Member guarantees, in any way, the return of any Member's Capital Contribution, a profit for any Member from the operations of the Company, or any distribution from the Company.

3.10. Members Have No Exclusive Duty to Company. No Member shall be required to manage the Company as a sole and exclusive function. Any Member may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Operating Agreement, to share or participate in such other interests or activities of any Member or to the income or proceeds derived therefrom.

3.11. Company Documents.

(a) The Recordkeeper shall maintain and preserve, until at least five years after the dissolution of the Company and longer if necessary and appropriate in connection with the winding

up of its business and affairs, all accounts, books, and other Company documents which are reasonably necessary as a record of its business and affairs, in which shall be entered fully and accurately all transactions and other matters relating to the Company's business in such detail and completeness as is customary and usual for businesses of the type engaged in by the Company. Such documents shall be maintained at the principal executive office of the Company.

(b) Without limiting the generality of Section 3.11(a), the Recordkeeper shall maintain and preserve the following:

(1) A current list of the full name and last-known business, residence, or mailing address of each Member, both past and present;

(2) A copy of the Articles of Organization and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any amendment has been executed;

(3) A copy of this Operating Agreement, including Schedule A, as in effect from time to time,

(4) Copies of all writings, if any, other than this Operating Agreement, which obligate a Member to contribute cash, property or services to the Company, and copies of all writings compromising the obligation of any member to contribute cash, property, or services to the Company;

(5) Minutes of every meeting of the Members and copies of all written consents by which Members take action;

(6) Copies of the Company's U.S. and foreign federal, state, and local income tax returns and reports, if any, for the three most recent years;

(7) Copies of all financial statements of the Company for the three most recent years; and

(8) Records and accounts of all operations and expenditures of the Company.

(c) Upon request, each Member shall have the right to inspect and copy such Company documents, at the requesting Member's expense; provided, however, that access to any such documents may be restricted as the Members determine in order to preserve intellectual property of the Company from misuse.

(d) The initial Recordkeeper shall be Jason Kiser. The Members may by agreement appoint a new Recordkeeper at any time. If a new Recordkeeper is appointed by the Members, the former Recordkeeper shall transfer to the new Recordkeeper all Company items set forth under this Article 3, together with all other Company documents and data in the possession of, or under the control of the former Recordkeeper. If the Members cannot agree on a Recordkeeper at any time, each Member

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may designate a separate Recordkeeper who shall have access to all records of the Company specified in this Article 3.

3.12. Economic Priority. Except as may be provided in this Operating Agreement, no Member shall have priority over any other Member, whether as to Net Profits, Net Losses, distributions, or other economic matters, provided, however, that this Section 3.12 shall not apply to loans (as distinguished from Capital Contributions) which a Member has made to the Company.

Article 4. Appointments and Employment

4.1. General. Unless the Members agree otherwise in writing, the appointment and removal of Company employees shall be as set forth in this Article 4.

4.2. COO. EchoStar shall have the right and ability to nominate and terminate the COO throughout the term of this Operating Agreement. Kudelski shall have 30 days from the date of an EchoStar nomination to veto EchoStar's selection for no reason, but can veto no more than two proposed nominees unless it has good cause. In the event of a veto, EchoStar may appoint an interim COO until a replacement COO is selected, and approved by Kudelski. The Members hereby delegate to the COO responsibility for scheduling, purchasing and expense authorization, hiring, salary administration, inventory management of 'Smart Cards' (as such term is defined in the Kudelski Smart Card Purchase Agreement), and allocation of the Company's human, administrative, and intangible resources. The COO shall report directly to the Members, and shall be further guided by instructions issued by the Financial Review Committee and the Technical Review Committee. The Members hereby agree that Joe Ferguson shall be the Company's initial COO.

4.3. CTO. Kudelski shall have the right and ability to nominate and terminate the Company's CTO throughout the term of this Operating Agreement. EchoStar shall have thirty (30) days from the date of a Kudelski nomination to veto Kudelski's selection for no reason, but can veto no more than two proposed nominees unless it has good cause. In the event of a veto, Kudelski may appoint an interim CTO until a replacement CTO is selected, and approved by EchoStar. The Members hereby delegate to the CTO responsibility for the technical design of Products and for the selection of development tools and techniques by agreement with the Technical Review Committee and the COO. The CTO shall report directly to the Members, and shall be further guided by instructions issued by the Financial Review Committee and the Technical Review Committee. The Members hereby agree that Xavier Carrel shall be the Company's initial CTO.

4.4. Employee Hiring. Each Member has the right to reject the hiring of any employee the COO and CTO jointly select as a candidate for employment. Each Member shall have fifteen (15) business days from the date of nomination to veto the selection for no reason, but can veto no more than two proposed nominees unless it has good cause. In the event of a veto, the COO may appoint an interim employee until a replacement employee is selected, and approved by the Members.

4.5. Removal. Employees may be removed by the agreement of both Members acting together for any reason or for no reason, or by agreement of the COO and the CTO if the removal is for cause.

"Cause", for purposes of the preceding sentence, shall mean criminal acts or omissions, insubordination, repeated unapproved absences from work, causing or threatening to cause bodily harm to others in the workplace, violating the Company's nondisclosure policies, or other similar misconduct.

4.6. Member Consent. Notwithstanding anything to the contrary herein, the Members expressly agree that the prior written consent of both Members shall be obtained by the COO prior to the:

- (a) authorization or issuance of any warrants, options, rights, or other interest in or to Membership Interests other than the initial issuance as set forth on Schedule A;
- (b) amendment of the Articles of Organization or this Operating Agreement;
- (c) changing of the purpose or scope of the Company's business in a manner inconsistent with Article II hereof or the engaging by the Company in activities outside such purpose or scope;
- (d) acquisition by the Company of all or substantially all of the stock or assets of any other corporation or other business entity;
- (e) establishment or acquisition of any Subsidiary by the Company; the sale or issuance of any shares by any Subsidiary of the Company, or the purchase of any shares of another company by any Subsidiary of the Company; provided, that any Subsidiary of the Company established or acquired with the consent of the Members may issue membership interests to third parties to the extent required to comply with foreign laws for the qualification of directors or pursuant to a pro rata offering to the shareholders of such Subsidiary;
- (f) pledging, mortgaging, selling, leasing or otherwise transferring or encumbering, except in the ordinary course of business or as part of a complete dissolution and liquidation, of any material portion of the business of the Company or permitting a Subsidiary of the Company to do so with respect to its business;
- (g) dissolving or merging or consolidating the Company with any other corporation or permitting any Subsidiary of the Company to do so with respect to its business;
- (h) entering into indebtedness for borrowed funds pursuant to an agreement with any third party, irrespective of the amount or maturity of such loan agreements;
- (i) granting of licenses by the Company to third parties under patents, know-how, trade secrets, trademarks, copyrights, or other intellectual property owned by the Company, except as provided in the EchoStar Agreements;
- (j) entering into, modifying, or canceling by the Company of any employment agreements;

(k) entering into, modifying, or canceling by the Company of agreements with any Member or any of its Affiliates; or

(l) entering into, modifying, or canceling by the Company of any other material contracts, not in the ordinary course of business, which have not already been approved in the Company's budget.

4.7. Interference with Employment. Neither Member shall directly or indirectly solicit or entice in any manner any employee of the Company to cease employment with the Company without prior written consent of the other Member.

4.8 Contract Services.

(a) The Members agree that if the Company requires the services of an employee of Kudelski or EchoStar, and such employee is available to perform, and does perform services at the request of the Company, the Company shall reimburse the party whose employee performed the work at a rate in U.S. dollars equal to a fully-loaded overhead rate of 1.472 (1.15 x 1.28) multiplied by the hourly base salary of the employee who performed the work.

(b) The Members agree that if a Member requires the services of a Company engineer for work outside the scope of the Kudelski Agreements or the EchoStar Agreements (or in the case of services for Kudelski, by a Company engineer formerly employed by Kudelski, for work other than maintenance of Kudelski systems the employee helped to develop, not to exceed services equivalent to three full-time engineers during any calendar year), and such employee is available to perform, and does perform services at the request of the Member, the rates charged by the Company shall be as follows:

1) One day category A engineer	US\$ 1,120
2) One day category B engineer	US\$ 905
3) One month category A engineer	US\$23,500
4) One month category B engineer	US\$19,000

These prices for services are effective as of December 1994 and shall not change during the term of this Agreement, except for an annual adjustment each December. The annual adjustment shall occur by the use of an escalator in the following manner: the index to be used shall be the U.S. Department of Labor's Bureau of Labor Statistics Consumer Price Index, Wage Rate, All Urban Consumers, U.S. City Average, 1997 = 100 (hereinafter referred to as the "CPI"). The base index shall be that published nearest to the date hereof. The increase hereunder shall be proportional to the increase in the CPI over the base index. Reasonable travel and other expenses, if any, will be billed separately.

(c) The Members agree that if Kudelski requires the services of a Company engineer formerly employed by Kudelski, for maintenance of Kudelski systems the employee helped to develop, up to a maximum equivalent of three full-time engineers in any calendar year, and such

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employee is available to perform, and does perform services at the request of Kudelski, the rates charged shall be as set forth in Subsection (a) above.

4.9 Initial Employees. The Members agree that Kudelski employees Jean-Daniel Meynet, Raphael Jouvenat, Peter Leuenberger, and Xavier Carrel, and EchoStar employees Curtis Elswick, Steve Ropa, and Chris Wallner, shall no longer be employees of the Members and shall be initial employees of the Company, on terms mutually acceptable to such employees and the Company. Jouvenat and Leuenberger will be transferred back to the Kudelski payroll if they are no longer required by NagraStar.

4.10 Employee Compensation and Benefits. Compensation procedures and benefits for employees based at the Swiss Office (regardless of whether they are relocated to the U.S. Office or some other location) shall be as similar as practicable to those provided Kudelski employees, and shall be administered by Kudelski on the Company's behalf. Compensation procedures and benefits for employees based at the U.S. Office (regardless of whether they are relocated to the Swiss Office or some other location) shall be as similar as practicable to those provided EchoStar employees, and shall be administered by EchoStar on the Company's behalf.

Article 5. Contributions to the Company and Capital Accounts

5.1. Issuance of Certificates. The Members shall each be given by the Company certificates representing their respective Membership Interests in the Company.

5.2. Members' Initial Capital Contributions. Each Member shall contribute to the capital of the Company such amount as is set forth in Schedule A as the Member's initial Capital Contribution.

5.3. Additional Capital Contributions. Except as set forth in Section 5.2, no Member shall be required to make any Capital Contribution. If the Members or the COO determines that additional operating capital is needed to satisfy the requirements of the agreed annual budget or other needs, the following procedure shall be followed:

(a) The COO will inform the Members of the nature and amount of the operating capital shortfall, and the Members shall jointly attempt to come to agreement on a plan to eliminate the operating shortfall through one of the following means: (i) reorder the Company's priorities in order to reduce the operating expenses of the Company; (ii) mutually agree to contribute the necessary additional funds to the Company on an equal basis; or (iii) mutually agree to extend loans in the amount of the necessary additional funds to the Company as necessary on an equal basis.

(b) Notwithstanding the foregoing, if the parties are unable to agree on a means of effecting additional operating capital pursuant to Section 5.3(a), no Member may unreasonably withhold its consent under Section 4.6 hereof, or otherwise, to the borrowing of funds from a Member desiring to fund the Company for projects reasonably anticipated to generate revenues of at least the amount of such loans plus interest and consistent with the purposes of the Company specified in Article 2

hereof. Any such loans shall be repaid prior to any capital distributions, at an interest rate equal to the Swiss discount rate on the date of such loan, as set by the Swiss National Bank.

(c) If the parties are unable to agree on a means of effecting additional operating capital pursuant to Section 5.3(a), then notwithstanding anything in this Operating Agreement to the contrary, no Member may unreasonably withhold its consent under Section 4.6 hereof to the other Member's offer to contract for services from NagraStar at the rates specified by the parties in Section 4.8 hereof and consistent with the purposes of the Company specified in Article 2 hereof. The parties' intent is that NagraStar remain financially viable unless and until dissolution is effected pursuant to Section 10.1. Consequently, notwithstanding anything in this Operating Agreement to the contrary, in the event of a dispute over whether withholding of consent under this Section 5.3(c) is reasonable, the Member desiring to contract for services may do so on an interim basis until a decision is rendered by the arbitration proceeding.

5.4. Capital Accounts.

(a) A separate Capital Account shall be maintained for each Member. Each Member's Capital Account shall be increased by (1) the amount of money contributed by the Member to the Company; (2) the fair market value of property contributed by the Member to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under Section 752 of the Code); (3) each allocation to the Member of Net Profits; (4) each item in the nature of income or gain which is specially allocated to the Member pursuant to Section 6.3(a), 6.3(b), 6.3(c), 6.3(d), 6.3(e), 6.3(f) or 6.3(j); and (5) each allocation to the Member of income described in Section 705(a)(1)(B) of the Code. Each Member's Capital Account shall be decreased by (A) the amount of money distributed to the Member by the Company; (B) the fair market value of property distributed to the Member by the Company (net of liabilities secured by such distributed property that the Member is considered to assume or take subject to under Section 752 of the Code); (C) each allocation to the Member of expenditures described in Section 705(a)(2)(B) of the Code; (D) each item in the nature of deduction or loss that is specially allocated to the Member pursuant to Section 6.3(a), 6.3(b), 6.3(c), 6.3(d), 6.3(e), 6.3(f), 6.3(i) or 6.3(j); and (E) allocations to the Capital Account of the Member of Net Losses.

(b) The manner in which Capital Accounts are to be maintained pursuant to this Section 5.4 is intended to comply with the requirements of Section 704(b) of the Code and the Treasury Regulations promulgated thereunder. If in the opinion of the Company's accountants the manner in which Capital Accounts are to be maintained pursuant to the preceding provisions of this Section 5.4 should be modified in order to comply with Section 704(b) of the Code and the Treasury Regulations thereunder, then, notwithstanding anything to the contrary contained in the preceding provisions of this Section 5.4 or in Section 12.4, upon agreement of the Members the method in which Capital Accounts are maintained shall be so modified.

(c) Provision for payment and distribution of liquidation proceeds is made in Section 10.5(b).

5.5. No Obligation to Restore Negative or Deficit Balances. Except as otherwise provided in Section 5.2 or Section 5.3 or in the Colorado Act, no Member shall have any liability to restore all or any portion of a negative or deficit balance in the Member's Capital Account, and the negative or deficit balance of the Member's Capital Account shall not be considered a debt owed by the Member to the Company or to any other Person for any purpose whatsoever. This provision shall apply, without limitation, to a liquidation within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations.

5.6. No Interest on Capital Contributions; No Right to Return of Capital Contributions. No Member shall be entitled to interest on the Member's Capital Contribution. No Member shall be entitled to a return of the Member's Capital Contribution, as such, but only to such distributions as are provided for in this Operating Agreement.

5.7. Obligations to be Assumed. Any assets to be contributed by any Member to the capital of the Company shall be contributed free and clear of all liens, encumbrances and liabilities, except those liens, encumbrances and liabilities the assumption of which by the Company is consented to, in writing, by the other Member.

Article 6. Allocations, Income Tax, Distributions, Elections, and Reports

6.1. Reliance on Budget. This Article 6 shall be read in conjunction with the current operating budget prepared pursuant to Section 7.1.

6.2. Allocations of Net Profits and Net Losses. The Net Profits or Net Losses of the Company for each fiscal year shall be allocated to the Members in the respective proportions stated on Schedule A. A Member's share of distributions is determined based upon the Member's share of Net Profits and Net Losses, as provided in Section 6.4.

6.3. Special Allocations to Capital Accounts and Certain Other Income Tax Allocations. Notwithstanding Section 6.2 hereof:

(a) In the event any Member unexpectedly receives any adjustment, allocation, or distribution described in Section 1.704-1(b)(2)(ii)(d)(4), (5), or (6) of the Treasury Regulations, which create or increase a Deficit Capital Account of the Member, then items of Company income and gain (consisting of a pro rata portion of each item of Company income, including gross income and gain for such year and, if necessary, for subsequent years) shall be specially allocated to the Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Deficit Capital Account so created as quickly as possible. It is the intent that this Section 6.3(a) be interpreted to comply with the alternate test for economic effect set forth in Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations.

(b) In the event any Member would have a Deficit Capital Account at the end of any Company taxable year which is in excess of the sum of any amount that the Member is treated as being obligated to restore to the Company under Section 1.704-1(b)(2)(ii)(c) of the Treasury

Regulations and the Member's share of minimum gain as defined in Section 1.704-2(g)(1) of the Treasury Regulations (which is also treated as an obligation to restore in accordance with Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations), the Capital Account of the Member shall be specially credited with items of Membership income (including gross income) and gain in the amount of such excess as quickly as possible.

(c) Notwithstanding any other provision of this Section 6.3, if there is a net decrease in the Company's minimum gain as defined in Treasury Regulation Section 1.704-2(d) during a taxable year of the Company, then the Capital Account of each Member shall be allocated items of income (including gross income) and gain for such year (and if necessary for subsequent years) equal to that Member's share of the net decrease in Company minimum gain. This Section 6.3(c) is intended to comply with the minimum gain chargeback requirement of Section 1.704-2 of the Treasury Regulations and shall be interpreted consistently therewith. If, in any taxable year in which the Company has a net decrease in the Company's minimum gain, the minimum gain chargeback requirement would cause a distortion in the economic arrangement among the Members and it is not expected that the Company shall have sufficient other income to correct that distortion, the Members may in their discretion (and shall, if requested to do so by any Member) seek to have the Internal Revenue Service waive the minimum gain chargeback requirement in accordance with Treasury Regulation Section 1.704-2(f)(4).

(d) Items of Company loss, deduction, and expenditure described in Section 705(a)(2)(B) of the Code which are attributable to nonrecourse debt of the Company and are characterized as partner (herein Member) nonrecourse deductions under Section 1.704-2(i) of the Treasury Regulations shall be allocated to the Members' Capital Accounts in accordance with Section 1.704-2(i) of the Treasury Regulations.

(e) Beginning in the first taxable year in which there are allocations of "nonrecourse deductions" (as described in Section 1.704-2(b) of the Treasury Regulations), such nonrecourse deductions shall be allocated to the Members for any period in the same manner as Net Profits or Net Losses is allocated for such period.

(f) In accordance with Section 704(c)(1)(A) of the Code and Section 1.704-1(b)(2)(i)(iv) of the Treasury Regulations, if a Member contributes property with a fair market value that differs from its adjusted basis at the time of contribution, income, gain, loss, and deductions with respect to the property shall, solely for Federal income tax purposes and not for Capital Account purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company and its fair market value at the time of contribution.

(g) Pursuant to Section 704(c)(1)(B) of the Code, if any contributed property is distributed by the Company, other than to the Member who contributed the property, within seven years of the contribution of the property to the Company, then, except as provided in Section 704(c)(2) of the Code, the contributing Member shall, solely for Federal income tax purposes and not for Capital Account purposes, be treated as recognizing gain or loss from the sale of such property, at the time of such distribution, in an amount equal to the gain or loss that would have been allocated to the

contributing Member under Section 704(c)(1)(A) of the Code if the property had been sold at its fair market value at the time of the distribution.

(h) In the case of any distribution by the Company to a Member, the Member shall, solely for Federal income tax purposes and not for Capital Account purposes, be treated as recognizing gain in an amount equal to the lesser of:

(1) the excess (if any) of (A) the fair market value of the property (other than money) received in the distribution over (B) the adjusted basis of the Member's Membership Interest in the Company immediately before the distribution, reduced (but not below zero) by the amount of money received in the distribution, or

(2) the Net Precontribution Gain (as defined in Section 737(b) of the Code) of the Member. The Net Precontribution Gain means the net gain (if any) which would have been recognized by the distributee Member under Section 704(c)(1)(B) of the Code if all property which (A) had been contributed to the Company within five years of the distribution, and (B) is held by the Company immediately before the distribution, had been distributed by the Company to another Member. If any portion of the property distributed consists of property which had been contributed by the distributee Member to the Company, then such property shall not be taken into account under this Section 6.3(h) and shall not be taken into account in determining the amount of the Net Precontribution Gain. If the property distributed consists of an interest in an Entity, the preceding sentence shall not apply to the extent that the value of such interest is attributable to the property contributed to such Entity after such interest had been contributed to the Company.

(i) All recapture of income tax deductions resulting from sale or disposition of Company property shall be allocated to the Member or Members to whom the deduction that gave rise to such recapture was allocated hereunder, to the extent that the Member or Members are allocated any gain from the sale or other disposition of such property.

(j) Any credit or charge to the Capital Accounts of the Members pursuant to Section 6.3(a), 6.3(b), 6.3(c), 6.3(d), or 6.3(e) shall be taken into account in computing subsequent allocations of profits and losses pursuant to Section 6.2, so that the net amount of any items charged or credited to Capital Accounts pursuant to Section 6.2, 6.3(a), 6.3(b), 6.3(c), 6.3(d), or 6.3(e) shall, to the extent possible, be equal to the net amount that would have been allocated to the Capital Account of each Member pursuant to the provisions of this Article 6 if the special allocations required by Section 6.3(a), 6.3(b), 6.3(c), 6.3(d), or 6.3(e) had not occurred.

6.4. Distributions.

(a) Subject to Section 10.5(b), all distributions shall be made to the Members pro rata in proportion to the respective rights of the Members in Net Profits and Net Losses as determined pursuant to Section 6.2 as of the record date of such distribution.

(b) All distributions shall be made at such times as may be determined by the Members. All amounts withheld pursuant to the Code or any provisions of state or local tax law with respect to any payment or distribution to a Member from the Company shall be treated nevertheless as amounts that have been distributed to the Member pursuant to this Section 6.4.

(c) A Member shall not receive a distribution from the Company to the extent that, after giving effect to the distribution, all liabilities of the Company would exceed the fair value of the Company's assets. A Member who receives any distribution from the Company is liable to the Company with respect thereto only to the extent provided by the Colorado Act.

(d) Regardless of the nature of any Member's Capital Contribution, a Member has only the right to demand and receive cash with respect to any distribution to which the Member is entitled. A Member may not be compelled to accept a distribution of any asset in kind from the Company to the extent that the percentage of the asset distributed to the Member exceeds a percentage of that asset which is equal to the percentage in which the Member shares in distributions from the Company.

(e) Under no circumstances shall any distributions be made until any contributions made to the Company by Member(s) pursuant to Section 5.3 have been repaid to such Member(s) in full.

6.5 Accounting Principles and Elections. The profits and losses of the Company for "book purposes" shall be determined in accordance with accounting principles applied on a consistent basis using the accrual method of accounting. All elections, including the election of tax accounting methods (which may vary from book accounting methods), permitted to be made by the Company under Federal or state laws shall be made by agreement of the Members.

6.6 Accounting Period. Unless and until otherwise determined by agreement of the Members, the Company's accounting period shall be the calendar year.

6.7 Returns. Unless the task is delegated to another Person by the Members, the Recordkeeper shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary in each jurisdiction in which the Company does business. The Members hereby delegate the task of preparing and filing any Swiss tax returns to the Swiss Office. Copies of such returns, or pertinent information therefrom, shall be furnished to the Members within a reasonable time after the end of the Company's fiscal year.

