

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM 8-K**

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**CURRENT REPORT**

**PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934**

**Date of Report (Date of earliest event reported): January 31, 2013**

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**GLOBAL EAGLE ENTERTAINMENT INC.**  
(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or other jurisdiction  
of incorporation)

**001-35176**  
(Commission  
File Number)

**27-4757800**  
(IRS Employer  
Identification No.)

**10900 Wilshire Blvd. Suite 1500, Los Angeles, California 90024**  
(Address of principal executive offices, including zip code)

**Registrant's telephone number, including area code: (310) 209-7280**

**Not Applicable**  
(Former name or former address, if changed since last report)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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### Item 1.01 Entry Into A Material Definitive Agreement.

On January 31, 2013 (the “Closing Date”), the Registrant consummated the previously disclosed business combination (the “Business Combination”), consisting of (i) the acquisition of Row 44, Inc., a Delaware corporation (“Row 44”), pursuant to the terms of the Agreement and Plan of Merger and Reorganization dated as of November 8, 2012, by and among the Registrant, EAGL Merger Sub Corp., a Delaware corporation and wholly owned subsidiary of the Registrant, Row 44, and PAR Investment Partners, L.P. a Delaware limited partnership (“PAR,” and the acquisition, the “Row 44 Merger”), and (ii) the acquisition of 86% of the shares of Advanced Inflight Alliance AG, a German corporation, pursuant to the Stock Purchase Agreement, dated as of November 8, 2012, between the Registrant and PAR (the “AIA Stock Purchase Agreement,” and the acquisition, the “AIA Stock Purchase”). In connection with the closing of the Business Combination (the “Closing”), the Company changed its name from Global Eagle Acquisition Corp. to Global Eagle Entertainment Inc. Unless the context otherwise requires, “we”, the “Company” and “Global Eagle” refer to the Registrant and its subsidiaries including Row 44 and AIA, “GEAC” refers to the Registrant prior to the Closing, “Row 44” refers to Row 44, Inc., which became a wholly owned subsidiary of the Company upon the Closing, and “AIA” refers to Advanced Inflight Alliance AG, which became a majority owned subsidiary of the Company upon the Closing.

In connection with the Closing, the Company entered into an amended and restated registration rights agreement, dated January 31, 2013 by and among the Company, Global Eagle Acquisition LLC (the “Sponsor”), Par Investment Partners, L.P. (“PAR”), Putnam Capital Spectrum Fund and Putnam Equity Spectrum Fund (“Putnam”), and the members of the Sponsor signatory thereto (the “Registration Rights Agreement”). The Registration Rights Agreement is described in GEAC’s definitive proxy statement filed with the Securities and Exchange Commission (“SEC”) on January 17, 2013, and supplemented on January 28, 2013 (the “Proxy Statement”), in the section entitled “The Business Combination Agreements—Additional Agreements—Registration Rights Agreement” beginning on page 137, which description is incorporated by reference herein. The description of the Registration Rights Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Registration Rights Agreement, which is included as Exhibit 10.1 to this Current Report on Form 8-K and also incorporated by reference herein.

In connection with the Closing, the Company entered into indemnification agreements with each newly elected or appointed member of the Board of Directors of the Company (the “Board”) and each newly appointed executive officer of the Company (each an “Indemnity Agreement”), which provides that the Company will indemnify such director and/or executive officer under the circumstances and to the extent provided for therein, for expenses, damages, judgments, fines and settlements he or she may be required to pay in actions or proceedings to which he or she is or may be made a party by reason of his or her position as a director or executive officer of the Company, and otherwise to the fullest extent permitted under Delaware law and the Company’s by-laws. The description of the Indemnity Agreements does not purport to be complete and is qualified in its entirety by reference to the full text of the form of Indemnity Agreement, which is included as Exhibit 10.15 to this Current Report on Form 8-K and also incorporated by reference herein.

In connection with the Closing, the Company entered into a Letter Agreement, dated January 31, 2013 (the “Letter Agreement”), with Wellington Management Company, LLP (“Wellington Management”), certain affiliates of Wellington Management and certain client accounts of Wellington Management (collectively, the “Wellington Entities”), pursuant to which the Wellington Entities expressly disclaimed and relinquished any right to exercise voting power or investment power with respect to any shares of common stock issued in the Business Combination to the extent (but only to the extent) that ownership of such shares would otherwise cause any Wellington Entity to beneficially own in excess of 9.9% (the “Maximum Percentage”) of the common stock (such shares in excess of the Maximum Percentage, the “Excess Shares”). Such Excess Shares will be held in escrow, registered in the name of the escrow agent, pursuant to an Escrow Agreement, dated January 31, 2013 (the “Escrow Agreement”), among the Company, American Stock Transfer & Trust Company LLC, as escrow agent, Wellington Management and certain client accounts of Wellington Management. In order to ensure compliance with the Maximum Percentage limitation under the Letter Agreement, Wellington Management, in its capacity as investment adviser to its client accounts, informed the Company that it intends to direct the exchange agent in the Row 44 Merger to deposit 2,543,546 shares of common stock otherwise issuable to such client accounts in connection with the Row 44 Merger with the escrow agent under the Escrow Agreement. The Wellington Entities disclaim voting power and investment power with respect to such shares to the extent such shares would otherwise cause a violation of the Maximum Percentage limitation. The description of each of the Letter Agreement and the Escrow Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of each of the Letter Agreement and the Escrow Agreement, which are included as Exhibit 10.13 and 10.14, respectively, to this Current Report on Form 8-K and incorporated by reference herein.

On February 1, 2013, Row 44 entered into an Amended and Restated Supply and Services Agreement with Southwest Airlines Co. (“Southwest,” and the agreement, the “Southwest Agreement”). The Southwest Agreement amends, restates and combines two prior agreements between Row 44 and Southwest, and provides for the sale by Row 44 to Southwest of units of Row 44’s broadband system. The Southwest Agreement sets forth (a) the terms of delivery and acceptance of the Row 44 system, (b) all regulatory steps that Row 44 must take to facilitate the use of the Row 44 system by Southwest, (c) the terms and conditions of the supply of units of the Row 44 system to Southwest, (d) the pricing and payment for each unit sold by Row 44 to Southwest and (e) certain other terms ancillary to Row 44