Article 7. Administrative

7.1 Budget. The operating budget for the first twelve months of the Company's operation is attached as Schedule B to this Operating Agreement. A thirty-six (36) month budget shall be prepared annually by the COO in consultation with the Financial Review Committee and submitted to the Members for approval together with a business plan for the corresponding time period. If the Members cannot agree on the budget for any specified year, the total budget for such year shall be the previous year's budget as adjusted by the use of a Budget Escalator in the following manner: the

index to be used shall be the U.S. Department of Labor's Bureau of Labor Statistics Consumer Price Index, Wage Rate, All Urban Consumers, U.S. City Average, 1997 = 100 (hereinafter referred to as the "CPI"). The base index shall be that published nearest to the date hereof. The increase hereunder shall be proportional to the increase in the CPI as above, over the base index, provided however, that in no case shall any year's budget exceed the projected revenues for the Company in such year.

7.2. Technical Review Committee. The Technical Review Committee shall have the responsibility for defining the Company's Product strategy and agreeing on the Company's technical strategy in a manner which anticipates and meets the requirements of the parties relating to the manufacture and support engineering of the Products. Instructions issued by the Technical Review Committee to the Company's COO and CTO shall be determined by majority vote. EchoStar has initially appointed Dick Johnson, Mike Dugan, and Gernar Schaefer (or their respective authorized proxies) to represent it on the Technical Review Committee. Kudelski has initially appointed Charles Egli, Philippe Stransky, and René-Pierre Bonvin (or their respective authorized proxies) to represent it on the Technical Review Committee. The parties have agreed that NagraStar developments will meet the guidelines set forth on the attached Schedule C.

7.3. Financial Review Committee. The Financial Review Committee shall consult with the Company in the preparation of the Company's annual budget in order to ensure that such budget properly takes into consideration the Company's Product strategy. Instructions issued by the Financial Review Committee to the Company's COO and CTO shall be determined by majority vote. EchoStar has initially appointed Jason Kiser and Steve Schaver (or their respective authorized proxies) to represent it on the Financial Review Committee. Kudelski has initially appointed Nicolas Goetschmann and Gerard Limat (or their respective authorized proxies) to represent it on the Financial Review Committee.

7.4. Facilities, Equipment, and Personnel. The Members agree to procure and make available to the Company during the term of this Operating Agreement, for good and valuable consideration to be agreed upon by the parties, such office equipment and facilities (including land, buildings, office equipment, tools and fixtures) as may be necessary for the development and support engineering of the Products, and such personnel, including payroll, accounting, legal, and human resources professionals, as may be necessary for the Company to properly function. The Company shall provide its own computer equipment, software, and related accessories.

7.5. Offices. Initially, the Company's main corporate headquarters shall be located in the U.S. Office, designated and paid for (to include site selection, furnishing of equipment and supplies, maintenance, and operation) by EchoStar. The Company shall also open the Swiss Office, designated and paid for (to include site selection, furnishing of equipment and supplies, maintenance, and operation) by Kudelski.

7.6. Administrative Overhead. EchoStar shall provide administrative support, including payroll, accounting, legal, and personnel functions, to the U.S. Office, for good and valuable consideration to be agreed upon by the parties. Kudelski shall provide similar administrative support for the Swiss Office, for good and valuable consideration to be agreed upon by the parties.

Article 8. Restrictions on Transferability; Acquisition of Control

8.1. General. Except as provided in this Article 8, no Member shall have the right to transfer or encumber any part of the Member's Membership Interest, and any purported transfer or encumbrance (including the granting of a security interest) of all or part of a Membership Interest, whether voluntarily or involuntarily, shall be void. Each Member hereby acknowledges the reasonableness of the restrictions on sale and gift of Membership Interests imposed by this Operating Agreement in view of the Company purposes and the relationship of the Members, and agrees that such restrictions shall be specifically enforceable. Special provisions relating to security interests and other encumbrances are set forth in Section 8.2.

8.2. Transferring Party's Indemnity Obligation. Each Member hereby indemnifies the Company and the remaining Members and their Affiliates against any and all loss, damage, and expense (including attorneys' and other professionals' fees incurred in applying and enforcing the provisions of this Operating Agreement and including tax liabilities or loss of tax benefits) resulting directly or indirectly because of any transfer or purported transfer, or encumbrance or purported encumbrance, in violation of this Operating Agreement.

8.3. Acquisition of Control by EchoStar. If following the Effective Date: (i) a direct competitor of EchoStar or its Affiliates, or any other Person or Entity hostile to its or their ongoing business interests, acquires Control of Kudelski; (ii) Kudelski is in default of the Residual Agreement, the Escrow Agreement, or any of the Kudelski Agreements, and such default is critical to the Company's ability to support, maintain, and operate the conditional access system and related components as intended or to provide properly functioning Smart Cards to EchoStar (provided that notice of the default has been given to Kudelski by EchoStar as provided in Section 12.1 hereof, and Kudelski has failed to cure the default within thirty (30) days); or (iii) Kudelski has ceased its on-going business operations, THEN NOTWITHSTANDING ANY PROVISION OF THIS OPERATING AGREEMENT TO THE CONTRARY, Kudelski shall immediately and irrevocably lose and forfeit forever all right to vote, decide, elect, select, choose, or otherwise influence or affect the policy, management, direction, or decisions of the Company, and EchoStar shall have the sole and exclusive right to make all decisions on behalf of the Company, including without limitation the ability to select all officers and employees of the Company, the right to approve all budgets, and the right to make all other decisions which would otherwise require approval or agreement of the Members pursuant to this Operating Agreement; provided however, that EchoStar's exercise of its decision-making powers shall not be used to dissolve or liquidate the Company, to change the allocations or capital accounts of the Members, or to damage Kudelski's rights in its technology with respect to third parties.

8.4. Acquisition of Control by Kudelski. If following the Effective Date: (i) a direct competitor of Kudelski or its Affiliates, or any other Person or Entity hostile to its or their ongoing business interests, acquires Control of EchoStar, or (ii) EchoStar has ceased its on-going business operations, THEN NOTWITHSTANDING ANY PROVISION OF THIS OPERATING AGREEMENT TO THE CONTRARY, EchoStar shall immediately and irrevocably lose and forfeit forever all right to vote, decide, elect, select, choose, or otherwise influence or affect the policy, management, direction,

or decisions of the Company, and Kudelski shall have the sole and exclusive right to make all decisions on behalf of the Company, including without limitation the ability to select all officers and employees of the Company, the right to approve all budgets, and the right to make all other decisions which would otherwise require approval or agreement of the Members pursuant to this Operating Agreement; provided however, that Kudelski's exercise of its decision-making powers shall not be used to dissolve or liquidate the Company, to change the allocations or capital accounts of the Members, or to damage EchoStar's ability to continue its use and operation of the Kudelski conditional access system and related components as intended.

Article 9. Marketing and Sale of Products; Technology

9.1. Marketing. All Products will be licensed or sold only to the Members and their Affiliates, except as noted in Section 2.2 or as provided in the Kudelski Smart Card Purchase Agreement or the EchoStar Smart Card Purchase Agreement. The Company shall not sell Products in any other manner or to any other entities.

9.2. Support for the Company. The Members hereby affirm their intention to fully support the Company. Each Member, however, will be free to purchase Products (including services) from another supplier or vendor whenever the Company (a) is not reasonably competitive with respect to price, (b) does not manufacture or supply a Product meeting the applicable specifications for such Product, or (c) is unwilling or unable to deliver the relevant Products within a commercially reasonable time; provided, however, the Members will give the Company reasonable prior written notice of such intent. In the event that EchoStar determines to pursue any conditional access system projects other than for the Kudelski conditional access system currently used by EchoStar, EchoStar shall give fair and due consideration to the Company to participate in such project.

9.3 Technology. The following intellectual property rights and obligations shall be embodied in the Kudelski Agreements, the EchoStar Agreements, the Escrow Agreement, and the Residual Agreement, and shall be subject to all of the terms and conditions contained therein:

(a) Rights to Kudelski Software Utilized by EchoStar and its Affiliates - Kudelski will grant to the Company a perpetual, prepaid, non-transferable license to the Source Code, as well as all source code for software and systems developed or updated in the future by Kudelski which enhance, expand, update, or upgrade software or systems licensed by the Company to EchoStar and its Affiliates. EchoStar and its Affiliates will be entitled to receive from the Company a perpetual, prepaid sublicense to use such products, but not to operate on the associated source code. Source code for the Security Technology is not included in these rights.

(b) Rights to Upgrades Developed by the Company - Upgrades will be the joint property of both the Company and Kudelski, and both parties shall have all rights attendant with ownership, except as otherwise provided in this Section 9.3(b). The Company will offer to sublicense the Upgrades to EchoStar and its Affiliates on a perpetual, prepaid basis in connection with its satellite operations but not for further sublicense or sale. Kudelski shall have the right to sublicense the Upgrades to third parties to the exclusion of the Company.

(c) Rights to New Products and Systems - Kudelski and the Company shall each have the right to purchase from the other, any or all future products related to the subject matter hereof which are offered by the other and which are not already licensed to such party pursuant to the Kudelski Agreements. The cost to the party for any such product shall be the other party's then current prices for similar volumes of products and services less fifteen percent (15%). The Company will offer any such products to EchoStar and its Affiliates, and Kudelski will have the exclusive right to market such products to any third party.

(d) Intellectual Property Indemnification. The provisions of this Section 9.3(d) shall survive termination of this Operating Agreement.

(1) If notified in writing of any Claim (as defined in Section 12.3(a)) brought against EchoStar or its Affiliates or the Company based on a claim that the use by EchoStar or its Affiliates or by the Company of any products or services (including updates, enhancements, corrections or other revisions to software and hardware) delivered by Kudelski or its Affiliates to EchoStar or its Affiliates or to the Company, including without limitation the intellectual property contained in or incorporated into any hardware or software or any portion thereof (all of the foregoing collectively, the "Kudelski Delivered Items"), infringes any patent, copyright, trademark or trade secret of any third person or entity, Kudelski shall defend such action (including appeals) at its expense and shall pay the costs and damages of any such action. In the event that an injunction is obtained against use of the Kudelski Delivered Items or any part thereof by EchoStar or its Affiliates or by the Company because of infringement of any patent, copyright, trademark or trade secret, Kudelski shall, at its option and at its expense, either (a) procure for the Company and EchoStar and its Affiliates the right to continue using such item, or (b) replace or modify same so that it becomes non-infringing. If Kudelski is unable to perform either (a) or (b) immediately above, Kudelski shall reimburse the Company or EchoStar and its Affiliates an amount equal to the cost incurred in replacing the infringing item in a manner reasonably acceptable to Kudelski. Kudelski shall not be liable to the extent such infringement or claim thereof is attributable to misuse or modifications by the Company or by EchoStar and its Affiliates, if Kudelski can demonstrate conclusively that such infringement or claim thereof would not have occurred but for the modification or misuse by the Company or EchoStar and its Affiliates. Notwithstanding the foregoing, Kudelski's liability for indemnity and warranty of products and services delivered to EchoStar prior to the date of this Agreement shall be governed by the agreements entered into between Kudelski and EchoStar (including their Affiliates) prior to execution of this Agreement.

(2) If notified in writing of any Claim (as defined in Section 12.3(a)) brought against Kudelski or EchoStar or their respective Affiliates based on a claim that the use by Kudelski or EchoStar or their respective Affiliates of any products or services (including updates, enhancements, corrections or other revisions to software and hardware) delivered by the Company to Kudelski or EchoStar or their respective Affiliates, including without limitation the intellectual property contained in or incorporated into any hardware or software or any portion thereof (all of the foregoing collectively, the "Company Delivered Items"), infringes any patent, copyright, trademark or trade secret of any third person or entity, the Company shall defend such action (including appeals) at its expense and shall pay the costs and damages of any such action. In the event that an

injunction is obtained against use of the Company Delivered Items or any part thereof by Kudelski or EchoStar or their respective Affiliates because of infringement of any patent, copyright, trademark or trade secret, the Company shall, at its option and at its expense, either (a) procure for Kudelski or EchoStar or their respective Affiliates the right to continue using such item, or (b) replace or modify same so that it becomes non-infringing. If the Company is unable to perform either (a) or (b) immediately above, the Company shall reimburse Kudelski or EchoStar or their respective Affiliates (as applicable) an amount equal to the cost incurred in replacing the infringing item in a manner reasonably acceptable to the Company. The Company shall not be liable to the extent such infringement or claim thereof is attributable to products or services delivered by Kudelski, unless Kudelski can demonstrate conclusively that such infringement or claim thereof would not have occurred but for the Company's modification or misuse of the products or services delivered by Kudelski.

(c) Escrow. The parties hereto have agreed on the form of the Escrow Agreement, which shall be modified before execution only to reflect the reasonable requirements of a suitable U.K. escrow agent. The parties agree to use their best efforts to execute the Escrow Agreement within thirty (30) days of the Effective Date hereof.

Article 10. Dissolution and Termination

10.1. Dissolution. The Company may be dissolved:

- (a) upon the written agreement of its then current Members that it be dissolved;
- (b) by either Member, upon six months' prior written notice, if EchoStar decides to no longer use the Kudelski conditional access system, and such decision is delivered to Kudelski in a writing signed by an authorized officer of EchoStar; or
- (c) by Kudelski, for business convenience, upon six months' prior written notice from Kudelski to EchoStar on Kudelski letterhead, explicitly stating that dissolution is being effected for business convenience, and signed by an authorized officer of Kudelski.
- (d) by Kudelski, if EchoStar has breached its material obligations under any of its agreements with Kudelski or the Company, and a final, non-appealable judgment has been obtained which orders EchoStar to pay Kudelski or the Company a definite sum of money or to perform or cease to perform any activity capable of being lawfully performed, and EchoStar has failed, after a reasonable period of time following receipt by EchoStar of such order (or the time actually specified in the order if applicable), to pay such sum owed or to perform or cease such activity.

10.2 Allocation of Rights upon Dissolution. Upon dissolution, notwithstanding any provision of this Operating Agreement to the contrary, ownership of the intellectual property of the Company following dissolution shall be as set forth below.

(a) If the Members dissolve the Company pursuant to Section 10.1 (a), ownership of the intellectual property of the Company shall be as determined by the Members in connection with the dissolution.

(b) If either Member dissolves the Company pursuant to Section 10.1 (b), Kudelski shall receive ownership of the intellectual property of the Company, and EchoStar and its Affiliates shall receive a perpetual, worldwide, irrevocable, prepaid license to use the Useable Technology exclusively for their own satellite operations and to sell and distribute Smart Cards exclusively for use with the satellite operations of EchoStar and its Affiliates, ExpressVu, Inc. and such other entities as both Members have authorized in writing; provided, however, that such license shall expire once EchoStar and its Affiliates cease to use the Kudelski conditional access system. Any additional or replacement Smart Cards needed by EchoStar and its Affiliates for the operation of the Kudelski conditional access system after notice of dissolution pursuant to Section 10.1 (b) has been delivered shall be purchased exclusively from Kudelski.

(c) If Kudelski dissolves the Company pursuant to Section 10.1 (c), Kudelski shall receive ownership of the intellectual property of the Company, and EchoStar and its Affiliates shall receive a perpetual, worldwide, irrevocable, prepaid license to use the Source Technology and the Useable Technology for operation, maintenance and updating of the systems obtained from Kudelski and NagraStar, exclusively for their own satellite operations and to sell and distribute Smart Cards exclusively for use with the satellite operations of EchoStar and its Affiliates, ExpressVu, Inc. and such other entities as both Members have authorized in writing; provided, however, that such license shall expire once EchoStar and its Affiliates cease to use the Kudelski conditional access system. If prior to dissolution of the Company pursuant to Section 10.1 (c), the Company has received or has the right to receive the contents, in whole or in part, of an escrow established pursuant to the Escrow Agreement, then upon dissolution EchoStar shall receive such contents, and all of the Company's right and title thereto (which right and title does not include the ability to sell or transfer such technology to third parties, except to sell and distribute Smart Cards exclusively for use with the satellite operations of EchoStar and its Affiliates, ExpressVu, Inc. and other entities both Members have authorized in writing), subject to all of the limitations of the Company contained in Section 4(d) of the Escrow Agreement. Any additional or replacement Smart Cards needed by EchoStar and its Affiliates for the operation of the Kudelski conditional access system after notice of dissolution pursuant to Section 10.1 (c) has been delivered shall be purchased exclusively from Kudelski.

(d) If Kudelski dissolves the Company pursuant to Section 10.1(d), Kudelski shall receive ownership of the intellectual property of the Company, and EchoStar and its Affiliates shall have no further rights under the EchoStar Agreements to use any of the technology licensed to the Company by Kudelski or sublicensed to EchoStar by the Company.

10.3 Statement of Intent to Dissolve. As soon as possible following the occurrence of any of the events specified in Section 10.1 effecting the dissolution of the Company, an appropriate representative of the Company shall execute a statement of intent to dissolve in a form that complies with the requirements of the Colorado Act and deliver the same to the Colorado Secretary of State for filing pursuant to the Colorado Act.

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10.4. Effect of Filing of Statement of Intent to Dissolve. Upon the filing by the Colorado Secretary of State of the Company's statement of intent to dissolve, the Company shall cease to carry on its business, except insofar as may be necessary for the winding up of its business, but its separate existence shall continue until a certificate of dissolution has been issued by the Secretary of State or until such separate existence is terminated in connection with judicial dissolution or liquidation of the Company.

10.5. Winding Up, Liquidation, and Distribution of Assets.

(a) Upon dissolution of the Company, an accounting shall be made of the accounts of the Company and of the Company's assets, liabilities, and operations, from the date of the last previous accounting until the date of dissolution. The Members may cause such accounting to be made by independent accountants and shall cause such accounting to be made by independent accountants upon the request of any Member. Upon dissolution of the Company, the Members shall immediately proceed to wind up the business and affairs of the Company.

(b) In winding up the business and affairs of the Company, the Members shall

(1) Sell or otherwise liquidate all of the Company's assets (except the intellectual property allocations made pursuant to Section 10.2) as promptly as practicable (except to the extent the Members may decide to distribute assets to the Members in kind, it being recognized that any in-kind distribution is subject to Section 6.4(d));

(2) Allocate the profits or losses resulting from such sales to the Members' Capital Accounts in accordance with the provisions of this Operating Agreement;

(3) Discharge all liabilities of the Company (including liabilities to Members who are also creditors, to the extent otherwise permitted by law) other than liabilities to Members for distributions, and establish such reserves as the Members deem reasonable to provide for contingent liabilities of the Company (for purposes of determining the Capital Accounts of the Members, the amounts of such Reserves shall be deemed to be an expense of the Company); and

(4) Distribute the remaining assets in accordance with the following:

(A) If any assets of the Company are to be distributed in kind, the net fair market value of such assets as of the date of dissolution shall be determined by independent appraisal or by agreement of the Members. Such assets shall be deemed to have been sold as of the date of dissolution for their fair market value, and the Capital Accounts of the Members shall be adjusted pursuant to the provisions of Section 5.4 and Article 6 of this Operating Agreement to reflect such deemed sale.

(B) The positive balance (if any) of each Member's Capital Account (as determined after taking into account all Capital Account adjustments for the Company's taxable year during which the liquidation occurs) shall be distributed to the Members, either in cash or in kind,

as determined by the Members, with any assets distributed in kind being valued for this purpose at their net fair market value. Any such distributions to the Members in respect of their Capital Accounts shall be made in accordance with the time requirements set forth in Section 1.704-1(b)(2)(ii)(b)(2) of the Treasury Regulations. Any additional Capital Contribution made pursuant to Section 5.3 shall be returned to the contributing Members subject to Section 3.12 prior to any general distribution to Members.

(c) The provisions of Section 5.5, which eliminates any liability of a Member to restore any portion of a deficit balance in the Member's Capital Account, apply to deficit balances in Capital Accounts upon liquidation of the Company.

(d) When all debts, liabilities, and obligations of the Company have been paid and discharged or adequate provisions have been made therefor and when all of the remaining property and assets have been distributed to the Members, the Company shall be deemed terminated.

(e) The Members shall comply with all applicable laws pertaining to the winding up of the business and affairs of the Company and the distribution of its assets.

10.6. Articles of Dissolution. When all debts, liabilities, and obligations have been paid and discharged or adequate provisions have been made therefor and all of the remaining property and assets have been distributed to the Members, articles of dissolution shall be executed in duplicate and verified by the Person signing the articles, which articles shall set forth the information required by the Colorado Act. Duplicate originals of such articles of dissolution shall be delivered to the Colorado Secretary of State.

10.7. Certificate of Dissolution. Upon the issuance of the certificate of dissolution, the existence of the Company shall cease, except for the purpose of suits, other proceedings, and appropriate action as provided in the Colorado Act. The Members shall have authority to distribute any Company property discovered after dissolution, convey real estate, and take such other action as may be necessary on behalf of and in the name of the Company.

Article 11. Definitions

The following terms used in this Operating Agreement have the meanings ascribed to them in this Article 11:

11.1. "Articles of Organization" means the Articles of Organization of the Company as filed with the Secretary of State of Colorado, as the same may be amended from time to time.

11.2. "Affiliate" means, with respect to any Person (such Person being referred to in this Section 11.2 as the "Target Person"), (a) any Person directly or indirectly controlling, controlled by, or under common control with the Target Person, (b) any Person owning, of record or beneficially, ten percent or more of the outstanding voting interests of the Target Person, unless another Person owns, beneficially, a larger percentage of the outstanding voting interests of the Target Person, (c) any

Person who is a director, officer, partner, or trustee of, or is in a similar capacity with respect to, the Target Person, or (d) any Person who is a director, officer, partner, or trustee of, or is in a similar capacity with respect to, or is holder of ten percent or more of the voting interests of, any Person described in clauses (a) through (c) of this sentence. For purposes of this definition, the term "controls," "is controlled by," or "is under common control with" shall refer to the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the Target Person, whether through the ownership of voting securities, by contract, or otherwise.

11.3. "Capital Account" of a Member, as of any given date, means the Capital Contribution to the Company by the Member as adjusted to the date in question pursuant to Article 5.

11.4. "Capital Contribution" means any contribution, whenever made, by a Member to the capital of the Company, whether in cash or property. Whether a payment of cash or a transfer of property is a contribution to the capital of the Company, and, therefore, a Capital Contribution, shall be determined by agreement of the Members.

11.5. "Capital Interest" means the proportion that a Member's positive Capital Account balance, if any, bears to the aggregate Capital Accounts of all Members whose Capital Accounts have positive balances, as such proportion may change from time to time. Negative Capital Account balances are disregarded in the determination of "Capital Interests."

11.6. "CEO" or "Co-CEO" means one of the two Members.

11.7. "Code" means the U.S. Internal Revenue Code of 1986 or corresponding provisions of superseding Federal revenue laws.

11.8. "Colorado Act" means the Colorado Limited Liability Company Act or any act that supersedes the Colorado Limited Liability Company Act, as the same may be amended from time to time.

11.9. "Company" is defined in the first paragraph of this Operating Agreement.

11.10. "Control" of a company means the ability to appoint a majority of the directors on its governing board or the ability to exercise similar operating control through other means.

11.11. "COO" means the Company's Chief Operating Officer, as appointed pursuant to Section 4.2 hereof.

11.12. "CTO" means the Company's Chief Technical Officer, as appointed pursuant to Section 4.3 hereof.

11.13. "Deficit Capital Account" means, with respect to any Member, the deficit balance, if any, in the Member's Capital Account as of the end of the taxable year, after giving effect to the following adjustments:

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(a) Credit to such Capital Account of all amounts which the Member is treated as being obligated to restore under Section 1.704-1(b)(2)(ii)(c) of the Treasury Regulations, as well as any addition thereto pursuant to the next to last sentence of Sections 1.704-2(g)(1) and (i)(5) of the Treasury Regulations, after taking into account thereunder any changes during such year in partnership minimum gain (as determined in accordance with Section 1.704-2(d) of the Treasury Regulations) and in the minimum gain attributable to any partner nonrecourse debt (as determined under Section 1.704-2(f)(3) of the Treasury Regulations); and

(b) Debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Treasury Regulations.

This definition of Deficit Capital Account is intended to comply with the provision of Treasury Regulations Sections 1.704-1(b)(2)(ii)(d) and 1.704-2, and is to be interpreted consistently with those provisions.

11.14. "Depreciation" means, with respect to each asset, for each fiscal year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to the asset for such fiscal year; provided, however, that, if the Gross Asset Value of the asset differs from its adjusted basis for Federal income tax purposes at the beginning of such fiscal year, "Depreciation" shall be an amount which bears the same ratio to such beginning Gross Asset Value as the Federal income tax depreciation, amortization, or other cost recovery deduction for such fiscal year bears to such beginning adjusted tax basis; and provided, further, that, if the adjusted basis for Federal income tax purposes of an asset at the beginning of such fiscal year is zero, "Depreciation" shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Members.

11.15. "EchoStar Agreement(s)" means the following agreements of even date herewith, by and between EchoStar and the Company: the EchoStar Software License Agreement, the EchoStar Service and Development Agreement, and the EchoStar Smart Card Purchase Agreement.

11.16. "EchoStar Service and Development Agreement" means that certain agreement by and between EchoStar and the Company pursuant to which the Company shall service and develop for EchoStar and its Affiliates various uplink datastream management and other systems.

11.17. "EchoStar Smart Card Purchase Agreement" means that certain agreement by and between EchoStar and the Company pursuant to which the Company sells Smart Cards to EchoStar and its Affiliates.

11.18. "EchoStar Software License Agreement" means that certain agreement by and between EchoStar and the Company pursuant to which the Company grants EchoStar and its Affiliates certain rights to use the Company systems and technology.

11.19 "Effective Date" means July 1, 1998.

11.20. "Entity" means a corporation, partnership, limited liability company, trust, or any other legally recognized person other than a human being.

11.21. "Escrow Agreement" means that certain agreement by and between Kudelski, EchoStar, an escrow agent, and the Company, pursuant to which Kudelski shall place certain Kudelski technology into escrow for the benefit of the Company and EchoStar and its Affiliates.

11.22. "Financial Review Committee" means a committee which shall provide advice, review, and approval of the Company financial operating issues and budgets. The committee shall consist of four persons, with each Member having the right to appoint, remove, replace, and appoint temporary substitutes or proxies for two members of the committee.

11.23. "Fiscal Year" means the Company's fiscal year, which shall be the calendar year.

11.24. "Gross Asset Value" means, with respect to any asset, the asset's adjusted basis for Federal income tax purposes; provided, however, that:

(a) The initial Gross Asset Value of an asset contributed by a Member to the Company shall be the gross fair market value of the asset at the time of such contribution, as determined by the Members; provided, however, that the initial Gross Asset Values of the assets (other than cash) contributed to the Company pursuant to Section 5.2 hereof shall be as set forth in Schedule A.

(b) The Gross Asset Values of all assets shall be adjusted to equal their respective gross fair market values, as determined by the Members, as of the following times: (1) the acquisition of an interest (as that term is used in Regulations Section 1.704-1(b)(2)(iv)(f)(5)(i)) by a Member in exchange for more than a de minimis contribution of property (including money); (2) the distribution by the Company to a Member of more than a de minimis amount of property as consideration for a Membership Interest; and (3) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g); provided, however, that adjustments pursuant to clauses (1) and (2) of this Section 11.24(b) shall be made only if the Members reasonably determine that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company;

(c) The Gross Asset Value of an asset distributed to a Member shall be adjusted to equal the gross fair market value of the asset on the date of distribution as determined by the Members, and

(d) The Gross Asset Values of assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulation Section 1.704-1(b)(2)(iv)(m), Section 11.31(d) (relating to the definition of Net Profits and Net Losses), and Section 5.4; provided, however, that Gross Asset Values shall not be adjusted pursuant to this definition to the extent the Members determine that an adjustment pursuant to Section 11.24(b) is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this Section 11.24(d). If the Gross Asset

Value of an asset has been determined or adjusted pursuant to Section 11.24(a), 11.24(b), or 11.24(d), then such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Net Profits and Net Losses.

11.25. "Kudelski Agreement(s)" means the following agreements of even date herewith by and between Kudelski and the Company: the Kudelski Software License Agreement, the Kudelski Service and Development Agreement, and the Kudelski Smart Card Purchase Agreement.

11.26. "Kudelski Service and Development Agreement" means that certain agreement by and between Kudelski and the Company pursuant to which each shall provide service and development services for the other on an ad hoc basis.

11.27. "Kudelski Smart Card Purchase Agreement" means that certain agreement by and between Kudelski and the Company pursuant to which Kudelski sells Smart Cards to the Company.

11.28. "Kudelski Software License Agreement" means that certain agreement by and between Kudelski and the Company pursuant to which the Company is granted certain rights to Kudelski technology.

11.29. "Member" means EchoStar or Kudelski.

11.30. "Membership Interest" means a Member's entire interest in the Company, and such other rights and privileges that the Member may enjoy by virtue of being a Member.

11.31. "Net Profits" and "Net Losses" means for each taxable year of the Company an amount equal to the Company's net taxable income or loss for such year as determined for Federal income tax purposes (including separately stated items) in accordance with the accounting method and rules used by the Company and in accordance with Section 703 of the Code, subject to the following provisions:

(a) Any item of income, gain, loss, or deduction allocated to Members pursuant to Section 6.3 shall not be taken into account in computing Net Profits or Net Losses;

(b) Any income of the Company that is exempt from Federal income tax and is not otherwise taken into account in computing Net Profits and Net Losses pursuant to this definition shall be added to such net taxable income or loss;

(c) Any expenditure of the Company described in Section 705(a)(2)(B) of the Code and not otherwise taken into account in computing Net Profits and Net Losses shall be subtracted from such net taxable income or loss;

(d) In the event the Gross Asset Value of an asset is adjusted pursuant to Section 11.24(b) or 11.24(c), the amount of such adjustment shall be taken into account, as gain or loss from the disposition of such asset, in computing Net Profits or Net Losses;

(e) Gain or loss resulting from the disposition of an asset with respect to which gain or loss is recognized for Federal income tax purposes shall be computed with reference to the Gross Asset Value of the asset, notwithstanding that the adjusted tax basis of the asset differs from its Gross Asset Value;

(f) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account, in computing Net Profits or Net Losses, Depreciation for such fiscal year; and

(g) To the extent an adjustment to the adjusted tax basis of an asset pursuant to Section 734(b) of the Code or Section 743(b) of the Code is required pursuant to Section 1.704-1(b)(2)(iv)(m)(4) of the Treasury Regulations to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Membership Interest, the amount of such adjustment shall be treated as an item of gain (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Net Profits or Net Losses.

11.32. "Operating Agreement" means this Operating Agreement, as amended from time to time.

11.33. "Person" means a human being or an Entity and shall include the heirs, executors, administrators, legal representatives, successors, and assigns of a "Person" where the context permits or requires.

11.34. "Products" shall mean the Smart Cards and uplink datastream management systems obtained from Kudelski, as well as any other products or services within the scope of the Company's general purpose, which the Members may agree that the Company shall design, manufacture, or distribute pursuant to Section 2.2 hereof.

11.35. "Recordkeeper" means the Person appointed by the Members, pursuant to Section 3.11, to keep the books and records of the Company and to perform the other duties specified in this Operating Agreement as duties of the Recordkeeper.

11.36. "Sale" and its derivatives means transfer for consideration.

11.37. "Schedule A" means Schedule A to this Operating Agreement reflecting matters such as Members' identities and share of Net Profits and Net Losses, which schedule bears the most recent date and is signed by the Members. Schedule A is prima facie evidence of the agreement of the parties hereto with respect to the matters reflected therein, but it is recognized that, through inadvertence or otherwise, Schedule A may not be modified from time to time as required to reflect the parties' agreement, or as circumstances change, and, accordingly, any party to this Operating Agreement may, by a preponderance of the evidence, show that Schedule A is not an accurate reflection of the parties' agreement.

11.38. "Securities Acts" means the Securities Act of 1933, the Colorado Securities Act, or the securities laws of any other state or country.

11.39. "Security Technology" means any materials (including source code, schematics, and documentation) containing internal design specifications associated either with current or future implementations of Smart Cards, or with those products and processes that are directly responsible for generation or processing of the payload of security related messages, including entitlement management messages, entitlement control messages, control words, and pairing keys.

11.40. "Source Code" means all source code, documentation and all related materials and intellectual property necessary for the effective maintenance, enhancement and ongoing operation of Kudelski software and systems utilized by EchoStar and its Affiliates as of the date this Operating Agreement is executed, but not including the Security Technology.

11.41. "Source Technology" means all intellectual property, software, and hardware acquired or possessed by the Company from the Kudelski Agreements and from the Company's own research and development efforts, including software in both object code and source code forms. Source Technology includes all items needed to operate on, and develop Upgrades from the source code as desired, but does not include Security Technology.

11.42. "Subsidiary" means any corporation more than fifty percent (50%) of whose outstanding shares or stock representing the right to vote (except by reason of the occurrence of a contingency) for the election of directors or Members of a similar managing body are owned or controlled, directly or indirectly, by a specified party.

11.43. "Swiss Office" means a Company facility located in Switzerland, selected by Kudelski pursuant to Section 7.5.

11.44. "Technical Review Committee" means a committee which shall provide advice, review, and approval of the Company product and technical direction. The committee shall consist of six persons, with each Member having the right to appoint, remove, replace, and appoint temporary substitutes or proxies for three members of the committee.

11.45. "Transfer" includes sale, bequest, assignment, and all other modes of transfer including the creation of a security interest or encumbrance.

11.46. "Treasury Regulations" shall include temporary and final regulations promulgated under the Code that are in effect as of the date of the filing of the Articles of Organization and the corresponding sections of any regulations subsequently promulgated that amend or supersede such regulations. The term "Treasury Regulations" shall also include regulations that have been proposed by the Internal Revenue Service under the Code at or prior to the date of the filing of the Articles of Organization, and have not been withdrawn at or prior to such date, as well as the corresponding provisions of any regulations subsequently promulgated that, amend or supersede such proposed regulations.

11.47. "Upgrades" are enhancements, modifications, updates, bug fixes, and direct extensions to software.

11.48. "Useable Technology" means that portion of the Source Technology necessary or desirable to continue to utilize and maintain ongoing operation of the technology, as set forth in the EchoStar Agreements, the Escrow Agreement, and the Residual Agreement, but shall not include the ability to upgrade such technology by operating on source code and shall not include the Security Technology, but shall include the functionality of the Security Technology in executable or other equivalent forms.

11.49. "U.S. Office" means the Company's main facility located in the Denver, Colorado metropolitan area, selected by EchoStar pursuant to Section 7.5.

Article 12. Miscellaneous Provisions

12.1. Notices. The parties choose the following addresses as the addresses at which they will accept service of all documents and notices relating to this Operating Agreement:

As to EchoStar:	EchoStar Communications Corporation 5701 S. Santa Fe Drive Littleton, CO 80120 USA Attn: David Moskowitz Fax: (303) 723-1699
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As to Kudelski:	Kudelski SA 1033 Cheseaux SWITZERLAND Attn: Nicolas Goetschmann Fax: 41 21/732 0300
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As to the Company:	NagraStar LLC 90 Inverness Circle East Englewood, CO 80112 USA Attn: Joe Ferguson and Xavier Carrel Fax: (303) 706-5719
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With a copy to:	Kudelski SA 1033 Cheseaux SWITZERLAND Attn: Nicolas Goetschmann Fax: 41 21/732 0300
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Any notice to be given by a party to the other parties pursuant to this Operating Agreement shall be given in writing in the English language by prepaid registered post, by facsimile or shall be delivered by hand (delivery by hand must be acknowledged by written receipt from a duly authorized person at the office of the addressee), provided that:

(a) any notice given by prepaid registered post shall be deemed to have been received by the addressee, in the absence of proof to the contrary, 14 days after the date of postage;

(b) any notice delivered by hand during normal business hours shall be deemed to have been received by the addressee, in the absence of proof to the contrary, at the time of delivery; and

(c) any notice given by facsimile shall be deemed to have been received by the addressee, in the absence of proof to the contrary, immediately upon the issuance by the transmitting facsimile machine, of a report confirming correct transmission of all the pages of the document containing the notice or upon receipt by the transmitting facsimile machine, at the end of the notice being transmitted, of the automatic answer-back of the receiving facsimile machine.

12.2. Governing Law; Arbitration. This Operating Agreement, and the performances of the parties hereunder, shall be governed by the laws of the State of New York without giving effect to the principles of conflicts of laws that would otherwise provide for the application of the substantive law of another jurisdiction. Should any dispute among the parties arise, the parties agree that the sole jurisdiction and venue for the resolution of any such dispute shall be English language binding arbitration conducted in the New York City metropolitan area, in accordance with the Commercial Rules of the American Arbitration Association, which rules shall include the right to seek appropriate injunctive relief in such arbitration and are deemed to be incorporated by reference into this clause. Unless the arbitrators determine otherwise, the losing party in any arbitration shall pay the costs of the prevailing party.

12.3. Indemnification

(a) By Kudelski. Kudelski shall indemnify, defend and hold the Company, EchoStar, the Affiliates of each, and its and their respective officers, directors, employees, agents and shareholders, and its and their respective assigns, successors and legal representatives harmless from and against, any and all costs, losses, liabilities, damages, lawsuits, judgments, claims, actions, penalties, fines and expenses (including, without limitation, interest, penalties, reasonable attorneys' fees and all monies paid in the investigation, defense or settlement of any or all of the foregoing, "Claims") that arise out of, or are incurred in connection with: (a) Kudelski's performance or failure of performance under this Operating Agreement and any direct or indirect results thereof; (b) Kudelski's acts or omissions, lawful or unlawful; (c) the breach of any of Kudelski's representations or warranties herein; or (d) the failure of Kudelski to comply with, or any actual or alleged violation of, any applicable laws, statute, ordinance, governmental administrative order, rule or regulation.

(b) By EchoStar. EchoStar shall indemnify, defend and hold Kudelski, the Company, the Affiliates of each, and its and their respective officers, directors, employees, agents and shareholders, and its and their respective assigns, heirs, successors and legal representatives harmless from and against, any and all Claims that arise out of, or are incurred in connection with: (a) EchoStar's performance or failure of performance under this Operating Agreement and any direct or indirect results thereof; (b) EchoStar's acts or omissions, lawful or unlawful; (c) the breach of any of EchoStar's representations or warranties herein; or (d) the failure of EchoStar to comply with, or any actual or alleged violation of, any applicable laws, statute, ordinance, governmental administrative order, rule or regulation.

12.4. Amendments. This Operating Agreement and the Articles of Organization may be amended from time to time by a writing executed by the Members.

12.5. Execution of Additional Instruments. Each Member hereby agrees to execute such other and further statements of interest and holdings, designations, powers of attorney, and other instruments necessary or appropriate to comply with any laws, rules or regulations.

12.6. Headings and Pronouns. Headings and captions contained in this Operating Agreement are solely for the convenience of the parties and are not to be considered in interpreting or construing this Operating Agreement or the parties' rights, remedies, and obligations hereunder. The words "herein," "hereof," and "hereunder," when used in this Operating Agreement, refer to this Operating Agreement in its entirety. The word "include" and its derivatives mean by way of example and not by way of exclusion or limitation. Words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. Words importing a gender include all genders.

12.7. Waivers. No party shall be deemed to have waived any right or remedy under or with respect to this Operating Agreement unless such waiver is expressed in a writing signed by such party. No waiver of any right or remedy under or with respect to this Operating Agreement by a party on any occasion or in any circumstance shall be deemed to be a waiver of any other right or remedy on that occasion or in that circumstance nor a waiver of the same or of any other right or remedy on any other occasion or in any other circumstance.

12.8. Rights and Remedies Cumulative. The rights and remedies provided by this Operating Agreement, the EchoStar Agreements, and the Kudelski Agreements are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

12.9. Severability. If any provision in this Operating Agreement is held to be invalid or unenforceable on any occasion or in any circumstance, such holding shall not be deemed to render the provision invalid or unenforceable on any other occasion or in any other circumstance nor to render any other provision hereof invalid or unenforceable, and to that extent the provisions of this Operating Agreement are severable; provided, however, that this provision shall not preclude a court

of competent jurisdiction from refusing so to sever any provision if severance would be inequitable to one or more of the parties.

12.10. Assignment. This Operating Agreement may not be assigned, in whole or in part, by any party without the prior written consent of the other parties, which consent may be withheld for any reason.

12.11. No Third Party Beneficiaries; No Rights in Creditors. This Operating Agreement creates no rights benefitting third Persons and no third Person shall have any right to enforce any provision hereof, except as may be specifically provided herein. Without limiting the generality of the preceding sentence, none of the provisions of this Operating Agreement shall be for the benefit of or enforceable by any creditor of the Company.

12.12. Investment Representations. The Members understand, acknowledge, and agree:

(a) that no Membership Interest has been registered under the Securities Acts because of the Company's reliance upon exemptions from the registrations requirements of the Securities Acts;

(b) that the Company has relied upon the fact that the Membership Interests are to be held by each Member for investment; and

(c) that exemption from registrations under the Securities Acts would not be available if the Membership Interests were acquired by a Member with a view to distribution. Accordingly, each Member hereby confirms to the Company that the Member is acquiring the Membership Interest for the Member's own account, for investment, and not with a view to the resale or distribution thereof. Each Member agrees not to hypothecate or transfer or offer to hypothecate or transfer any portion of the Membership Interests unless there is an effective registration or other qualification relating thereto under the Securities Act of 1933 and under all applicable state securities laws or unless the holder of Membership Interests delivers to the Company an opinion of counsel, reasonably satisfactory to the remaining Members, that such registration or other qualification under such Act and applicable state securities laws is not required in connection with such hypothecation, transfer, or offer. Each Member understands that the Company is under no obligation to register any Membership Interest or to assist the Member in complying with any exemption from registration under the Securities Acts if the Member should, at a later date, wish to dispose of the Membership Interest. Furthermore, each Member realizes that the Membership Interests are unlikely to qualify for disposition under Rule 144 of the Securities and Exchange Commission unless the Member is not an "affiliate" of the Company and the Membership Interest has been beneficially owned and fully paid for by the Member for at least one year. Prior to acquiring any Membership Interests, each Member has made an investigation of the Company and its business and has had made available to the Member all information with respect thereto which the Member needed to make an informed decision to acquire the Membership Interest. Each Member considers itself to be a Person possessing experience and sophistication as an investor which are adequate for the evaluation of the merits and risks of the Member's investment in the Membership Interest.

12.13. Other Representations and Warranties. As of the date the Member becomes a Member, each Member represents and warrants that:

(a) Due Incorporation or Formation; Authorization of Agreement. The Member is duly existing as an Entity and in good standing under the laws of the jurisdiction of its formation and has the power and authority, as an Entity, to own its property and carry on its business as owned and carried on at the date hereof and as contemplated hereby. The Member is duly licensed or qualified to do business and in good standing in each of the jurisdictions in which the failure to be so licensed or qualified would have a material adverse effect on its financial condition or its ability to perform its obligations hereunder. The Member has the power and authority as an Entity to execute and deliver this Operating Agreement and to perform its obligations hereunder, and its execution, delivery, and performance of this Operating Agreement has been duly authorized by all necessary action.

(b) Valid Obligation. This Operating Agreement constitutes the legal, valid, and binding obligation of the Member.

(c) No Conflict with Restrictions; No Default. Neither the execution, delivery, and performance of this Operating Agreement nor the consummation by the Member of the transactions contemplated hereby

(1) shall conflict with, violate, or result in a breach of any of the terms, conditions, or provisions of any law, regulation, order, writ, injunction, decree, determination, or award of any court, any governmental department, board, agency, or instrumentality, domestic or foreign, or any arbitrator, applicable to the Member or any of its Affiliates;

(2) shall conflict with, violate, result in a breach of, or constitute a default under any of the terms, conditions, or provisions of the articles of incorporation, bylaws, partnership agreement or operating agreement (if any) of the Member or any of its Affiliates or of any material agreement or instrument to which the Member or any of its Affiliates is a party or by which the Member, or any of its Affiliates is or may be bound or to which any of its material properties or assets is subject;

(3) shall conflict with, violate, result in a breach of, constitute a default under (whether with notice or lapse of time or both), accelerate or permit the acceleration of the performance required by, give to others any material interests or rights, or require any consent, authorization, or approval under any indenture, mortgage, lease agreement, or instrument to which the Member or any of its Affiliates is a party or by which the Member or any of its Affiliates is or may be bound; or

(4) shall result in the creation or imposition of any lien upon any of the material properties or assets of the Member or any of its Affiliates.

(d) Government Authorizations. Any registration, declaration, or filing with, or consent, approval, license, permit, or other authorization or order by, any government or regulatory authority,

domestic or foreign, that is required in connection with the valid execution, delivery, acceptance, and performance by the Member under this Operating Agreement or the consummation by the Member of any transaction contemplated hereby has been completed, made, or obtained on or before the effective date of this Operating Agreement.

(e) Litigation. Except as disclosed in EchoStar's annual, quarterly, or current reports filed pursuant to the U.S. Securities Exchange Act of 1934, there are no actions, suits, proceedings, or investigations pending or, to the knowledge of the Member or any of its Affiliates, threatened against or affecting the Member or any of its Affiliates or any of their properties, assets, or businesses in any court or before or by any governmental department, board, agency, or instrumentality, domestic or foreign, or any arbitrator which could, if adversely determined (or, in the case of an investigation, could lead to any action, suit, or proceeding, which if adversely determined could) reasonably be expected to materially impair the Member's ability to perform its obligations under this Operating Agreement or to have a material adverse effect on the consolidated financial condition of the Member; and the Member or any of its Affiliates has not received any currently effective notice of any default, and the Member or any of its Affiliates is not in default, under any applicable order, writ, injunction, decree, permit, determination, or award of any court, any governmental department, board, agency, or instrumentality, domestic or foreign, or any arbitrator which could reasonably be expected to materially impair the Member's ability to perform its obligations under this Operating Agreement or to have a material adverse effect on the consolidated financial condition of the Member.

(f) Investment Company Act; Public Utility Holding Company Act. Neither the Member nor any of its Affiliates is, nor shall the Company as a result of the Member holding an interest be, an "investment company" as defined in, or subject to regulation under, the U.S. Investment Company Act of 1940. Neither the Member nor any of its Affiliates is, nor shall the Company as a result of the Member holding an interest be, a "holding company," "an affiliate of a holding company," or a "subsidiary of a holding company," as defined in, or subject to regulation under, the U.S. Public Utility Holding Company Act of 1935.

(g) Confidentiality.

(1) Except as contemplated hereby or required by a court of competent authority, each Member shall keep confidential and shall not disclose to others and shall use its reasonable efforts to prevent its Affiliates and any of its, or its Affiliates', present or former employees, agents, and representatives from disclosing to others without the prior written consent of the Members any information which

(A) pertains to this Operating Agreement, any negotiations pertaining thereto, any of the transactions contemplated hereby, or the business of the Company; or

(B) pertains to written or oral confidential or proprietary information of any Member or the Company or which any Member has labeled as confidential or proprietary; provided,

however, that the Company may disclose to its Affiliates' employees, agents, and representatives any information made available to the Member.

(2) No Member shall use, and each Member shall use its best efforts to prevent any Affiliate of the Member from using, any information which

(A) pertains to this Operating Agreement, any negotiations pertaining hereto, any of the transactions contemplated hereby, or the business of the Company; or

(B) pertains to the confidential or proprietary information of any Member or the Company or which any Member has labeled in writing as confidential or proprietary, except in connection with the transactions contemplated hereby.

12.14. Counterparts. This Operating Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

12.15. Waiver of Action for Partition. Each Member irrevocably waives any right that it may have to maintain any action for partition with respect to the property of the Company; provided, however, that this provision shall not apply to any asset that is distributed in kind to any Member.

Certificate

The undersigned, being NagraStar LLC and all of the initial Members of NagraStar LLC, hereby agree, acknowledge, and certify that the foregoing Operating Agreement constitutes the Operating Agreement of NagraStar LLC adopted by the Members as of the date first stated in the Operating Agreement.

NAGRASTAR LLC

By:

(A Member)

Initial Members:

ECHOSTAR COMMUNICATIONS CORPORATION

By:

Its:

KUDELSKI SA

By:

Its:

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**Schedule A
to
NagraStar LLC
Operating Agreement**

Member Name	Initial Capital Contribution	Initial Share of Total Capital	Share of Net Profits and Net Losses
EchoStar Communications Corporation	\$1,000,000 USD (cash)	50%	50%
Kudelski SA	\$1,000,000 USD (contract rights)	50%	50%

The undersigned, possessing all Membership Interest in the Company, certify that the foregoing Schedule A is accurate and in effect as of the date first stated on the Operating Agreement to which it is attached.

ECHOSTAR COMMUNICATIONS CORPORATION

By:
Its:



KUDELSKI SA

By:
Its:



**Schedule B
to
NagraStar LLC
Operating Agreement**

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**Schedule C
to
NagraStar LLC
Operating Agreement**

Development Guidelines for NagraStar Developments

1. Preferred hardware platform is DEC Alpha running DecUnix for the mainframes and Windows 95/NT computers for GUI support
2. Software developed in C/C++
3. Database: Oracle 8.0 or later
4. System design tool: Rational Rose
5. Engineering documentation is compliant with IEEE
6. Development process is compliant with IEEE
7. There will be a quality assurance coordinator in Cheseaux and in Denver. The coordinator need not be dedicated full time to NagraStar
8. Developments will be done using the software environment platform SEP

[APPENDIX C-1]

RESIDUAL SERVICE AND DEVELOPMENT AGREEMENT

This Residual Service and Development Agreement ("Agreement") is made this twenty-third day of June, 1998, between Kudelski SA, a corporation organized under the laws of Switzerland ("Kudelski") and EchoStar Communications Corporation, a Nevada corporation ("EchoStar").

INTRODUCTION

- A. In conjunction with this Agreement, the parties are entering into a number of agreements ("Related Agreements"), pursuant to which Kudelski is supplying a conditional access system, software maintenance and development services, and other related software and hardware components to NagraStar LLC, a Colorado limited liability company ("NagraStar"), to enable NagraStar to meet EchoStar's needs for the provision and maintenance of a conditional access system for its satellite broadcasting operations.
- B. Prior to the effective date of this Agreement, EchoStar and those entities it directly or indirectly controls, is controlled by, or under common control with (collectively, its "Affiliates") obtained software maintenance and development services related to the Kudelski conditional access system (collectively, the "Services"), and the conditional access system itself, directly from Kudelski and its Affiliates, as defined in three contracts between EchoStar and/or its Affiliates and Kudelski and/or its Affiliates entered into prior to this Agreement (the "Pre-Existing Contracts").
- C. The parties' intent to shift the delivery and support of the conditional access system and related components from Kudelski to NagraStar is expressed in the Related Agreements. The parties desire herein to provide EchoStar and its Affiliates a means to obtain occasional Services directly from Kudelski upon request from time to time by EchoStar, and to clarify other obligations between the parties upon execution of this Agreement and the Related Agreements.

AGREEMENT

1. Services

Kudelski shall provide Services to EchoStar and its Affiliates upon request, subject to the reasonable availability of Kudelski's technical resources.

2. Payment for Services.

Payment for Services provided to EchoStar and its Affiliates by Kudelski at the written request of EchoStar shall vary based on the time spent and the experience level of the engineer providing the Services in the following manner:

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- | | |
|----------------------------------|------------|
| 1) One day category A engineer | US\$ 1,120 |
| 2) One day category B engineer | US\$ 905 |
| 3) One month category A engineer | US\$23,500 |
| 4) One month category B engineer | US\$19,000 |

These prices for Services were in effect as of December 1994 and shall not change during the term of this Agreement, except for an annual adjustment each December. The annual adjustment shall reflect only changes in the Swiss consumer price index and the US dollar/Swiss franc exchange rate. Reasonable travel and other expenses, if any, will be billed separately.

Kudelski represents that the fees charged to EchoStar and its Affiliates at all times under this Agreement shall be comparable to or less than the fee charged to its then current third party customers other than NagraStar, for work of similar scope and quantity.

3. Indemnification

(a) **By Kudelski.** Kudelski shall indemnify, defend and hold EchoStar, its Affiliates, and its and their respective officers, directors, employees, agents and shareholders, and its and their respective assigns, successors and legal representatives harmless from and against, any and all costs, losses, liabilities, damages, lawsuits, judgments, claims, actions, penalties, fines and expenses (including, without limitation, interest, penalties, reasonable attorneys' fees and all monies paid in the investigation, defense or settlement of any or all of the foregoing, "Claims") that arise out of, or are incurred in connection with: (a) Kudelski's performance or failure of performance under this Agreement and any direct or indirect results thereof; (b) Kudelski's acts or omissions, lawful or unlawful; (c) the breach of any of Kudelski's representations or warranties herein; or (d) the failure of Kudelski to comply with, or any actual or alleged violation of, any applicable laws, statute, ordinance, governmental administrative order, rule or regulation.

(b) **By EchoStar.** EchoStar shall indemnify, defend and hold Kudelski, its Affiliates, and its and their respective officers, directors, employees, agents and shareholders, and its and their respective assigns, heirs, successors and legal representatives harmless from and against, any and all Claims that arise out of, or are incurred in connection with: (a) EchoStar's performance or failure of performance under this Agreement and any direct or indirect results thereof; (b) EchoStar's acts or omissions, lawful or unlawful; (c) the breach of any of EchoStar's representations or warranties herein; or (d) the failure of EchoStar to comply with, or any actual or alleged violation of, any applicable laws, statute, ordinance, governmental administrative order, rule or regulation.

(c) **Pre-Existing Contracts.** All indemnification of EchoStar and its Affiliates for the conditional access systems and all related hardware, software, documentation, products and Services (collectively, the "Items") delivered to EchoStar or its Affiliates by Kudelski or its Affiliates prior to the date of this Agreement shall remain as set forth in the Pre-Existing Contracts and the indemnification provisions of Subsection 3(a)-(b) above shall not apply to such Items. All indemnification provisions contained in the Pre-Existing Contracts shall survive for the original terms of the respective Pre-Existing Contracts, whether or not this Agreement is earlier terminated.

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The indemnification provisions of Subsections 3(a)-(b) and those contained in the NagraStar Operating Agreement shall apply to all Items delivered after execution of this Agreement.

4. Warranty

All warranty provisions contained in the Pre-Existing Contracts, including but not limited to all obligations of Kudelski and its Affiliates in the event of a security breach of the conditional access system to replace Smart Cards within specified time periods at reduced prices, shall survive for the original terms of the respective Pre-Existing Contracts, whether or not this Agreement is earlier terminated.

5. Term and Termination

This Agreement shall commence on the date of execution hereof, and shall remain in effect perpetually unless and until terminated either (i) by EchoStar for any reason, upon six (6) months' notice to Kudelski; (ii) by either party, if EchoStar no longer elects to use the Kudelski conditional access system, upon six (6) months' notice to the other; or (iii) by Kudelski, if Kudelski dissolves NagraStar pursuant to Section 10.1(d) of the NagraStar Operating Agreement. The provisions of Sections 3 and 4 shall survive termination of this Agreement.

6. Confidential Information

The parties agree that this Agreement is confidential and neither party shall disclose any of the commercial, business, technical, operational, or legal details of this Agreement (the "Confidential Information") in any manner, including but not limited to press releases or other publicity of any nature without the prior written approval of the other party. The obligations imposed upon the parties herein shall survive termination of this Agreement indefinitely, but shall not apply to Confidential Information which is:

- (a) or becomes generally available to the public through no wrongful act of the party receiving the Confidential Information (the "Receiving Party");
- (b) already lawfully in the possession of the Receiving Party and not subject to an existing agreement of confidentiality between the parties;
- (c) received from a third party without restriction and without breach of this Agreement;
- (d) independently developed by the Receiving Party; or
- (e) released pursuant to the requirements imposed on the party by U.S. or Swiss securities laws, or the binding order of a government agency or court, so long as prior to any such release the releasing party provides the other party with the greatest notice permitted under the circumstances, so that the party disclosing the Confidential Information may seek a protective order or other appropriate remedy. In any such event, the releasing party will disclose only such Confidential

Information as is legally required and will exercise reasonable efforts to obtain confidential treatment for any Confidential Information being disclosed.

7. **Insurance**

Kudelski shall maintain adequate insurance coverage from a reputable carrier at levels standard in the software service and development industry.

8. **Governing Law; Arbitration.**

This Agreement, and the performances of the parties hereunder, shall be governed by the laws of the State of New York without giving effect to the principles of conflicts of laws that would otherwise provide for the application of the substantive law of another jurisdiction. Should any dispute among the parties arise, the parties agree that the sole jurisdiction and venue for the resolution of any such dispute shall be English language binding arbitration conducted in the New York City metropolitan area, in accordance with the Commercial Rules of the American Arbitration Association, which rules shall include the right to seek appropriate injunctive relief in such arbitration and are deemed to be incorporated by reference into this clause. Unless the arbitrators determine otherwise, the losing party in any arbitration shall pay the costs of the prevailing party.

9. **Notices**

The parties choose the following addresses as the addresses at which they will accept service of all documents and notices relating to this Agreement:

As to EchoStar:

EchoStar Communications Corporation
5701 S. Santa Fe Drive
Littleton, CO 80120
USA
Attn: David Moskowitz
Fax: (303) 723-1699

As to Kudelski:

Kudelski SA
1033 Cheseaux
SWITZERLAND
Attn: Nicolas Goetschmann
Fax: 41 21/732 0300

Any notice to be given by a party to the other parties pursuant to this Agreement shall be given in writing in the English language by prepaid registered post, by facsimile or shall be delivered by hand (delivery by hand must be acknowledged by written receipt from a duly authorized person at the office of the addressee), provided that:

(a) any notice given by prepaid registered post shall be deemed to have been received by the addressee, in the absence of proof to the contrary, 14 days after the date of postage;

(b) any notice delivered by hand during normal business hours shall be deemed to have been received by the addressee, in the absence of proof to the contrary, at the time of delivery; and

(c) any notice given by facsimile shall be deemed to have been received by the addressee, in the absence of proof to the contrary, immediately upon the issuance by the transmitting facsimile machine, of a report confirming correct transmission of all the pages of the document containing the notice or upon receipt by the transmitting facsimile machine, at the end of the notice being transmitted, of the automatic answer-back of the receiving facsimile machine.

10. **Effect of EchoStar Non-Payment**

During any period in which EchoStar is past due on payments for invoices tendered by Kudelski for Services provided under this Agreement, Kudelski shall have no obligation to provide further Services to EchoStar under this Agreement without payment in advance or other secured payment reasonably satisfactory to Kudelski.

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

KUDELSKI S.A.

By: 

ECHOSTAR COMMUNICATIONS CORPORATION

By: 

[APPENDIX C-2]

ESCROW AGREEMENT

This Escrow Agreement ("Escrow Agreement") is entered into and effective as of the twenty-third day of June 1998, by and between Kudelski SA, a corporation organized under the laws of Switzerland ("Kudelski"), NagraStar LLC, a Colorado limited liability company ("NagraStar"), EchoStar Communications Corporation ("EchoStar"), and DSI/Arcus Data Security, Ltd., a corporation organized under the laws of England ("Escrow Agent").

INTRODUCTION

- A. Kudelski has granted licenses to NagraStar to use certain software and technology through a Kudelski Smart Card Purchase Agreement (the "Smart Card Purchase Agreement") and related agreements entered into concurrently with this Escrow Agreement, which software and technology NagraStar shall sublicense to EchoStar and those entities it directly or indirectly controls, is controlled by, or under common control with (collectively, its "Affiliates") through certain agreements also entered into concurrently with this Escrow Agreement (all of the software referred to in, or referenced by this paragraph collectively, the "Software").
- B. The uninterrupted availability of all forms of the Software and related technology is critical to NagraStar and EchoStar in the conduct of their respective businesses.
- C. Kudelski has agreed to deposit relevant items in an escrow held by the Escrow Agent for the benefit of NagraStar and EchoStar, in accordance with the terms and conditions of this Escrow Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

I. Deposit

(a) Kudelski shall within thirty (30) days of execution of this Escrow Agreement, deposit with the Escrow Agent for storage in England: (i) the source code form of the Software (the "Source Code"); (ii) all software, hardware, and other tangible or intangible technology necessary or useful in the manufacture, use, or operation of the cards ("Smart Cards") described in the Smart Card Purchase Agreement (collectively, the "Escrow Technology"); (iii) irrevocable authorizations, in the form of the attached Exhibit C, permitting SGS Thompson and any other current, future, or potential manufacturers of the Smart Cards to reproduce fully functional Smart Cards and related technology, in whole or in part, on behalf of NagraStar or EchoStar ("Authorizations"); (iv) such other related tangible and intangible items set forth in this Escrow Agreement ("Additional Items"), including but

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not limited to each of the items set forth on Exhibit A hereto, and (v) all relevant commentary, explanations, and other documentation of or relating to the Source Code, the Escrow Technology, the Authorizations, and the Additional Items, which is existing as of the date of this Escrow Agreement (collectively, "Commentary"). The Source Code, the Escrow Technology, the Authorizations, the Additional Items, and the Commentary shall be hereinafter collectively referred to as the "Escrow Material".

(b) Kudelski also agrees to deposit with Escrow Agent, at such times as they are made, one copy of all revisions to the items comprising the Escrow Material, encompassing all updates, enhancements, corrections or other revisions which relate to all or any portion of the items comprising the Escrow Material (any of the foregoing, an "Update").

(c) With each copy of Escrow Material and each Update delivered to the Escrow Agent pursuant to this Section 1, Kudelski shall complete, execute, and submit to the Escrow Agent a separate "Description of Deposit Materials" in substantially the form set forth as Exhibit B (a "Deposit Description").

(d) When Escrow Agent receives the Escrow Material or any Update, together with the Deposit Description, Escrow Agent will conduct a deposit inspection by visually matching the labeling of the tangible media containing the deposit materials to the item descriptions and quantity listed on the Deposit Description. In the case of the initial deposit of the Authorization, Escrow Agent shall verify that the document submitted by Kudelski for deposit is identical in verbiage to Exhibit C, and that it is signed. In addition to the deposit inspection, NagraStar may elect to cause a verification of the Escrow Materials and Updates in accordance with Section 8 below.

(e) At completion of the deposit inspection, if Escrow Agent determines that the labeling of the tangible media matches the item descriptions and quantity on the Deposit Description, Escrow Agent will date and sign the Deposit Description and mail a copy thereof to each of Kudelski, NagraStar, and EchoStar. If Escrow Agent determines that the labeling does not match the item descriptions or quantity on the Deposit Description (or for the initial deposit of the Authorization, that the wording or signature are not as specified in Section 1(d) above), Escrow Agent will (i) note the discrepancies in writing on the Deposit Description; (ii) date and sign the Deposit Description with the exceptions noted; and (iii) provide a copy of the Deposit Description to each of Kudelski, NagraStar, and EchoStar. Escrow Agent's acceptance of the deposit occurs upon the signing of the Deposit Description by Escrow Agent. Delivery of the signed Deposit Description to NagraStar and EchoStar constitutes notice to NagraStar and EchoStar that the deposit materials have been received and accepted by Escrow Agent.

(f) Kudelski represents that: (i) Kudelski lawfully possesses all of the deposit materials deposited with Escrow Agent; (ii) with respect to all of the deposit materials, Kudelski has the right and authority to grant to Escrow Agent and NagraStar and EchoStar the rights as provided in this Escrow Agreement; (iii) the deposit materials are not subject to any lien or other encumbrance; (iv) the deposit materials consist of the proprietary information and other materials identified in this Escrow Agreement, including Exhibit A; and (v) the deposit materials are readable and useable in

their current form or, if the deposit materials are encrypted, the decryption tools and decryption keys have also been deposited.

(g) Kudelski is responsible for and warrants compliance with all applicable laws, rules and regulations, including but not limited to customs laws, import, export, and re-export laws and government regulations of any country to which the deposit materials may be delivered in accordance with the provisions of this Escrow Agreement.

2. Term

This Escrow Agreement shall remain in effect in perpetuity, unless terminated: (a) pursuant to the provisions of this Escrow Agreement; (b) by agreement of EchoStar and Kudelski; or (c) upon the dissolution of NagraStar pursuant to Sections 10.1(b) or 10.1(d) of the NagraStar Operating Agreement. Termination hereof is automatic upon delivery of all of the deposited Escrow Materials and Updates to NagraStar in accordance with the provisions hereof.

3. Default

A default by Kudelski shall be deemed to have occurred under this Escrow Agreement upon the occurrence of any of the following; provided however, that the occurrence of such event or circumstance is not the direct result of a default by EchoStar of its material obligations under any agreement with Kudelski or NagraStar related to the subject matter hereof:

(a) if Kudelski has ceased its on-going business operations, or ceased the sale, licensing, maintenance or other support of the Escrow Material, as modified or expanded by any Updates, if such cessation prevents EchoStar and its Affiliates from properly operating or maintaining its conditional access system in whole or in part;

(b) if the security of any of the Escrow Material, as modified or expanded by any Updates, is breached and Kudelski fails to correct such breach within a reasonable period of time (giving consideration to the effect on EchoStar's business) following receipt by Kudelski of notice from EchoStar informing it of the breach; or

(c) if any other event or circumstance (giving consideration to the effect on EchoStar's business), which prevents EchoStar and its Affiliates from properly operating or maintaining its conditional access system in whole or in part, occurs due to the inability or unwillingness of Kudelski to fulfill its material obligations related to encryption technology and conditional access security to NagraStar or EchoStar and its Affiliates (as applicable) under the Smart Card Purchase Agreement, this Escrow Agreement, or any Software contract between the parties, including, without limitation, the correction of defects in the Escrow Material, as modified or expanded by any Updates; provided however, that the occurrence of such event or circumstance is not the result of a default by EchoStar of its material obligations under any agreement with Nagra or NagraStar related to the subject matter hereof.

4. Notice of Default; Release

(a) Filing For Release. EchoStar may give written notice to Escrow Agent and Kudelski of the occurrence of a default hereunder and a demand for the release of the deposit materials to NagraStar. In the event of a default under Section 3(c) above, EchoStar must provide Kudelski with notice of the default on or prior to the date a demand for release is made. Upon receipt of such notice, Escrow Agent shall immediately provide a copy of the notice to Kudelski, by certified mail, return receipt requested, or by commercial express mail.

(b) Contrary Instructions. From the date Escrow Agent mails the notice requesting release of the deposit materials, Kudelski shall have thirty (30) days to deliver to Escrow Agent any Contrary Instructions. "Contrary Instructions" shall mean the written representation by Kudelski that a default has not occurred or has been cured. Upon receipt of Contrary Instructions, Escrow Agent shall immediately send a copy to NagraStar and EchoStar by certified mail, return receipt requested, or by commercial express mail. Additionally, Escrow Agent shall notify Kudelski, NagraStar, and EchoStar that there is a dispute to be resolved pursuant to the Dispute Resolution section of this Escrow Agreement (Article 5).

(c) Release of Deposit. If Escrow Agent does not receive Contrary Instructions from Kudelski, Escrow Agent shall release and deliver all deposit materials to the Chief Operating Officer of NagraStar, or to EchoStar if the provisions of Section 14 apply. In the event of a dispute, Escrow Agent shall immediately comply with any order to release the Escrow Materials and Updates resulting from the binding arbitration set forth in Section 5 below. However, Escrow Agent is entitled to receive any fees due Escrow Agent before making the release.

(d) Right to Use Following Release. Notwithstanding anything to the contrary herein, upon release of the Escrow Material and any Updates in accordance with this Article 4, NagraStar and/or EchoStar (as the case may be) shall: (i) have the right to use the Escrow Material and Updates only for the purpose of correcting, modifying, enhancing and upgrading the Software and the Escrow Technology to the extent required now or in the future to fully support the satellite operations of EchoStar and its Affiliates, including, the manufacture and personalization of fully functional Smart Cards in accordance with the Authorizations, and for no other purpose; (ii) treat the Escrow Material and Updates as confidential and not divulge the whole or any part thereof to any person save such of its employees or contractors who need to know the same in order to carry out the provisions of Section 4(d)(i) above, provided that NagraStar and/or EchoStar (as the case may be) shall procure that any such employee or contractor is aware of and shall comply with these obligations as to confidentiality and non-disclosure; (iii) keep the Escrow Material and Updates in a secure place and safeguard them from access by any unauthorized person; (iv) not deface or remove any proprietary notices affixed to or contained in the Escrow Material and Updates; and (v) forthwith upon the proper termination (in accordance with its terms) of the Kudelski Software License Agreement entered into between Kudelski and NagraStar or the EchoStar Software License Agreement between NagraStar and EchoStar (as the case may be) under which NagraStar or EchoStar (as the case may be) is entitled to use the Software, deliver to Kudelski all copies of the Escrow Material and Updates under the control of NagraStar or EchoStar.

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5. Resolution of Dispute

Should EchoStar disagree with Kudelski on whether a default has occurred, the disagreement shall be decided immediately by English language binding arbitration in the London, England metropolitan area, in accordance with the Rules of the London Court of International Arbitration, which Rules are deemed to be incorporated by reference into this clause. This Escrow Agreement shall be deemed to be a contract made under the laws of England, and for all purposes it, plus any related or supplemental documents and notices, shall be construed in accordance with and governed by the laws of England. Service of a petition to confirm the arbitration award may be made by first class mail or by commercial express mail, to the attorney for the party or, if unrepresented, to the party at the last known business address.

6. Compensation of Escrow Agent

As compensation for the services to be performed by Escrow Agent hereunder, EchoStar shall pay to Escrow Agent an initial fee of \$3,750, payable at the time of execution of this Escrow Agreement, and an annual fee in the amount of \$2,750, to be paid to Escrow Agent in advance on each anniversary date hereafter during the term of this Escrow Agreement.

In the event of the nonpayment of fees owed to Escrow Agent, Escrow Agent shall provide written notice of delinquency to the parties to this Escrow Agreement affected by such delinquency. Any such party shall have the right to make the payment to Escrow Agent to cure the default. If the past due payment is not received in full by Escrow Agent within ninety (90) days of the date of such notice, then at any time thereafter Escrow Agent shall have the right to terminate this Escrow Agreement to the extent it relates to the delinquent party by sending written notice of termination to all affected parties. In the event of such termination, Kudelski shall have the right to retain all Escrow Material, provided it pays all outstanding amounts owed hereunder and any applicable shipping charges to Escrow Agent. Escrow Agent shall have no obligation to take any action under this Escrow Agreement so long as any payment due to Escrow Agent remains unpaid.

7. Liability of Escrow Agent

Escrow Agent shall not, by reason of its execution of its Escrow Agreement, assume any responsibility or liability for any transaction between Kudelski, EchoStar, and NagraStar, other than the performance of its obligations, as Escrow Agent, with respect to the Escrow Materials and Updates held by it in accordance with this Escrow Agreement.

8. Tests

Upon written notice to Kudelski and Escrow Agent, Kudelski, or a third party selected by NagraStar and reasonably acceptable to Kudelski, shall be required to conduct tests of the Source Code and other Escrow Materials, as modified or expanded by any Updates, held in escrow, under the supervision of Kudelski, NagraStar, EchoStar, and Escrow Agent, to confirm that it is the current

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Source Code for the Software, running on the Hardware specified in the Smart Card Purchase Agreement, and that all other escrow items are in fact the items Kudelski has represented them to be.

9. Confidentiality

The parties agree that this Escrow Agreement is confidential and neither party shall disclose any of the commercial, business, technical, operational, or legal details of this Escrow Agreement (the "Confidential Information") in any manner, including but not limited to press releases or other publicity of any nature without the prior written approval of the other party. The obligations imposed upon the parties herein shall survive termination of this Escrow Agreement indefinitely, but shall not apply to Confidential Information which is:

(a) or becomes generally available to the public through no wrongful act of the party receiving the Confidential Information (the "Receiving Party");

(b) already lawfully in the possession of the Receiving Party and not subject to an existing agreement of confidentiality between the parties;

(c) received from a third party without restriction and without breach of this Escrow Agreement;

(d) independently developed by the Receiving Party; or

(e) released pursuant to the requirements imposed on the party by U.S. or Swiss securities laws, or the binding order of a government agency or court, so long as prior to any such release, the releasing party provides the other parties with the greatest notice permitted under the circumstances, so that the party disclosing the Confidential Information may seek a protective order or other appropriate remedy. In any such event, the releasing party will disclose only such Confidential Information as is legally required and will exercise reasonable efforts to obtain confidential treatment for any Confidential Information being disclosed.

Except as provided in this Escrow Agreement, Escrow Agent agrees that it shall not divulge or disclose or otherwise make available to any third person whatsoever, or make any use whatsoever, of the Source Code or Commentary, without the express prior written consent of Kudelski.

10. Notices

The parties choose the following addresses as the addresses at which they will accept service of all documents and notices relating to this Escrow Agreement:

As to EchoStar:

EchoStar Communications Corporation
5701 S. Santa Fe Drive
Littleton, CO 80120

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USA
Attn: David Moskowitz
Fax: (303) 723-1699

As to Kudelski: Kudelski SA
1033 Cheseaux
SWITZERLAND
Attn: Nicolas Goetschmann
Fax: 41 21/732 0300

As to NagraStar: NagraStar LLC
90 Inverness Circle East
Englewood, CO 80112
USA
Attn: Joe Ferguson and Xavier Carrel
Fax: (303) 706-5719

With a copy to: Kudelski SA
1033 Cheseaux
SWITZERLAND
Attn: Nicolas Goetschmann
Fax: 41 21/732 0300

As to Escrow Agent: DSI/Arcus Data Security, Ltd.
102 Buckingham Avenue
Slough, Berkshire SL1 4PF
ENGLAND
Attn: Elaine Brophy
Fax: (01753) 554 775

Any notice to be given by a party to the other parties pursuant to this Escrow Agreement shall be given in writing in the English language by prepaid registered post, commercial express mail, facsimile, or hand delivery (delivery by hand must be acknowledged by written receipt from a duly authorized person at the office of the addressee), provided that:

(a) any notice given by prepaid registered post shall be deemed to have been received by the addressee, in the absence of proof to the contrary, 14 days after the date of postage;

(b) any notice given by commercial express mail shall be deemed to have been received by the addressee, in the absence of proof to the contrary, three days after the date of delivery to the commercial express mail service;

(c) any notice delivered by hand during normal business hours shall be deemed to have been received by the addressee, in the absence of proof to the contrary, at the time of delivery; and

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(d) any notice given by facsimile shall be deemed to have been received by the addressee, in the absence of proof to the contrary, immediately upon the issuance by the transmitting facsimile machine, of a report confirming correct transmission of all the pages of the document containing the notice or upon receipt by the transmitting facsimile machine, at the end of the notice being transmitted, of the automatic answer-back of the receiving facsimile machine.

Notwithstanding the foregoing, Escrow Agent may send all routine communication (i.e., communication not directly affecting the contents or security of the Escrow Materials and Updates) via first class mail.

11. Assignment

Neither this Escrow Agreement, nor any rights, liabilities or obligations hereunder may be assigned by Escrow Agent without the prior written consent of the parties hereto.

12. Indemnification

(a) By Kudelski. Kudelski shall indemnify, defend and hold NagraStar, EchoStar, the Affiliates of each, and its and their respective officers, directors, employees, agents and shareholders, and its and their respective assigns, successors and legal representatives harmless from and against, any and all costs, losses, liabilities, damages, lawsuits, judgments, claims, actions, penalties, fines and expenses (including, without limitation, interest, penalties, reasonable attorneys' fees and all monies paid in the investigation, defense or settlement of any or all of the foregoing) ("Claims"), that arise out of, or are incurred in connection with: (a) Kudelski's performance or failure of performance under this Escrow Agreement and any direct or indirect results thereof; or (b) the breach of any of Kudelski's representations or warranties herein.

(b) By NagraStar. NagraStar shall indemnify, defend and hold Kudelski, EchoStar, the Affiliates of each, and its and their respective officers, directors, employees, agents and shareholders, and its and their respective assigns, successors and legal representatives harmless from and against, any and all Claims that arise out of, or are incurred in connection with: (a) NagraStar's performance or failure of performance under this Escrow Agreement and any direct or indirect results thereof; or (b) the breach of any of NagraStar's representations or warranties herein.

(c) By EchoStar. EchoStar shall indemnify, defend and hold Kudelski, NagraStar, the Affiliates of each, and its and their respective officers, directors, employees, agents and shareholders, and its and their respective assigns, successors and legal representatives harmless from and against, any and all Claims that arise out of, or are incurred in connection with: (a) EchoStar's performance or failure of performance under this Escrow Agreement and any direct or indirect results thereof; or (b) the breach of any of EchoStar's representations or warranties herein.

(d) Of Escrow Agent. Escrow Agent shall be responsible for performing its obligations under this Escrow Agreement and to act in a reasonable and prudent manner with regard to this

escrow arrangement. Provided Escrow Agent has acted in the manner stated in the preceding sentence, Kudelski, NagraStar, and EchoStar each agree to indemnify, defend and hold harmless Escrow Agent from any and all claims, actions, damages, arbitration fees and expenses, costs, attorney's fees and other liabilities incurred by Escrow Agent relating in any way to this escrow arrangement.

13. Further Cooperation

The parties agree to cooperate, by taking such action, and executing such documentation, as may reasonably be necessary or desirable for appointment or replacement of the escrow agent or to revise this Escrow Agreement to conform to the reasonable needs of the escrow agent in the future.

14. Cessation of NagraStar

Notwithstanding anything to the contrary herein, if at any time during the term of this Escrow Agreement, NagraStar is dissolved by Kudelski for business convenience pursuant to the provisions of Section 10.1(c) of the NagraStar Operating Agreement, then the parties intend that all rights and obligations of NagraStar hereunder shall automatically transfer to EchoStar.

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement as of the day and year first set forth above.

NAGRASTAR LLC

DSI/ARCUS DATA SECURITY, LTD.

By: 

By: _____

Approved as to Form:

KUDELSKI S.A.

ECHOSTAR COMMUNICATIONS CORPORATION

By: 

By: 

Approved as to Form:

Approved as to Form:

**[EXHIBIT A
TO ESCROW AGREEMENT]**

ESSENTIAL ESCROW ITEMS

1. The source code for all software related to the use and operation of Smart Cards, including FME and ECH technology and their internal specifications, as well as all associated software documentation.
2. The binaries delivered by Kudelski to SGS-Thomson Microelectronics to generate firmware masks.
3. Documentation from Kudelski enabling EchoStar and its Affiliates to build components at SGS or elsewhere, including the Irrevocable Authorization constituting Exhibit C to the Escrow Agreement.
4. All documentation and procedures which may be utilized to personalize Smart Cards.
5. Accurate step-by-step instructions, together with all supporting documentation, enabling the reader to assemble and operate a fully-functional personalization tool, including but not limited to a list of vendors that manufacture or sell automatic feed equipment for Smart Cards, and other parts, software, and services needed to fully build and operate the tool as intended.
6. Documentation for SGS - module assembly into Smart Card. A list of vendors under contract to do this.
7. A list of other vendors that have started work on a next generation Smart Card, contact names, addresses, and telephone numbers, and authorization to work with the vendors.
8. Test procedures and quality control documentation for the Smart Card and assemblies.
9. All software source code, schematics, documentation for the Entitlement Control Encryptor, Entitlement Message Encryptor, and Cryptor-8 systems, CW generator, pairing key generator.

**[EXHIBIT B
TO ESCROW AGREEMENT]**

DESCRIPTION OF DEPOSIT MATERIALS

Send materials to: _____

Depositor Company Name: DSI/Arcus Data Security, Ltd.

Account Number _____

Product Name _____

Version _____

(Product Name will appear on Account History report)

DEPOSIT MATERIAL DESCRIPTION:

Quantity	Media Type & Size	Label Description of Each Separate Item (Please use other side if additional space is needed)
.....	Disk 3.5" or _____	
.....	DAT tape _____mm	
.....	CD-ROM	
.....	Data cartridge tape _____	
.....	TK 70 or _____ tape	
.....	Magnetic tape _____	
.....	Documentation	
.....	Other _____	

PRODUCT DESCRIPTION:

Operating System _____

Hardware Platform _____

DEPOSIT COPYING INFORMATION:

Hardware required: _____

Software required: _____

I certify for Depositor that the above described
deposit materials have been transmitted to DSI:

Escrow Agent has inspected and accepted the above
materials (any exceptions are noted above).

Signature:
Print Name
Date

Signature:
Print Name
Date Accepted

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[EXHIBIT C
TO ESCROW AGREEMENT]

IRREVOCABLE AUTHORIZATION

Kudelski SA, a corporation organized under the laws of Switzerland ("Kudelski") does hereby enter into this irrevocable authorization ("Authorization") as of the date set forth below for the benefit of NagraStar LLC, a Colorado limited liability company ("NagraStar"), and EchoStar Communications Corporation, a Nevada corporation ("EchoStar").

1. Purpose and Use. After execution by Kudelski, this Authorization will be placed into escrow for the benefit of NagraStar. The Authorization permits NagraStar to use the proprietary technology of Kudelski set forth in Section 2 below (the "Technology") and any other technology requiring authorization by Kudelski to manufacture or have manufactured by third parties (each, a "Manufacturer") products ("Products") incorporating the Technology (including but not limited to Smart Cards), for the sole use and benefit of NagraStar and EchoStar but not for resale to others except as provided in the Escrow Agreement (to which this Authorization is attached as Exhibit C). This Authorization is designed to stand alone, and Manufacturer may rely on this Authorization without reference to the Escrow Agreement or any other document. Manufacturer may make a copy of this Authorization for its own records, and such copy will have the full force and effect of the original, but must return the original to NagraStar for presentment to other Manufacturers as needed.

2. Technology. The term "Technology" when used in this Authorization consists of patents, trademarks, copyrights, know-how, and other intellectual property rights related to the development, use, modification, improvement, and control of Smart Cards, and includes all of the following items placed into escrow for the benefit of NagraStar by Kudelski: (a) source code for all software related to the use and operation of Smart Cards, including EME and ECE technology and their internal specifications, as well as all associated software documentation; (b) binaries delivered by Kudelski to SGS-Thomson Microelectronics to generate firmware masks; (c) documentation from Kudelski enabling NagraStar and its Affiliates to build components or have them built by a Manufacturer; (d) all documentation and procedures which may be utilized to personalize the Smart Card; (e) accurate step-by-step instructions, together with all supporting documentation, enabling the reader to assemble and operate a fully-functional personalization tool, including but not limited to a list of vendors that manufacture or sell automatic feed equipment for Smart Cards, and other parts, software, and services needed to fully build and operate the tool as intended; (f) documentation for SGS - module assembly into Smart Card; (g) test procedures and quality control documentation for the Smart Card and assemblies; (h) all software source code and documentation for Entitlement Control Encryptor and Entitlement Message Encryptor systems; and (i) all updates, enhancements, corrections or other revisions which relate to all or any portion of the above items.

3. Grant. Kudelski hereby irrevocably authorizes NagraStar to make Products or have Products made by Manufacturers, and to otherwise use the Technology in accordance with Section 1 and any other provision of this Authorization.

4. Reliance by Manufacturer. Provided this document is signed below, the Manufacturer may assume without independent verification that it is genuine, signed by an authorized officer of Kudelski, properly presented to Manufacturer by NagraStar, and that it is valid and in full force and effect. Manufacturer has no duty to contact or notify Kudelski, the escrow agent, or any other person or entity before acting in reliance on this Authorization. Kudelski hereby holds harmless and forever waives and releases Manufacturer from any and all claims or rights of action which it may have against Manufacturer arising out or resulting from Manufacturer's reliance on this Authorization.


5. Term. This Authorization shall be valid beginning on the date of execution below and continuing in perpetuity. This Authorization cannot expire and can only be invalidated by an express written consent executed by duly authorized officers of both EchoStar and NagraStar.

6. Representation. By signing this Authorization below, I certify to EchoStar, NagraStar, and any Manufacturer that I have the full authority to enter into this Authorization on behalf of Kudelski and to bind Kudelski with my signature. I further certify that I have obtained all necessary consents and authorizations from Kudelski's directors, officers, and shareholders.

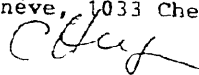
7. NagraStar Termination. Notwithstanding anything to the contrary herein, if EchoStar presents to Manufacturer: (i) this Authorization; (ii) a signed statement from Kudelski on its letterhead which purports to dissolve NagraStar for business convenience; and (iii) a certificate of dissolution of NagraStar, which appears to be issued by the Secretary of State of Colorado, then Manufacturer may assume that NagraStar no longer exists, and that EchoStar is entitled to, and has obtained, all of NagraStar's rights under this Authorization.

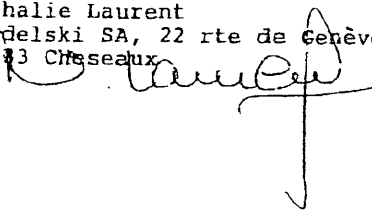
IN WITNESS WHEREOF, Kudelski has executed this Irrevocable Authorization through its duly authorized officer as of the twenty-third day of June 1998.

KUDELSKI S.A.


Andre Kudelski
President

Execution by Andre Kudelski was witnessed by the following persons:

Name: Catherine Hugon
Address: Kudelski SA, 22 rte de
Genève, 1033 Cheseaux
Signature: 

Name: Nathalie Laurent
Address: Kudelski SA, 22 rte de Genève,
1033 Cheseaux
Signature: 

[APPENDIX D-1]
KUDELSKI SOFTWARE LICENSE AGREEMENT

This Kudelski Software License Agreement ("Agreement") dated as of the twenty-third day of June, 1998, is made by and between Kudelski SA, a corporation organized under the laws of Switzerland ("Kudelski"), and NagraStar LLC, a Colorado limited liability company ("NagraStar").

INTRODUCTION

- A. In conjunction with this Agreement, EchoStar Communications Corporation and Kudelski are establishing NagraStar as a Colorado Limited Liability Company (the "Company"), each transferring certain assets into NagraStar in exchange for equal ownership of NagraStar (the "Joint Venture").
- B. Prior to the effective date of this Agreement, EchoStar Communications Corporation and its affiliates (collectively, "EchoStar") licensed its conditional access system directly from Kudelski.
- C. The parties desire to provide for the use by NagraStar of Kudelski's conditional access system and the sublicensing of the system and all related software from NagraStar to EchoStar.

AGREEMENT

The parties, by their duly authorized representatives and intending to be legally bound, hereby covenant and agree as follows:

1. DEFINITIONS

As used in the Agreement:

Affiliate - means any entity directly or indirectly controlling, controlled by or under common control with, a specified person or entity.

Computer Application Program - means a set of computer instructions or statements in a definite series or sequence.

Documentation - means all human-readable information, in printed or electronic form, pertaining to and appropriate or necessary for the effective and efficient operation and Use of Computer Application Programs or system or subsystem of Computer Application

Programs. The term Documentation excludes source code listings of Computer Application Programs.

Effective Date - means July 1, 1998.

Object Code - means a machine-readable representation of a Computer Application Program which can be executed on specifically designated computer equipment.

Program Materials - means collectively the Source Materials, Object Code, Documentation, and other materials associated with each and every Computer Application Program in the System. Program Materials may exist in printed, hard copy, optical, or electromagnetic form on computer storage media such as a tape or magnetic or compact disc, and shall not include the Security Technology but shall include the functionality of the Security Technology in executable or other equivalent forms.

Security Technology - means any materials (including source code, schematics, and documentation) containing internal design specifications associated either with current or future implementations of the smart card, or with those products and processes that are directly responsible for generation or processing of the payload of security related messages, including entitlement management messages, entitlement control messages, control words, and pairing keys.

Source Materials - means a human-readable representation of a Computer Application Program which can be understood by an individual having skill and experience in computer programming and from which such individual can readily modify said Computer Application Program without undue difficulty and shall not include the Security Technology.

System - means collectively the complete set of Computer Application Programs listed on Exhibit A attached hereto and incorporated herein, as they exist on the Effective Date of this Agreement, and any updates, enhancements, corrections or other revisions thereto supplied by Kudelski.

System License - means the license to the Use of the System, including any or all of the Computer Application Programs or portions thereof, granted pursuant to and as part of this Agreement.

Use - means copying a Computer Application Program or any portion thereof from any media into computer equipment for execution and/or data processing, copying a Computer Application Program or any portion thereof from any media into printed form using any Computer Application Program or any portion thereof, in electro-magnetic form in the course of operating any computer processor, and/or using any Computer Application Program or any portion thereof, including any of the processes, procedures or techniques contained therein or derivable therefrom, in printed form, for any purpose whatsoever, including without

limitation modifying, operating on, or amending the Object Code or source code of a Computer Application Program or creating and executing Computer Application Programs.

Useable Technology - means all of the Program Materials, except those which are Source Materials and Security Technology, but shall include the functionality of the Security Technology in executable or other equivalent forms.

2. SOFTWARE LICENSE AND OTHER RIGHTS

In consideration of the transactions entered into by the parties in connection with the Joint Venture, Kudelski makes the following grants to NagraStar.

2.1 Program Materials

The parties record and acknowledge the tender by Kudelski and the receipt by NagraStar of the Program Materials for the System.

2.2 Grant of the License

Kudelski hereby grants to NagraStar a fully paid up, non-exclusive, non-transferable, worldwide irrevocable right and license to the Program Materials (excluding the Security Technology but including the functionality of the Security Technology in executable or other equivalent forms), and all related materials and intellectual property necessary for effective maintenance, support, enhancement, updating, and ongoing operation of the System at any or all of NagraStar's locations, but not to sell, sublicense, or transfer such right and license other than as provided in this Agreement or in the Joint Venture agreements. The license granted hereunder shall remain in force so long as either: (i) NagraStar continues to exist; or (ii) EchoStar is still using the Kudelski conditional access system.

2.3 Grant of Right to Reproduce Program Materials

Kudelski hereby grants to NagraStar the right to reproduce the System and Program Materials or any portions thereof (excluding the Security Technology but including the functionality of the Security technology in executable or other equivalent forms) (a) provided that any such reproduction shall be subject to the restrictions on Use, sublicensing and disclosure contained in this Agreement; and (b) provided further that NagraStar will include in any reproduction made in whole or in part and pursuant to and in accordance with this Agreement, all confidential and/or proprietary notices of Kudelski, including copyrights or other proprietary legends, which are contained in the copy of the Program Materials provided to NagraStar by Kudelski under this Agreement.

2.4 Grant of Right to Sublicense the System and Program Materials

Kudelski hereby grants to NagraStar the irrevocable right to sublicense the Useable Technology to EchoStar, for use by EchoStar and its Affiliates in connection with its satellite operations but not for further sublicense or sale.

3. DELIVERY

Kudelski represents that it will deliver all of the existing Program Materials (excluding the Security Technology but including the functionality of the Security Technology in executable or other equivalent forms) to NagraStar within six weeks of the Effective Date.

4. WARRANTY

Kudelski represents and warrants that it has the unconditional right to grant the licenses and other rights to the System and Program Materials as set forth herein.

Kudelski further warrants to NagraStar the security of the conditional access system provided by Kudelski, and expressly agrees that if the security of the conditional access system is breached, and new security-related updates provided to NagraStar by Kudelski at no additional cost to NagraStar have been implemented in a reasonably timely manner following delivery by Kudelski, Kudelski will, at the highest priority within aggressive manufacturing lead times at that time, replace all outstanding Smart Cards which were delivered by Kudelski no more than 48 months prior to the date of such notice, and which are in use by end-users of the conditional access system or are in NagraStar's or EchoStar's inventories, at a cost to NagraStar equal to the direct marginal cost of manufacturing the Smart Cards (i.e., exclusive of all overhead costs).

5. KUDELSKI'S PROPRIETARY DATA/ENDORSEMENT

NagraStar acknowledges that the Program Materials, more specifically the Source Materials of the Computer Application Programs in the System and related Documentation, contain procedures and processes which are trade secrets of Kudelski and that the Program Materials contain copyrighted works owned by Kudelski. NagraStar further acknowledges and agrees that such trade secrets and copyrights shall remain the property of Kudelski at all times. In order to protect Kudelski's proprietary rights in its trade secrets and to protect Kudelski's copyrights, NagraStar agrees to protect the confidentiality of the Program Materials in accordance with the standards of care set by NagraStar's Technical Review Committee.

NagraStar agrees not to sell, assign, distribute or disclose the System and the Documentation or any part thereof to any other person except as otherwise authorized by this Agreement. NagraStar shall not disclose to any other person the Source Materials or any item of Documentation relating to the System, except as otherwise provided in this Agreement; provided, however, that NagraStar shall have no liability or responsibility for any unauthorized disclosures made by any former NagraStar employee so long as any such unauthorized disclosure does not result from NagraStar's failure to meet its obligations under

the third sentence of this section. NagraStar shall treat as confidential proprietary data under this section all computer system components and documentation related thereto received by NagraStar from Kudelski prior to the Effective Date.

6. INDEMNIFICATION

Kudelski shall indemnify, defend and hold NagraStar, and its officers, directors, employees, agents and shareholders, and its and their respective assigns, successors and legal representatives harmless from and against, any and all costs, losses, liabilities, damages, lawsuits, judgments, claims, actions, penalties, fines and expenses (including, without limitation, interest, penalties, reasonable attorneys' fees and all monies paid in the investigation, defense or settlement of any or all of the foregoing, "Claims") that arise out of, or are incurred in connection with: (a) Kudelski's performance or failure of performance under this Agreement and any direct or indirect results thereof; (b) Kudelski's acts or omissions, lawful or unlawful; (c) the breach of any of Kudelski's representations or warranties herein; or (d) the failure of Kudelski to comply with, or any actual or alleged violation of, any applicable laws, statute, ordinance, governmental administrative order, rule or regulation.

NagraStar shall indemnify, defend and hold Kudelski, and its officers, directors, employees, agents and shareholders, and its and their respective assigns, heirs, successors and legal representatives harmless from and against, any and all Claims that arise out of, or are incurred in connection with: (a) NagraStar's performance or failure of performance under this Agreement and any direct or indirect results thereof; (b) NagraStar's acts or omissions, lawful or unlawful; (c) the breach of any of NagraStar's representations or warranties herein; or (d) the failure of NagraStar to comply with, or any actual or alleged violation of, any applicable laws, statute, ordinance, governmental administrative order, rule or regulation.

7. MOST FAVORED CUSTOMERS

Each party represents to the other that all of the prices, warranties, benefits, and other terms being provided hereunder are, and will continue to be until termination of this Agreement, at least as good as the terms being offered by the party to its current customers for similar volumes of products and services.

8. CONFIDENTIALITY

The parties agree that this Agreement is confidential and neither party shall disclose any of the commercial, business, technical, operational, or legal details of this Agreement (the "Confidential Information") in any manner, including but not limited to press releases or other publicity of any nature without the prior written approval of the other party. The obligations imposed upon the parties herein shall survive termination of this Agreement indefinitely, but shall not apply to Confidential Information which is:

- (a) or becomes generally available to the public through no wrongful act of the party receiving the Confidential Information (the "Receiving Party");
- (b) already lawfully in the possession of the Receiving Party and not subject to an existing agreement of confidentiality between the parties;
- (c) received from a third party without restriction and without breach of this Agreement;
- (d) independently developed by the Receiving Party; or
- (e) released pursuant to the requirements imposed on the party by U.S. or Swiss securities laws, or the binding order of a government agency or court, so long as prior to any such release the releasing party provides the other party with the greatest notice permitted under the circumstances, so that the party disclosing the Confidential Information may seek a protective order or other appropriate remedy. In any such event, the releasing party will disclose only such Confidential Information as is legally required and will exercise reasonable efforts to obtain confidential treatment for any Confidential Information being disclosed.

9. FUTURE ENHANCEMENTS AND PRODUCTS

9.1 Future Enhancements

Each party shall have a right to receive from the other party at no cost all future enhancements to the System offered by the other party. Each party shall inform the other of the existence of all such enhancements as they are developed, and shall promptly deliver to the other party upon request all software and documentation necessary to effectively implement and utilize any such enhancement.

9.2 Future Products

Each party shall have the right to purchase from the other party any or all future products offered by the other party which are not already licensed to such party pursuant to this Agreement. The cost to the party for any such product shall be the other party's then current prices for similar volumes of products and services less fifteen percent (15%). NagraStar shall have the exclusive right to market any such products to EchoStar, and Kudelski shall have the exclusive right to market such products to any other party.

9.3 Future Documentation

Software and documentation received by Kudelski from NagraStar shall not have any visible reference to NagraStar when redelivered by Kudelski to its customers.

10. NOTICES

The parties choose the following addresses as the addresses at which they will accept service of all documents and notices relating to this Agreement:

As to Kudelski: Kudelski SA
1033 Cheseaux
SWITZERLAND
Attn: Nicolas Goetschmann
Fax: 41 21/732 0300

As to NagraStar: NagraStar LLC
90 Inverness Circle East
Englewood, CO 80112
USA
Attn: Joe Ferguson and Xavier Carrel
Fax: (303) 706-5719

With a copy to: Kudelski SA
1033 Cheseaux
SWITZERLAND
Attn: Nicolas Goetschmann
Fax: 41 21/732 0300

And a copy to: EchoStar Communications Corporation
5701 S. Santa Fe Drive
Littleton, CO 80120
USA
Attn: David Moskowitz
Fax: (303) 723-1699

Any notice to be given by a party to the other parties pursuant to this Agreement shall be given in writing in the English language by prepaid registered post, by facsimile or shall be delivered by hand (delivery by hand must be acknowledged by written receipt from a duly authorized person at the office of the addressee), provided that:

- (a) any notice given by prepaid registered post shall be deemed to have been received by the addressee, in the absence of proof to the contrary, 14 days after the date of postage;
- (b) any notice delivered by hand during normal business hours shall be deemed to have been received by the addressee, in the absence of proof to the contrary, at the time of delivery; and

- (c) any notice given by facsimile shall be deemed to have been received by the addressee, in the absence of proof to the contrary, immediately upon the issuance by the transmitting facsimile machine, of a report confirming correct transmission of all the pages of the document containing the notice or upon receipt by the transmitting facsimile machine, at the end of the notice being transmitted, of the automatic answer-back of the receiving facsimile machine.

11. TERM AND TERMINATION OF SOFTWARE LICENSE

11.1 Term

This Agreement shall remain in full force and effect perpetually unless and until terminated as specified in Section 11.2 below.

11.2 Termination

This Agreement may terminate only upon agreement of the parties, or as provided in Sections 12.1 and 12.3 hereof.

12. RIGHTS UPON DISSOLUTION OF NAGRASTAR

12.1 EchoStar Ceases Use of the System

If NagraStar is dissolved pursuant to Section 10.1(b) of the Operating Agreement of NagraStar LLC, by and among NagraStar, Kudelski, and EchoStar (the "Operating Agreement"), EchoStar shall immediately, automatically, and irrevocably assume the rights, duties, and obligations of NagraStar to use the Useable Technology hereunder exclusively for its own satellite operations and to sell and distribute Smart Cards exclusively for use with the satellite operations of EchoStar, ExpressVu, Inc., and such other entities as shall have been authorized by EchoStar and Kudelski in writing, but not the right to operate on the Source Materials of the Computer Application Programs in the System; provided however, that this Agreement and such rights shall terminate once EchoStar and its Affiliates have actually ceased Use of the System.

12.2 Kudelski Business Convenience

If NagraStar is dissolved pursuant to Section 10.1(c) of the Operating Agreement, EchoStar shall immediately, automatically, and irrevocably assume in perpetuity all rights, duties, and obligations of NagraStar hereunder, including the right to operate on the Source Materials of the Computer Application Programs in the System, subject to the limitations of Section 10.2(c) of the Operating Agreement, but excluding the right to operate on the Source Materials of the Security Technology.

12.3 EchoStar Breach

If NagraStar is dissolved pursuant to Section 10.1(d) of the Operating Agreement, this Agreement and all rights thereunder shall terminate, and EchoStar shall have no rights hereunder after such termination.

13. GOVERNING LAW; ARBITRATION.

This Agreement, and the performances of the parties hereunder, shall be governed by the laws of the State of New York without giving effect to the principles of conflicts of laws that would otherwise provide for the application of the substantive law of another jurisdiction. Should any dispute among the parties arise, the parties agree that the sole jurisdiction and venue for the resolution of any such dispute shall be English language binding arbitration conducted in the New York City metropolitan area, in accordance with the Commercial Rules of the American Arbitration Association, which rules shall include the right to seek appropriate injunctive relief in such arbitration and are deemed to be incorporated by reference into this clause. Unless the arbitrators determine otherwise, the losing party in any arbitration shall pay the costs of the prevailing party.

14. HEADINGS

Headings used in this Agreement are for the purpose of organization and convenience of reference only. They should not be construed to be statements of or summaries of the intent of the paragraphs above which they appear and should not be considered in any manner in the construction or interpretation of this Agreement.

15. EXHIBITS

Exhibit A is hereby incorporated into and made a part of this Agreement.

16. MODIFICATIONS

Kudelski may make modifications, updates and enhancements to the System and the Program Materials after the effective date of this Agreement. Any such modifications, updates and enhancements by virtue of this Agreement become a part of the System and the Program Materials.

17. WAIVER AND AMENDMENT

17.1 Waiver

No provision of this Agreement shall be deemed waived and no breach excused by either party unless such waiver or consent be in writing, signed by the authorized representative of the party claimed to have waived or consented. Any consent by

either party to, or waiver of, a breach by the other shall not constitute a subsequent breach. No delays or forbearance of either party in the exercise of any remedy or right will constitute a waiver thereof, and the exercise or partial exercise of a remedy or right shall not preclude the further exercise of the same or any other right or remedy.

17.2 Amendment

No provision of this Agreement shall be deemed amended by either party unless such amendment be in writing and signed by the authorized representative of the party to be bound thereby.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

KUDELSKI S.A.

By: 

NAGRASTAR LLC

By: 

EXHIBIT A

Access Control System (ACS) - Those systems, services and equipment licensed to EchoStar by Kudelski as of the date of this Agreement which are responsible for functions related to the generation, management and control of receiver and subscriber entitlement and authorization, and certain other functions.

Automation - Those systems, services and equipment licensed to EchoStar by Kudelski as of the date of this Agreement which are responsible for management of the interface between the conditional access systems and equipment and the compression and encoding systems and equipment, and certain other functions.

Call Collector (CC) - Those systems, services and equipment licensed to EchoStar by Kudelski as of the date of this Agreement which are responsible for managing the interface with receivers for purposes of verifying receiver ownership and location, collecting pay-per-view usage information, establishing pay-per-view credit limits in the Smart Card, and certain other functions.

Entitlement Control Encryptor (ECE) - Those systems, services and equipment licensed to EchoStar by Kudelski as of the date of this Agreement which are responsible for the generation of DVB scrambling control words, the generation and encryption of the Entitlement Control Messages (ECMs) which contain them, and certain other functions.

Entitlement Message Broadcaster (EMB) - Those systems, services and equipment licensed to EchoStar by Kudelski as of the date of this Agreement which are responsible for the pacing and broadcasting of Entitlement Management Messages (EMMs), and certain other functions.

Entitlement Message Encryptor (EME) - Those systems, services and equipment licensed to EchoStar by Kudelski as of the date of this Agreement which are responsible for the encryption of Entitlement Management Messages (EMMs), and certain other functions.

Information Management System (IMS) - Those systems, services and equipment licensed to EchoStar by Kudelski as of the date of this Agreement which are responsible for functions related to product definition, event scheduling, network topology management, electronic program guide generation, generation of control streams, and certain other functions.

Pairing Key Generator (PKG) - Those system, services and equipment licensed to EchoStar by Kudelski as of the date of this Agreement which are responsible for generating the receiver's pairing keys in a manner consistent with the ones the EME will generate upon card initialization.

[APPENDIX D-2]

KUDELSKI SERVICE AND DEVELOPMENT AGREEMENT

This Kudelski Service and Development Agreement ("Agreement") is made this twenty-third day of June 1998, by and between Kudelski SA, a corporation organized under the laws of Switzerland ("Kudelski"), and NagraStar LLC, a Colorado limited liability company ("NagraStar").

INTRODUCTION

- A. In conjunction with this Agreement, the parties are entering into a Software License Agreement and a Smart Card Purchase Agreement (collectively, the "Related Contracts"), pursuant to which Kudelski is supplying a conditional access system and related components (the "System") to NagraStar.
- B. Prior to the effective date of this Agreement, EchoStar Communications Corporation and those entities it directly or indirectly controls, is controlled by, or under common control with (collectively, "EchoStar") obtained Software Maintenance and Development Services for the System (the "Services") directly from Kudelski and its affiliates, and the parties now contemplate that EchoStar shall henceforth receive the Services from NagraStar.
- C. The parties further desire to provide for the maintenance and development of the System pursuant to the terms of this Agreement.

AGREEMENT

1. Term and Termination

This Agreement shall commence as of July 1, 1998, and shall remain in full force and effect until terminated pursuant to this Agreement.

This Agreement shall terminate immediately if NagraStar is dissolved or if Kudelski has ceased its ongoing operations.

2. Maintenance

During the term hereof, each party shall (i) respond to all requests for Services from the other party within twenty-four (24) hours of each request; and (ii) provide one copy of any update, upgrade, new version, or other modification to the System, or part thereof, to the other party in a reasonably acceptable format without charge, which may be copied in the appropriate quantity and substituted in the System for a prior release. In addition, each party will provide bulletins describing new releases, maintenance releases, temporary problem resolutions and circumventions, support level changes and other information with respect to the System, which updated releases the other party may obtain at no additional cost, except for applicable mailing and media charges.

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Each party hereto, during the term of this Agreement, shall have reasonable access to the other party's personnel familiar with the Services, for assistance with the maintenance and support of software. Such assistance may utilize an average of up to the equivalent of three full-time engineers of the other party, or such greater time as the parties may agree in writing.

3. Payment

(a) The parties agree that, except as provided in Section 3(b) below, if one party requires the services of an employee of the other, and such employee is available to perform, and does perform services at the request of the other party, the requesting party shall reimburse the party whose employee performed the work at a rate in U.S. dollars equal to a fully-loaded overhead rate of 1.472 (1.15 x 1.28) multiplied by the hourly base salary of the employee who performed the work.

(b) The parties agree that if a party requires the services of an engineer of the other party for work outside the scope of the System as designed for EchoStar (or in the case of services for Kudelski by a NagraStar engineer formerly employed by Kudelski, for work other than maintenance of Kudelski systems the engineer helped to develop, to a maximum of the equivalent of three full-time engineers), and such employee is available to perform, and does perform services at the request of the other party, the requesting party shall reimburse the party whose employee performed the work at a rate in U.S. dollars equal to:

- | | |
|----------------------------------|------------|
| 1) One day category A engineer | US\$ 1,120 |
| 2) One day category B engineer | US\$ 905 |
| 3) One month category A engineer | US\$23,500 |
| 4) One month category B engineer | US\$19,000 |

These prices for special services were in effect as of December 1994 and shall not change during the term of this Agreement, except for an annual adjustment each December. The annual adjustment shall reflect only changes in the U.S. consumer price index. Reasonable travel and other expenses, if any, will be billed separately.

(c) Each party shall also reimburse reasonable travel costs and expenses of the person or persons performing the Services or labor if travel is requested by the party.

4. Warranty

Each party warrants that it will take reasonable steps to ensure that each of its employees, agents or representatives assigned to perform Services hereunder will have the skills, training and background necessary to perform the Services in a competent and professional manner.

5. Indemnification

5.1 By Kudelski. Kudelski shall indemnify, defend and hold NagraStar and its officers, directors, employees, agents and shareholders, and its and their respective assigns, successors and legal representatives harmless from and against, any and all costs, losses, liabilities, damages,

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lawsuits, judgments, claims, actions, penalties, fines and expenses (including, without limitation, interest, penalties, reasonable attorneys' fees and all monies paid in the investigation, defense or settlement of any or all of the foregoing, "Claims") that arise out of, or are incurred in connection with: (a) Kudelski's performance or failure of performance under this Agreement and any direct or indirect results thereof; (b) Kudelski's acts or omissions, lawful or unlawful; (c) the breach of any of Kudelski's representations or warranties herein; or (d) the failure of Kudelski to comply with, or any actual or alleged violation of, any applicable laws, statute, ordinance, governmental administrative order, rule or regulation.

5.2 By NagraStar NagraStar shall indemnify, defend and hold Kudelski and its officers, directors, employees, agents and shareholders, and its and their respective assigns, heirs, successors and legal representatives harmless from and against, any and all Claims that arise out of, or are incurred in connection with: (a) NagraStar's performance or failure of performance under this Agreement and any direct or indirect results thereof; (b) NagraStar's acts or omissions, lawful or unlawful; (c) the breach of any of NagraStar's representations or warranties herein; or (d) the failure of NagraStar to comply with, or any actual or alleged violation of, any applicable laws, statute, ordinance, governmental administrative order, rule or regulation.

6. Confidential Information

The parties agree that this Agreement is confidential and neither party shall disclose any of the commercial, business, technical, operational, or legal details of this Agreement (the "Confidential Information") in any manner, including but not limited to press releases or other publicity of any nature without the prior written approval of the other party. The obligations imposed upon the parties herein shall survive termination of this Agreement indefinitely, but shall not apply to Confidential Information which is:

- (a) or becomes generally available to the public through no wrongful act of the party receiving the Confidential Information (the "Receiving Party");
- (b) already lawfully in the possession of the Receiving Party and not subject to an existing agreement of confidentiality between the parties;
- (c) received from a third party without restriction and without breach of this Agreement;
- (d) independently developed by the Receiving Party; or
- (e) released pursuant to the requirements imposed on the party by U.S. or Swiss securities laws, or the binding order of a government agency or court, so long as prior to any such release the releasing party provides the other party with the greatest notice permitted under the circumstances, so that the party disclosing the Confidential Information may seek a protective order or other appropriate remedy. In any such event, the releasing party will disclose only such Confidential Information as is legally required and will exercise reasonable efforts to obtain confidential treatment for any Confidential Information being disclosed.

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7. Governing Law; Arbitration

This Agreement, and the performances of the parties hereunder, shall be governed by the laws of the State of New York without giving effect to the principles of conflicts of laws that would otherwise provide for the application of the substantive law of another jurisdiction. Should any dispute among the parties arise, the parties agree that the sole jurisdiction and venue for the resolution of any such dispute shall be English language binding arbitration conducted in the New York City metropolitan area, in accordance with the Commercial Rules of the American Arbitration Association, which rules shall include the right to seek appropriate injunctive relief in such arbitration and are deemed to be incorporated by reference into this clause. Unless the arbitrators determine otherwise, the losing party in any arbitration shall pay the costs of the prevailing party.

8. Notices

The parties choose the following addresses as the addresses at which they will accept service of all documents and notices relating to this Agreement:

As to Kudelski: Kudelski SA
1033 Cheseaux
SWITZERLAND
Attn: Nicolas Goetschmann
Fax: 41 21/732 0300

As to NagraStar: NagraStar LLC
90 Inverness Circle East
Englewood, CO 80112
USA
Attn: Joe Ferguson and Xavier Carrel
Fax: (303) 706-5719

With a copy to: Kudelski SA
1033 Cheseaux
SWITZERLAND
Attn: Nicolas Goetschmann
Fax: 41 21/732 0300

And a copy to: EchoStar Communications Corporation
5701 S. Santa Fe Drive
Littleton, CO 80120
USA
Attn: David Moskowitz
Fax: (303) 723-1699

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Any notice to be given by a party to the other parties pursuant to this Agreement shall be given in writing in the English language by prepaid registered post, by facsimile or shall be delivered by hand (delivery by hand must be acknowledged by written receipt from a duly authorized person at the office of the addressee), provided that:

(a) any notice given by prepaid registered post shall be deemed to have been received by the addressee, in the absence of proof to the contrary, 14 days after the date of postage;

(b) any notice delivered by hand during normal business hours shall be deemed to have been received by the addressee, in the absence of proof to the contrary, at the time of delivery; and

(c) any notice given by facsimile shall be deemed to have been received by the addressee, in the absence of proof to the contrary, immediately upon the issuance by the transmitting facsimile machine, of a report confirming correct transmission of all the pages of the document containing the notice or upon receipt by the transmitting facsimile machine, at the end of the notice being transmitted, of the automatic answer-back of the receiving facsimile machine.

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

KUDELSKI S.A.

By: 

NAGRASTAR LLC

By: 

[EXHIBIT D-3]

KUDELSKI SMART CARD PURCHASE AGREEMENT

This Kudelski Smart Card Purchase Agreement ("Agreement"), is made and entered into as of this twenty-third day of June 1998, by and between Kudelski SA, a corporation organized under the laws of Switzerland (hereinafter referred to as "Kudelski"), and NagraStar LLC, a Colorado limited liability company (hereinafter referred to as "NagraStar").

INTRODUCTION

- A. In conjunction with this Agreement, the parties are entering into a Software License Agreement, a Service and Development Agreement, and an Escrow Agreement (collectively, the "Related Contracts"), pursuant to which Kudelski is licensing a conditional access system to NagraStar.
- B. The parties desire to provide for the sale to NagraStar by Kudelski of "Smart Cards" for resale to EchoStar Communications Corporation and those entities it directly or indirectly controls, is controlled by, or is under common control with (collectively, "EchoStar"), and the licensing of all related technology and software, excluding source code to the Smart Card encryption technology, to NagraStar pursuant to the terms of this Agreement for the purpose of reselling and sublicensing such Smart Cards, technology and software to EchoStar, for resale and sublicense exclusively for use with the satellite operations of EchoStar, ExpressVu, Inc., and such other direct broadcast satellite entities ("DBS Providers") as may be authorized by Kudelski and EchoStar in writing (collectively, "Authorized Resale").
- C. EchoStar currently purchases Smart Cards from Kudelski. Pursuant to this Agreement and other related Agreements, EchoStar will purchase Smart Cards directly from NagraStar.

AGREEMENT

1. DESIGN, USE, AND OPERATION OF SMART CARDS.

1.1 Use by Consumer. The "Smart Card" resembles a credit card in size and appearance, is embedded with a microchip, and provides security for digital broadcast satellite ("DBS") systems. The Smart Card is used with a unique DBS receiver, determined by the serial number of the DBS receiver, and must be inserted into, and remain in, the DBS receiver in order for it to properly receive DBS programming.

1.2 Technical Functions. The Smart Card has the following functions:

- A. Controls the descrambling process(es) in real-time by returning a control word when receiving entitlement control messages; control words are returned only if the smart card holds the corresponding access rights.

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B. Holds the access rights for both subscription and pay-per-view events, as updated by entitlement management messages.

C. Manages impulse pay-per-view events by giving access rights against debit of credit held in the Smart Card.

D. Provides information for communication on pay-per-view matters with the call collector.

E. Manages the security against piracy by keeping cryptological keys up to date.

F. Enables new functions in the future via Smart Card software downloading.

G. Manages blackout and 'spot beam' restrictions.

H. All other Smart Card functions obtained from Kudelski and used by, or available to, EchoStar as of the date of this Agreement.

1.3 Longevity. Smart Cards are designed for permanent, continuous operation for at least four years. For normal operation, periodic Smart Card replacement is not necessary during this period.

2. SMART CARD SOFTWARE.

2.1 Defined. Certain interface software has been designed for use with the Smart Cards (the "Software"). The term "Software" shall include: (i) all technology obtained from Kudelski by EchoStar which is intended for use, or actually used by NagraStar as of the date of this Agreement, in connection with the Smart Cards; (ii) the Entitlement Message Encryptor (EME), defined as those systems, services and equipment licensed to NagraStar by Kudelski as of the date of this Agreement which are responsible for the encryption of Entitlement Management Messages (EMMs), and related functions; (iii) the Entitlement Control Encryptor (ECE), defined as those systems, services and equipment licensed to NagraStar by Kudelski as of the date of this Agreement which are responsible for the generation of DVB scrambling control words, the generation and encryption of the Entitlement Control Messages (ECMs) which contain them, and related functions; and (iv) the Smart Card personalization tool.

2.2 Function. The Software is designed to, inter alia, support the technical functions set forth in Section 1.2 above.

3. PURCHASE; PRICE

3.1 Smart Cards. NagraStar shall have the right, during the term of this Agreement, to purchase Smart Cards from Kudelski for resale to EchoStar, for use by EchoStar (including Authorized Resale). NagraStar shall be invoiced by Kudelski eight U.S. dollars (\$8) per Smart Card, CIF Denver International Airport, assuming that Kudelski is selecting the transporter. Smart Card

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personalization is included in the cost of the Smart Cards. NagraStar agrees to purchase all of its requirements of Smart Cards for use in the Kudelski conditional access system exclusively from Kudelski.

3.2 Software. An irrevocable license to use the Software is included in the cost of the Smart Cards.

3.3 Price Adjustment. At the end of each calendar year during the term hereof in which NagraStar purchases less than one million Smart Cards from Kudelski hereunder (prorated in any partial calendar year), NagraStar shall pay Kudelski an amount equal to the product of (a) ten cents (\$.10) and (b) the difference between (i) one million and (ii) the number of Smart Cards purchased by NagraStar from Kudelski hereunder in such calendar year. In any calendar year during the term hereof in which NagraStar purchases more than one million Smart Cards from Kudelski hereunder (prorated in any partial calendar year), Kudelski shall pay NagraStar an amount equal to the product of (a) ten cents (\$.10) and (b) the difference between (i) the number of Smart Cards purchased by NagraStar from Kudelski hereunder in such calendar year, and (ii) one million; provided, however, that Kudelski shall have no obligation to pay NagraStar more than NagraStar has paid Kudelski in the aggregate under the first sentence of this Section 3.3, and any amount which Kudelski is not obligated to pay shall be carried forward as a credit to NagraStar in any future calendar year in which it is required to make a payment to Kudelski under the first sentence of this Section 3.3.

4. PRICE GUARANTEE; LIMITATION; AVAILABILITY

4.1 Guarantee. The price for Smart Cards under this Agreement shall not increase prior to February 2, 2010, unless the price of the microchip used in the Smart Card increases materially or other exceptional changes beyond the control of Kudelski take place in other Smart Card manufacturing cost components.

4.2 Price Limitation. Notwithstanding the Smart Card price in Section 3.1 or in Section 7.2, Kudelski will, throughout the term of this Agreement, provide Smart Cards to NagraStar at a price which does not exceed sixty-seven U.S. cents (\$0.67) less than the lowest price at which Kudelski provides comparable cards to any other person or entity in quantities no more than double the number of Smart Cards purchased annually by NagraStar. The provisions of this Section 4.2 shall not apply to Smart Cards sold by Kudelski as replacements for security breaches pursuant to Section 5.3.

4.3 Availability. Kudelski agrees to deliver Smart Cards within twenty (20) weeks of receipt of a committed purchase order from NagraStar. Kudelski shall promptly send a copy to NagraStar of any purchase order or similar contract Kudelski delivers to third parties regarding the manufacture for Kudelski of Smart Cards, or of any components thereof, which Kudelski intends to deliver to NagraStar in fulfillment of a committed purchase order.

5. WARRANTY

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5.1 Smart Cards. Kudelski warrants that each Smart Card will function as intended for at least three months from the date of delivery to the end user, if the Smart Card has not suffered from mechanical stress higher than indicated in the ISO 7816/1 standard.

5.2 Limitation. The warranty on Smart Cards shall not be valid longer than twelve months from the date of delivery by Kudelski to NagraStar.

5.3 Additional Warranty. Kudelski further warrants the security of the Kudelski conditional access system provided by Kudelski, and expressly agrees that if the security of the conditional access system is breached, and replacement of Smart Cards is reasonably necessary to cure the breach, notwithstanding the Smart Card pricing specified in Sections 3.1 and 7.2, Kudelski will, at the highest priority within aggressive manufacturing lead times, replace all outstanding Smart Cards which were delivered by Kudelski no more than 48 months prior to the date of such notice, and which are in use by end-users of the conditional access system or are in NagraStar's inventories, at a cost to NagraStar equal to the direct marginal cost of manufacturing the Smart Cards (i.e., exclusive of all overhead costs).

6. INDEMNIFICATION

6.1 By Kudelski. Kudelski shall indemnify, defend and hold NagraStar and its officers, directors, employees, agents and shareholders, and its and their respective assigns, successors and legal representatives harmless from and against, any and all costs, losses, liabilities, damages, lawsuits, judgments, claims, actions, penalties, fines and expenses (including, without limitation, interest, penalties, reasonable attorneys' fees and all monies paid in the investigation, defense or settlement of any or all of the foregoing, "Claims") that arise out of, or are incurred in connection with: (a) Kudelski's performance or failure of performance under this Agreement and any direct or indirect results thereof; (b) Kudelski's acts or omissions, lawful or unlawful; (c) the breach of any of Kudelski's representations or warranties herein; or (d) the failure of Kudelski to comply with, or any actual or alleged violation of, any applicable laws, statute, ordinance, governmental administrative order, rule or regulation.

6.2 By NagraStar. NagraStar shall indemnify, defend and hold Kudelski and its officers, directors, employees, agents and shareholders, and its and their respective assigns, heirs, successors and legal representatives harmless from and against, any and all Claims that arise out of, or are incurred in connection with: (a) NagraStar's performance or failure of performance under this Agreement and any direct or indirect results thereof; (b) NagraStar's acts or omissions, lawful or unlawful; (c) the breach of any of NagraStar's representations or warranties herein; or (d) the failure of NagraStar to comply with, or any actual or alleged violation of, any applicable laws, statute, ordinance, governmental administrative order, rule or regulation.

7. TERM

7.1 Term. This Agreement and all terms contained herein shall commence on July 1, 1998, and shall remain in full force and effect in perpetuity, unless earlier terminated as provided in Section 7.3.

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7.2 Dissolution of NagraStar for Business Convenience. If NagraStar is dissolved by Kudelski for business convenience pursuant to Section 10.1(c) of the NagraStar Operating Agreement, EchoStar shall automatically assume all of the duties, obligations, and benefits of NagraStar under this Agreement, including but not limited to the right to indemnification pursuant to Article 6, except that the unit cost to EchoStar for the purchase of Smart Cards from Kudelski in Section 3.1 shall be \$8.59 (subject to the price limitations of Section 4.2).

7.3 Early Termination. If, pursuant to Section 10.2(b) of the NagraStar Operating Agreement, EchoStar ceases to use the conditional access system that it obtained from Kudelski, as updated and modified, then Kudelski shall have the right to terminate this Agreement upon thirty days notice to NagraStar. Kudelski shall also have the right to terminate this Agreement if it first dissolves NagraStar pursuant to Section 10.1(d) of the NagraStar Operating Agreement.

8. CONFIDENTIALITY

The parties agree that this Agreement is confidential and neither party shall disclose any of the commercial, business, technical, operational, or legal details of this Agreement (the "Confidential Information") in any manner, including but not limited to press releases or other publicity of any nature without the prior written approval of the other party. The obligations imposed upon the parties herein shall survive termination of this Agreement indefinitely, but shall not apply to Confidential Information which is:

- (a) or becomes generally available to the public through no wrongful act of the party receiving the Confidential Information (the "Receiving Party");
- (b) already lawfully in the possession of the Receiving Party and not subject to an existing agreement of confidentiality between the parties;
- (c) received from a third party without restriction and without breach of this Agreement;
- (d) independently developed by the Receiving Party; or
- (e) released pursuant to the requirements imposed on the party by U.S. or Swiss securities laws, or the binding order of a government agency or court, so long as prior to any such release the releasing party provides the other party with the greatest notice permitted under the circumstances, so that the party disclosing the Confidential Information may seek a protective order or other appropriate remedy. In any such event, the releasing party will disclose only such Confidential Information as is legally required and will exercise reasonable efforts to obtain confidential treatment for any Confidential Information being disclosed.

9. GOVERNING LAW; ARBITRATION

This Agreement, and the performances of the parties hereunder, shall be governed by the laws of the State of New York without giving effect to the principles of conflicts of laws that would

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otherwise provide for the application of the substantive law of another jurisdiction. Should any dispute among the parties arise, the parties agree that the sole jurisdiction and venue for the resolution of any such dispute shall be English language binding arbitration conducted in the New York City metropolitan area, in accordance with the Commercial Rules of the American Arbitration Association, which rules shall include the right to seek appropriate injunctive relief in such arbitration and are deemed to be incorporated by reference into this clause. Unless the arbitrators determine otherwise, the losing party in any arbitration shall pay the costs of the prevailing party.

10. NOTICES

The parties choose the following addresses as the addresses at which they will accept service of all documents and notices relating to this Agreement:

As to Kudelski: Kudelski SA
1033 Cheseaux
SWITZERLAND
Attn: Nicolas Goetschmann
Fax: 41 21/732 0300

As to NagraStar: NagraStar LLC
90 Inverness Circle East
Englewood, CO 80112
USA
Attn: Joe Ferguson and Xavier Carrel
Fax: (303) 706-5719

With a copy to: Kudelski SA
1033 Cheseaux
SWITZERLAND
Attn: Nicolas Goetschmann
Fax: 41 21/732 0300

And a copy to: EchoStar Communications Corporation
5701 S. Santa Fe Drive
Littleton, CO 80120
USA
Attn: David Moskowitz
Fax: (303) 723-1699

Any notice to be given by a party to the other parties pursuant to this Agreement shall be given in writing in the English language by prepaid registered post, by facsimile or shall be delivered by hand (delivery by hand must be acknowledged by written receipt from a duly authorized person at the office of the addressee), provided that:

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(a) any notice given by prepaid registered post shall be deemed to have been received by the addressee, in the absence of proof to the contrary, 14 days after the date of postage;

(b) any notice delivered by hand during normal business hours shall be deemed to have been received by the addressee, in the absence of proof to the contrary, at the time of delivery; and

(c) any notice given by facsimile shall be deemed to have been received by the addressee, in the absence of proof to the contrary, immediately upon the issuance by the transmitting facsimile machine, of a report confirming correct transmission of all the pages of the document containing the notice or upon receipt by the transmitting facsimile machine, at the end of the notice being transmitted, of the automatic answer-back of the receiving facsimile machine.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

KUDELSKI S.A.

By:  _____

NAGRASTAR LLC

By:  _____

[EXHIBIT E-1]
ECHOSTAR SOFTWARE LICENSE AGREEMENT

This EchoStar Software License Agreement ("Agreement") is made this twenty-third day of June 1998, by and between EchoStar Communications Corporation, a Nevada corporation (hereinafter referred to as "EchoStar"), and NagraStar LLC, a Colorado limited liability company (hereinafter referred to as "NagraStar").

INTRODUCTION

- A. In conjunction with this Agreement, the parties are entering into a Smart Card Purchase Agreement and a Service and Development Agreement (collectively, the "Related Contracts"), pursuant to which NagraStar is licensing a conditional access system to EchoStar and those entities it directly or indirectly controls, is controlled by, or under common control with (its "Affiliates").
- B. The parties desire to provide for the sale by NagraStar of "Smart Cards", and the licensing of all related software to EchoStar and its Affiliates pursuant to the terms of this Agreement.

AGREEMENT

1. Software License

NagraStar hereby grants to EchoStar and its Affiliates, for use with their own satellite operations, a perpetual license to use, with no right to sublicense, the Software and Documentation (collectively, the "Software System"), subject to the terms and conditions hereinafter set forth.

2. License Fee

As consideration for the perpetual license to use the Software System granted to EchoStar and its Affiliates herein, EchoStar shall pay NagraStar the amount specified in the Payment Schedule set forth in Article 7 below.

3. The Software

The "Software" shall consist of the modules or components, shall perform the functions and shall comply with the proposals and specifications, identified or set forth on Schedule A, annexed hereto, and any future updates, enhancements, corrections or other revisions to any of the foregoing. Each Software module or component, specification and proposal included or referred to in Schedule A is expressly incorporated by reference herein.

4. Documentation

The Documentation shall consist of all operator and user manuals, training materials, guides, listings, specifications, and other materials for use in conjunction with the Software. NagraStar shall

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deliver to EchoStar complete copies of the Documentation. EchoStar and its Affiliates shall have the right, as part of the license granted herein, to make as many additional copies of the Documentation for its own use as it may determine.

5. Term

This Agreement shall commence on July 1, 1998 and shall remain in full force and effect until terminated pursuant to this Article.

This Agreement shall terminate immediately upon the dissolution of NagraStar, or if NagraStar has otherwise ceased its ongoing operations, unless the parties agree otherwise.

6. Operating Environment

The Software, and each module or component and function thereof, shall be capable of operating fully and correctly on the combination of computer equipment ("Hardware"), the programming language, and the operating system obtained from Kudelski SA, a corporation organized under the laws of Switzerland ("Kudelski") and used by EchoStar and its Affiliates as of the effective date of this Agreement, or such other environment as NagraStar may specify from time to time and which is reasonably acceptable to Kudelski. NagraStar agrees to sell all necessary custom dedicated Hardware (i.e., all Hardware designed or modified to be used exclusively for EME or ECE operation) to EchoStar and its Affiliates at its cost. EchoStar agrees to purchase all Hardware used for operating NagraStar systems and applications from NagraStar, so long as NagraStar's prices for such Hardware are reasonably competitive with third party vendors.

7. Payment Schedule

The License Fee for the license of the Software System granted herein shall be paid by EchoStar to NagraStar as follows, within 30 days of EchoStar's receipt of an invoice from NagraStar:

(a) No Modification. Use as presently constituted: no charge for the term of this Agreement, as EchoStar has already purchased a perpetual license.

(b) Initial Upgrade. Upgrade for use with more than five million subscribers: \$385,000 (U.S. dollars).

(c) Additional Products. Additional products developed by NagraStar or licensed from third parties, including but not limited to Kudelski, shall be offered by NagraStar to EchoStar and its Affiliates as enhancements or accessories to the Software System at fair market price.

8. New Location

EchoStar and its Affiliates may, at any time, with notice to NagraStar, transfer the Software to any location in the United States other than the site of initial installation for use on any other central processing unit ("CPU") which is owned or controlled by EchoStar and its Affiliates,

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provided however, that the Software is used for EchoStar's DISH Network business. EchoStar shall thereafter promptly give NagraStar notice of such new location. Additional license fees and costs, to be negotiated between NagraStar and EchoStar, shall be paid in the event that EchoStar and its Affiliates deploy NagraStar uplink datastream management systems for production use other than EchoStar's current Satellite operations in the United States.

9. NagraStar's Warranties

NagraStar hereby warrants and represents to EchoStar that NagraStar has the right and authority to grant to EchoStar and its Affiliates the license to use same set forth in this Agreement without violating any rights of any third party, and there is currently no actual or threatened suit by any such third party based on an alleged violation of such right by NagraStar.

10. Software Maintenance

(a) Defects. NagraStar shall promptly notify EchoStar of any defects or malfunctions, in the Software or Documentation, which NagraStar becomes aware of from any source. NagraStar shall promptly correct any defects or malfunctions in the Software or Documentation discovered during the term of this Agreement and provide EchoStar and its Affiliates with corrected copies of same, without additional charge. NagraStar's obligation hereunder shall not affect any other liability which it may have to EchoStar and its Affiliates.

(b) Enhancements. NagraStar shall provide to EchoStar and its Affiliates, without additional charge, copies of the Software System and Documentation revised to reflect any enhancements to the Software System made by NagraStar during the term of this Agreement. Such enhancements shall include all modifications to the Software System which increase the speed, efficiency or ease of operation of the Software System, or add additional capabilities to or otherwise improve the functions of the Software System.

11. Additional Support

NagraStar shall provide to EchoStar and its Affiliates during the term of this Agreement, without additional charge, all reasonably necessary telephone or written consultation requested by EchoStar in connection with its use and operation of the Software System or any problems therewith.

12. Confidentiality

The parties agree that this Agreement is confidential and neither party shall disclose any of the commercial, business, technical, operational, or legal details of this Agreement (the "Confidential Information") in any manner, including but not limited to press releases or other publicity of any nature without the prior written approval of the other party. The obligations imposed upon the parties herein shall survive termination of this Agreement indefinitely, but shall not apply to Confidential Information which is:

- (a) or becomes generally available to the public through no wrongful act of the party receiving the Confidential Information (the "Receiving Party");
- (b) already lawfully in the possession of the Receiving Party and not subject to an existing agreement of confidentiality between the parties;
- (c) received from a third party without restriction and without breach of this Agreement;
- (d) independently developed by the Receiving Party; or
- (e) released pursuant to the requirements imposed on the party by U.S. or Swiss securities laws, or the binding order of a government agency or court, so long as prior to any such release the releasing party provides the other party with the greatest notice permitted under the circumstances, so that the party disclosing the Confidential Information may seek a protective order or other appropriate remedy. In any such event, the releasing party will disclose only such Confidential Information as is legally required and will exercise reasonable efforts to obtain confidential treatment for any Confidential Information being disclosed.

13. NagraStar's Proprietary Notices

EchoStar agrees that any copies of the Software or Documentation which it makes pursuant to this Agreement shall bear all copyright, trademark and other proprietary notices included therein by NagraStar and, except as expressly authorized herein, EchoStar shall not distribute same to any third party without NagraStar's prior written consent.

14. Other Customers

NagraStar agrees to treat EchoStar as its most favored customer, and the parties acknowledge that EchoStar and its Affiliates are NagraStar's only customers at the date of execution of this Agreement. NagraStar represents that all of the prices, warranties, benefits and other terms being provided hereunder shall continue to be, in the aggregate, equivalent to or better than the terms being offered by NagraStar to any additional customer. If NagraStar enters into an agreement with any other customer providing such customer with more favorable terms, then this Agreement shall be deemed appropriately amended to provide such terms to EchoStar and its Affiliates. NagraStar shall promptly provide EchoStar with any refund, credit, or other adjustment thereby created.

15. Assignment

Neither party shall assign this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld. An assignee of either party, if authorized hereunder, shall have all of the rights and obligations of the assigning party set forth in this Agreement.

16. Indemnification

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16.1 By EchoStar. EchoStar shall indemnify, defend and hold NagraStar and its officers, directors, employees, agents and shareholders, and its and their respective assigns, successors and legal representatives harmless from and against, any and all costs, losses, liabilities, damages, lawsuits, judgments, claims, actions, penalties, fines and expenses (including, without limitation, interest, penalties, reasonable attorneys' fees and all monies paid in the investigation, defense or settlement of any or all of the foregoing, "Claims") that arise out of, or are incurred in connection with: (a) EchoStar's performance or failure of performance under this Agreement and any direct or indirect results thereof; (b) EchoStar's acts or omissions, lawful or unlawful; (c) the breach of any of EchoStar's representations or warranties herein; or (d) the failure of EchoStar to comply with, or any actual or alleged violation of, any applicable laws, statute, ordinance, governmental administrative order, rule or regulation.

16.2 By NagraStar. NagraStar shall indemnify, defend and hold EchoStar and its officers, directors, employees, agents and shareholders, and its and their respective assigns, heirs, successors and legal representatives harmless from and against, any and all Claims that arise out of, or are incurred in connection with: (a) NagraStar's performance or failure of performance under this Agreement and any direct or indirect results thereof; (b) NagraStar's acts or omissions, lawful or unlawful; (c) the breach of any of NagraStar's representations or warranties herein; or (d) the failure of NagraStar to comply with, or any actual or alleged violation of, any applicable laws, statute, ordinance, governmental administrative order, rule or regulation.

17. Notice

The parties choose the following addresses as the addresses at which they will accept service of all documents and notices relating to this Agreement:

As to EchoStar: EchoStar Communications Corporation
5701 S. Santa Fe Drive
Littleton, CO 80120
USA
Attn: David Moskowitz
Fax: (303) 723-1699

As to NagraStar: NagraStar LLC
90 Inverness Circle East
Englewood, CO 80112
USA
Attn: Joe Ferguson and Xavier Carrel
Fax: (303) 706-5719

With a copy to: Kudelski SA
1033 Cheseaux
SWITZERLAND
Attn: Nicolas Goetschmann
Fax: 41 21/732 0300
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Any notice to be given by a party to the other parties pursuant to this Agreement shall be given in writing in the English language by prepaid registered post, by facsimile or shall be delivered by hand (delivery by hand must be acknowledged by written receipt from a duly authorized person at the office of the addressee), provided that:

(a) any notice given by prepaid registered post shall be deemed to have been received by the addressee, in the absence of proof to the contrary, 14 days after the date of postage;

(b) any notice delivered by hand during normal business hours shall be deemed to have been received by the addressee, in the absence of proof to the contrary, at the time of delivery; and

(c) any notice given by facsimile shall be deemed to have been received by the addressee, in the absence of proof to the contrary, immediately upon the issuance by the transmitting facsimile machine, of a report confirming correct transmission of all the pages of the document containing the notice or upon receipt by the transmitting facsimile machine, at the end of the notice being transmitted, of the automatic answer back of the receiving facsimile machine.

18. Governing Law; Arbitration

This Agreement, and the performances of the parties hereunder, shall be governed by the laws of the State of Colorado without giving effect to the principles of conflicts of laws that would otherwise provide for the application of the substantive law of another jurisdiction. Should any dispute among the parties arise, the parties agree that the sole jurisdiction and venue for the resolution of any such dispute shall be English language binding arbitration conducted in the Denver metropolitan area, in accordance with the Commercial Rules of the American Arbitration Association, which rules shall include the right to seek appropriate injunctive relief in such arbitration and are deemed to be incorporated by reference into this clause. Unless the arbitrators determine otherwise, the losing party in any arbitration shall pay the costs of the prevailing party.

19. Consent to Service

Service of process in any proceeding may be made by certified mail, return receipt requested, directed to the respective party at the address at which it is to receive notice as provided herein.

20. Severability

If any provision of this Agreement is held invalid or otherwise unenforceable, the enforceability of the remaining provisions shall not be impaired thereby.

21. No Waiver

The failure by any party to exercise any right provided for herein shall not be deemed a waiver of any right hereunder.

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IN WITNESS WHEREOF the parties have executed this Agreement on the date first set forth above.

ECHOSTAR COMMUNICATIONS CORPORATION: NAGRASTAR LLC:

By: C
Title: _____

By: ML
Title: _____

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HIGHLY CONFIDENTIAL

Case No. SA CV03-950 DOC (JTL)

ESC0158746

SCHEDULE A

Access Control System (ACS) - Those systems, services and equipment licensed to EchoStar and its Affiliates by Kudelski as of the date of this agreement which are responsible for functions related to the generation, management and control of receiver and subscriber entitlement and authorization, and certain other functions.

Automation - Those systems, services and equipment licensed to EchoStar by Kudelski as of the date of this Agreement which are responsible for management of the interface between the conditional access systems and equipment and the compression and encoding systems and equipment, and certain other functions.

Call Collector (CC) - Those systems, services and equipment licensed to EchoStar and its Affiliates by Kudelski as of the date of this agreement which are responsible for managing the interface with receivers for purposes of verifying receiver ownership and location, collecting pay-per-view usage information, establishing pay-per-view credit limits in the Smart Card, and certain other functions.

Entitlement Control Encryptor (ECE) - Those systems, services and equipment licensed to EchoStar and its Affiliates by Kudelski as of the date of this agreement which are responsible for the generation of DVB scrambling control words, the generation and encryption of the Entitlement Control Messages (ECMs) which contain them, and certain other functions.

Entitlement Message Broadcaster (EMB) - Those systems, services and equipment licensed to EchoStar and its Affiliates by Kudelski as of the date of this agreement which are responsible for the pacing and broadcasting of Entitlement Management Messages (EMMs), and certain other functions.

Entitlement Message Encryptor (EME) - Those systems, services and equipment licensed to EchoStar by Kudelski as of the date of this Agreement which are responsible for the encryption of Entitlement Management Messages (EMMs), and certain other functions.

Information Management System (IMS) - Those systems, services and equipment licensed to EchoStar and its Affiliates by Kudelski as of the date of this agreement which are responsible for functions related to product definition, event scheduling, network topology management, electronic program guide generation, generation of control streams, and certain other functions.

Pairing Key Generator (PKG) - Those system, services and equipment licensed to EchoStar and its Affiliates by Kudelski as of the date of this agreement which are responsible for generating the receiver's pairing keys in a manner consistent with the ones the EME will generate upon card initialization.

[APPENDIX E-2]

ECHOSTAR SERVICE AND DEVELOPMENT AGREEMENT

This EchoStar Service and Development Agreement ("Agreement") is entered into as of the twenty-third day of June, 1998, by and between NagraStar LLC, a Colorado limited liability company (hereinafter referred to as "NagraStar"), and EchoStar Communications Corporation, a Nevada corporation (hereinafter referred to as "EchoStar").

INTRODUCTION

- A. In conjunction with this Agreement, the parties are entering into a Software License Agreement and a Smart Card Purchase Agreement (collectively, the "Related Contracts"), pursuant to which NagraStar is supplying a conditional access system to EchoStar and those entities it directly or indirectly controls, is controlled by, or is under common control with (collectively, its "Affiliates"), to be used with EchoStar's DISH Network digital broadcast satellite service ("DISH Network Programming").
- B. Prior to the effective date of this Agreement, EchoStar and its Affiliates obtained Software Maintenance and Development Services (collectively, the "Services") directly from Kudelski SA and its Affiliates.
- C. The parties desire to provide for the maintenance by NagraStar of certain software pursuant to the terms of this Agreement.

AGREEMENT

1. Term and Termination

This Agreement shall commence on July 1, 1998, and shall remain in effect until and unless terminated either (i) by EchoStar upon six (6) months' notice to NagraStar; (ii) by EchoStar upon notice if NagraStar is unable or unwilling to fulfill its material obligations under the Related Contracts; (iii) by EchoStar upon dissolution of NagraStar; or (iv) by either party pursuant to a breach, after notice and an adequate opportunity to cure.

2. Payment

2.1 Ongoing Services. As consideration for the Services, in advance of each month during the term of this Agreement, EchoStar shall pay to NagraStar a fee of US \$102,083.33. This monthly fee shall be adjusted each year on the anniversary of this Agreement by the use of an escalator in the following manner: the index to be used shall be the U.S. Department of Labor's Bureau of Labor Statistics Consumer Price Index, Wage Rate, All Urban Consumers, U.S. City Average, 1997 = 100 (hereinafter referred to as the "CPI"). The base index shall be that published nearest to the date hereof. The increase hereunder shall be proportional to the increase in the CPI as above, over the

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base index, but in no event shall any annual increase raise the payment more than five percent (5%) in any twelve month period.

2.2 Special Services. Payment for special services (i.e., outside the scope of the Services) which are provided to EchoStar and its Affiliates by NagraStar at the written request of EchoStar shall vary based on the time spent and the experience level of the engineer providing the Services:

- | | |
|----------------------------------|------------|
| 1) One day category A engineer | US\$ 1,120 |
| 2) One day category B engineer | US\$ 905 |
| 3) One month category A engineer | US\$23,500 |
| 4) One month category B engineer | US\$19,000 |

These prices for special services were in effect as of December 1994 and shall not change during the term of this Agreement, except for an annual adjustment each December. The annual adjustment shall reflect only changes in the U.S. consumer price index. Reasonable travel and other expenses, if any, will be billed separately.

3. Maintenance

During the term hereof, NagraStar will (i) respond to all requests for Services within four (4) hours of each request by EchoStar; (ii) cause the software identified on Schedule A hereto (the "Software") to operate according to the published specifications and without error; and (iii) provide one copy of any updated release of the Software, or part thereof, to EchoStar and its Affiliates without charge, which EchoStar and its Affiliates may copy in the appropriate quantity and substitute for a prior release. In addition, NagraStar will provide published bulletins describing new releases, maintenance releases, temporary problem resolutions and circumventions, support level changes and other information with respect to the Software, which updated releases EchoStar and its Affiliates may obtain at no additional cost, except for NagraStar's then-applicable mailing and media charges.

4. Indemnification

4.1 By EchoStar. EchoStar shall indemnify, defend and hold NagraStar, its Affiliates and its and their respective officers, directors, employees, agents and shareholders, and its and their respective assigns, successors and legal representatives harmless from and against, any and all costs, losses, liabilities, damages, lawsuits, judgments, claims, actions, penalties, fines and expenses (including, without limitation, interest, penalties, reasonable attorneys' fees and all monies paid in the investigation, defense or settlement of any or all of the foregoing, "Claims") that arise out of, or are incurred in connection with: (a) EchoStar's performance or failure of performance under this Agreement and any direct or indirect results thereof; (b) EchoStar's acts or omissions, lawful or unlawful; (c) the breach of any of EchoStar's representations or warranties herein; or (d) the failure of EchoStar to comply with, or any actual or alleged violation of, any applicable laws, statute, ordinance, governmental administrative order, rule or regulation.

4.2 By NagraStar. NagraStar shall indemnify, defend and hold EchoStar, its Affiliates, and its and their respective officers, directors, employees, agents and shareholders, and its and their respective assigns, heirs, successors and legal representatives harmless from and against, any and all Claims that arise out of, or are incurred in connection with: (a) NagraStar's performance or failure of performance under this Agreement and any direct or indirect results thereof; (b) NagraStar's acts or omissions, lawful or unlawful; (c) the breach of any of NagraStar's representations or warranties herein; (d) the failure of NagraStar to comply with, or any actual or alleged violation of, any applicable laws, statute, ordinance, governmental administrative order, rule or regulation.

5. Warranty

NagraStar warrants that it will take reasonable steps to ensure that each of its employees, agents or representatives assigned to perform Services hereunder will have the skills, training and background necessary to perform the Services in a competent and professional manner.

6. Confidential Information

The parties agree that this Agreement is confidential and neither party shall disclose any of the commercial, business, technical, operational, or legal details of this Agreement (the "Confidential Information") in any manner, including but not limited to press releases or other publicity of any nature without the prior written approval of the other party. The obligations imposed upon the parties herein shall survive termination of this Agreement indefinitely, but shall not apply to Confidential Information which is:

- (a) or becomes generally available to the public through no wrongful act of the party receiving the Confidential Information (the "Receiving Party");
- (b) already lawfully in the possession of the Receiving Party and not subject to an existing agreement of confidentiality between the parties;
- (c) received from a third party without restriction and without breach of this Agreement;
- (d) independently developed by the Receiving Party; or
- (e) released pursuant to the requirements imposed on the party by U.S. or Swiss securities laws, or the binding order of a government agency or court, so long as prior to any such release the releasing party provides the other party with the greatest notice permitted under the circumstances, so that the party disclosing the Confidential Information may seek a protective order or other appropriate remedy. In any such event, the releasing party will disclose only such Confidential Information as is legally required and will exercise reasonable efforts to obtain confidential treatment for any Confidential Information being disclosed.

7. Insurance

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NagraStar shall maintain insurance coverage at levels standard in the software industry.

8. Governing Law; Arbitration

This Agreement, and the performances of the parties hereunder, shall be governed by the laws of the State of Colorado without giving effect to the principles of conflicts of laws that would otherwise provide for the application of the substantive law of another jurisdiction. Should any dispute among the parties arise, the parties agree that the sole jurisdiction and venue for the resolution of any such dispute shall be English language binding arbitration conducted in the Denver metropolitan area, in accordance with the Commercial Rules of the American Arbitration Association, which rules shall include the right to seek appropriate injunctive relief in such arbitration and are deemed to be incorporated by reference into this clause. Unless the arbitrators determine otherwise, the losing party in any arbitration shall pay the costs of the prevailing party.

9. Notices

The parties choose the following addresses as the addresses at which they will accept service of all documents and notices relating to this Agreement:

As to EchoStar: EchoStar Communications Corporation
5701 S. Santa Fe Drive
Littleton, CO 80120
USA
Attn: David Moskowitz
Fax: (303) 723-1699

As to NagraStar: NagraStar LLC
90 Inverness Circle East
Englewood, CO 80112
USA
Attn: Joe Ferguson and Xavier Carrel
Fax: (303) 706-5719

With a copy to: Kudelski SA
1033 Cheseaux
SWITZERLAND
Attn: Nicolas Goetschmann
Fax: 41 21/732 0300

Any notice to be given by a party to the other parties pursuant to this Agreement shall be given in writing in the English language by prepaid registered post, by facsimile or shall be delivered by hand (delivery by hand must be acknowledged by written receipt from a duly authorized person at the office of the addressee), provided that:

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(a) any notice given by prepaid registered post shall be deemed to have been received by the addressee, in the absence of proof to the contrary, 14 days after the date of postage;

(b) any notice delivered by hand during normal business hours shall be deemed to have been received by the addressee, in the absence of proof to the contrary, at the time of delivery; and

(c) any notice given by facsimile shall be deemed to have been received by the addressee, in the absence of proof to the contrary, immediately upon the issuance by the transmitting facsimile machine, of a report confirming correct transmission of all the pages of the document containing the notice or upon receipt by the transmitting facsimile machine, at the end of the notice being transmitted, of the automatic answer-back of the receiving facsimile machine.

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

ECHOSTAR COMMUNICATIONS CORPORATION

By:  _____

NAGRASTAR LLC

By:  _____

SCHEDULE A

1. Access Control System (ACS) - Those systems, services and equipment licensed to EchoStar and its Affiliates by Kudelski as of the date of this agreement which are responsible for functions related to the generation, management and control of receiver and subscriber entitlement and authorization, and certain other functions.
2. Automation - Those systems, services and equipment licensed to EchoStar and its Affiliates by Kudelski as of the date of this agreement which are responsible for management of the interface between the conditional access systems and equipment and the compression and encoding systems and equipment, and certain other functions.
3. Call Collector (CC) - Those systems, services and equipment licensed to EchoStar and its Affiliates by Kudelski as of the date of this agreement which are responsible for managing the interface with receivers for purposes of verifying receiver ownership and location, collecting pay-per-view usage information, establishing pay-per-view credit limits in the Smart Card, and certain other functions.
4. Entitlement Control Encryptor (ECE) - Those systems, services and equipment licensed to EchoStar and its Affiliates by Kudelski as of the date of this agreement which are responsible for the generation of DVB scrambling control words, the generation and encryption of the Entitlement Control Messages (ECMs) which contain them, and certain other functions.
5. Entitlement Message Broadcaster (EMB) - Those systems, services and equipment licensed to EchoStar and its Affiliates by Kudelski as of the date of this agreement which are responsible for the pacing and broadcasting of Entitlement Management Messages (EMMs), and certain other functions.
6. Entitlement Message Encryptor (EME) - Those systems, services and equipment licensed to EchoStar and its Affiliates by Kudelski as of the date of this agreement which are responsible for the encryption of Entitlement Management Messages (EMMs), and certain other functions.
7. Information Management System (IMS) - Those systems, services and equipment licensed to EchoStar and its Affiliates by Kudelski as of the date of this agreement which are responsible for functions related to product definition, event scheduling, network topology management, electronic program guide generation, generation of control streams, and certain other functions.
8. Pairing Key Generator (PKG) - Those system, services and equipment licensed to EchoStar and its Affiliates by Kudelski as of the date of this agreement which are responsible for generating the receiver's pairing keys in a manner consistent with the ones the EME will generate upon card initialization.

[EXHIBIT E-3]

ECHOSTAR SMART CARD PURCHASE AGREEMENT

THIS ECHOSTAR SMART CARD PURCHASE AGREEMENT ("Agreement"), is made and entered into as of the twenty-third day of June, 1998, by and between EchoStar Communications Corporation, a Nevada corporation (hereinafter referred to as "EchoStar"), and NagraStar LLC, a Colorado limited liability company (hereinafter referred to as "NagraStar").

INTRODUCTION

- A. In conjunction with this Agreement, the parties are entering into a Software License Agreement and a Service and Development Agreement (collectively, the "Related Contracts"), pursuant to which NagraStar is supplying a conditional access system to EchoStar and those entities it directly or indirectly controls, is controlled by, or under common control with (collectively, its "Affiliates"), to be used with EchoStar's DISH Network digital broadcast satellite service ("DISH Network Programming").
- B. Prior to the effective date of this Agreement, EchoStar and its Affiliates obtained its "Smart Cards" from Kudelski SA and its Affiliates (collectively, "Kudelski").
- C. The parties desire to provide for the sale by NagraStar of "Smart Cards", and the licensing of all related technology and software, to EchoStar and its Affiliates, for their use and for resale and sublicense exclusively for use with the satellite operations of EchoStar and its Affiliates and such other direct broadcast satellite entities ("DBS Providers") as are authorized by Kudelski and EchoStar in writing (collectively, "Authorized Resale").

AGREEMENT

1. DESIGN, USE, AND OPERATION OF SMART CARDS.

1.1 Use by Consumer. The "Smart Card" resembles a credit card in size and appearance, is embedded with a microchip, and provides security for EchoStar's MPEG-2 DVB compliant satellite receiver (a "DISH DBS System"). The Smart Card is used with a unique DISH DBS System, determined by the serial number of the DISH DBS System, and must be inserted into, and remain in, the DISH DBS System in order for it to properly receive DISH Network Programming or other satellite delivered programming.

1.2 Technical Functions. The Smart Card has the following functions:

- A. Controls the descrambling process(es) in real-time by returning a control word when receiving entitlement control messages; control words are returned only if the smart card holds the corresponding access rights.

B. Holds the access rights for both subscription and pay-per-view events, as updated by entitlement management messages.

C. Manages impulse pay-per-view events by giving access rights against debit or credit held in the Smart Card.

D. Provides information for communication on pay-per-view matters with the call collector.

E. Manages the security against piracy by keeping cryptological keys up to date.

F. Enables new functions in the future via Smart Card software downloading.

G. Manages blackout and 'spot beam' restrictions.

H. All other Smart Card functions used by, or available to EchoStar and its Affiliates as of the date of this Agreement.

1.3 Longevity. Smart Cards are designed for permanent continuous operation for at least four years. For normal operation, periodic Smart Card replacement is not necessary during such period.

2. SMART CARD SOFTWARE.

2.1 Defined. Certain interface software has been designed for use with the Smart Cards (the "Software"). The term "Software" shall include: (i) all technology obtained from Kudelski by EchoStar and its Affiliates which is intended for use, or actually used by EchoStar and its Affiliates as of the date of this Agreement, in connection with the Smart Cards; (ii) the Entitlement Message Encryptor (EME), defined as those systems, services and equipment licensed to EchoStar and its Affiliates by Kudelski as of the date of this Agreement which are responsible for the encryption of Entitlement Management Messages (EMMs), and related functions; (iii) the Entitlement Control Encryptor (ECE), defined as those systems, services and equipment licensed to EchoStar and its Affiliates by Kudelski as of the date of this Agreement which are responsible for the generation of DVB scrambling control words, the generation and encryption of the Entitlement Control Messages (ECMs) which contain them, and related functions; and (iv) the Smart Card personalization tool.

2.2 Function. The Software is designed to, inter alia, support the technical functions set forth in Section 1.2 above.

3. PURCHASE; PRICE

3.1 Smart Cards. NagraStar agrees to sell Smart Cards to EchoStar and its Affiliates, for their use or for Authorized Resale, upon request at the price of ten U.S. dollars (\$10) per Smart Card, CIF Denver International Airport. Smart Card personalization is included in the cost of the Smart Cards. This purchase price does not apply to Smart Cards purchased as a result of a security breach pursuant to the provisions of Section 5.3. Smart Cards compatible with Kudelski's conditional access system must be purchased from NagraStar.

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3.2 Software. An irrevocable license to use the Software, and to sublicense it to DBS Providers, is included in the cost of the Smart Cards sold to EchoStar and its Affiliates hereunder.

4. PRICE GUARANTEE; REDUCTIONS; SUPPORT DEDUCTION

4.1 Guarantee. The price for Smart Cards under this Agreement shall not change prior to February 2, 2010, unless NagraStar's cost for the Smart Cards change, in which case the price under this Agreement shall be adjusted by such amount.

4.2 Support Deduction. For each Smart Card in excess of one million that EchoStar and its Affiliates purchase in any calendar year from NagraStar, EchoStar's remaining payment obligations for such calendar year under the EchoStar Service and Development Agreement entered into by the parties on the same date as, and in conjunction with this Agreement, shall be reduced by two U.S. dollars (\$2.00); provided however, that in no event shall the amount of such reduction in any calendar year exceed the remaining amount owed in such calendar year.

5. WARRANTY

5.1 Smart Cards. NagraStar warrants that each Smart Card will function as intended for at least three months from the date of delivery by EchoStar and its Affiliates to the end user, if the Smart Card has not suffered from mechanical stress higher than indicated in the ISO 7816/1 standard.

5.2 Limitation. The warranty on Smart Cards shall not be valid longer than twelve months from the date of delivery by NagraStar to EchoStar.

5.3 Additional Warranty. NagraStar further warrants the security of the conditional access system provided EchoStar and its Affiliates, and expressly agrees that if the security of the conditional access system is breached, NagraStar will immediately notify Kudelski with a demand for fastest possible replacement, and upon receipt of replacement Smart Cards from Kudelski, immediately replace all outstanding Smart Cards which were delivered by NagraStar to EchoStar no more than 48 months prior to the date of such notice, and which are in use by end-users of the conditional access system or are in EchoStar's inventories, at a cost to EchoStar equal to the cost properly charged NagraStar by Kudelski for the Smart Cards.

6. MISCELLANEOUS

6.1 Waiver. The failure of any party to insist upon strict performance of any provision of this Agreement shall not be construed as a waiver of any subsequent breach of the same or similar nature. All rights and remedies reserved to either party shall be cumulative and shall not be in limitation of any other right or remedy which such party may have at law or in equity.

6.2 Attorney Fees. In the event of any suit or action to enforce or interpret this Agreement or any provision thereof, the prevailing party shall be entitled to recover its costs, expenses and reasonable attorney fees, both at trial and on appeal, in addition to all other sums allowed by law.

6.3 Successor Interests; No Assignment by NagraStar. This Agreement is binding upon the heirs, legal representatives, successors and assigns of EchoStar and NagraStar. Neither party may assign this Agreement at any time without the consent of the other party.

6.4 Governing Law, Arbitration. This Agreement, and the performances of the parties hereunder, shall be governed by the laws of the State of Colorado without giving effect to the principles of conflicts of laws that would otherwise provide for the application of the substantive law of another jurisdiction. Should any dispute among the parties arise, the parties agree that the sole jurisdiction and venue for the resolution of any such dispute shall be English language binding arbitration conducted in the Denver metropolitan area, in accordance with the Commercial Rules of the American Arbitration Association, which rules shall include the right to seek appropriate injunctive relief in such arbitration and are deemed to be incorporated by reference into this clause. Unless the arbitrators determine otherwise, the losing party in any arbitration shall pay the costs of the prevailing party.

6.5 Severability. The parties agree that each provision of this Agreement shall be construed as separable and divisible from every other provision and that the enforceability of any one provision shall not limit the enforceability, in whole or in part, of any other provision hereof. In the event that a court of competent jurisdiction determines that any term or provision herein, or the application thereof to any person, entity, or circumstance, shall to any extent be invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, and shall be interpreted as if the invalid term or provision were not a part hereof.

6.6 Entire Agreement. This Agreement sets forth the entire, final and complete understanding between the parties hereto relevant to the subject matter of this Agreement, and it supersedes and replaces all previous understandings or agreements, written, oral, or implied, relevant to the subject matter of this Agreement made or existing before the date of this Agreement. Except as expressly provided by this Agreement, no waiver or modification of any of the terms or conditions of this Agreement shall be effective unless in writing and signed by both parties.

6.7 Compliance with Law. The parties shall comply with, and agree that this Agreement is subject to, all applicable federal, state, and local laws, rules and regulations, and all amendments thereto, now enacted or hereafter promulgated in force during the term of this Agreement.

6.8 Remedies Cumulative. It is agreed that the rights and remedies herein provided in case of default or breach by NagraStar of this Agreement are cumulative and shall not affect in any manner any other remedies that EchoStar may have by reason of such default or breach by NagraStar. The exercise of any right or remedy herein provided shall be without prejudice to the right to exercise any other right or remedy provided herein, at law, or in equity.

6.9 Confidentiality. The parties agree that this Agreement is confidential and neither party shall disclose any of the commercial, business, technical, operational, or legal details of this Agreement (the "Confidential Information") in any manner, including but not limited to press releases or other publicity of any nature without the prior written approval of the other party. The obligations

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imposed upon the parties herein shall survive termination of this Agreement indefinitely, but shall not apply to Confidential Information which is:

- (a) or becomes generally available to the public through no wrongful act of the party receiving the Confidential Information (the "Receiving Party");
- (b) already lawfully in the possession of the Receiving Party and not subject to an existing agreement of confidentiality between the parties;
- (c) received from a third party without restriction and without breach of this Agreement;
- (d) independently developed by the Receiving Party; or
- (e) released pursuant to the requirements imposed on the party by U.S. or Swiss securities laws, or the binding order of a government agency or court, so long as prior to any such release the releasing party provides the other party with the greatest notice permitted under the circumstances, so that the party disclosing the Confidential Information may seek a protective order or other appropriate remedy. In any such event, the releasing party will disclose only such Confidential Information as is legally required and will exercise reasonable efforts to obtain confidential treatment for any Confidential Information being disclosed.

6.10 Term. This Agreement shall commence on July 1, 1998, and remain in full force and effect unless and until terminated pursuant to the provisions of this Section. This Agreement shall automatically terminate upon the dissolution of NagraStar.

6.11 Notices. The parties choose the following addresses as the addresses at which they will accept service of all documents and notices relating to this Agreement:

As to EchoStar: EchoStar Communications Corporation
5701 S. Santa Fe Drive
Littleton, CO 80120
USA
Attn: David Moskowitz
Fax: (303) 723-1699

As to NagraStar: NagraStar LLC
90 Inverness Circle East
Englewood, CO 80112
USA
Attn: Joe Ferguson and Xavier Carrel
Fax: (303) 706-5719

With a copy to: Kudelski SA
1033 Cheseaux
SWITZERLAND
Attn: Nicolas Goetschmann
Fax: 41 21/732 0300

Any notice to be given by a party to the other parties pursuant to this Agreement shall be given in writing in the English language by prepaid registered post, by facsimile or shall be delivered by hand (delivery by hand must be acknowledged by written receipt from a duly authorized person at the office of the addressee), provided that:

(a) any notice given by prepaid registered post shall be deemed to have been received by the addressee, in the absence of proof to the contrary, 14 days after the date of postage;

(b) any notice delivered by hand during normal business hours shall be deemed to have been received by the addressee, in the absence of proof to the contrary, at the time of delivery; and

(c) any notice given by facsimile shall be deemed to have been received by the addressee, in the absence of proof to the contrary, immediately upon the issuance by the transmitting facsimile machine, of a report confirming correct transmission of all the pages of the document containing the notice or upon receipt by the transmitting facsimile machine, at the end of the notice being transmitted, of the automatic answer-back of the receiving facsimile machine.

6.12 Indemnification

(a) By EchoStar. EchoStar shall indemnify, defend and hold NagraStar, its Affiliates and its and their respective officers, directors, employees, agents and shareholders, and its and their respective assigns, successors and legal representatives harmless from and against, any and all costs, losses, liabilities, damages, lawsuits, judgments, claims, actions, penalties, fines and expenses (including, without limitation, interest, penalties, reasonable attorneys' fees and all monies paid in the investigation, defense or settlement of any or all of the foregoing, "Claims") that arise out of, or are incurred in connection with: (a) EchoStar's performance or failure of performance under this Agreement and any direct or indirect results thereof; (b) EchoStar's acts or omissions, lawful or unlawful; (c) the breach of any of EchoStar's representations or warranties herein; or (d) the failure of EchoStar to comply with, or any actual or alleged violation of, any applicable laws, statute, ordinance, governmental administrative order, rule or regulation.

(b) By NagraStar. NagraStar shall indemnify, defend and hold EchoStar, its Affiliates and its and their respective officers, directors, employees, agents and shareholders, and its and their respective assigns, heirs, successors and legal representatives harmless from and against, any and all Claims that arise out of, or are incurred in connection with: (a) NagraStar's performance or failure of performance under this Agreement and any direct or indirect results thereof; (b) NagraStar's acts or omissions, lawful or unlawful; (c) the breach of any of NagraStar's representations or warranties herein; or (d) the failure of NagraStar to comply with, or any actual or alleged violation of, any applicable laws, statute, ordinance, governmental administrative order, rule or regulation.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

ECHOSTAR COMMUNICATIONS CORPORATION

NAGRASTAR LLC

By: [Signature]

By: [Signature]

Title: _____

Title: _____

Date: _____

Date: _____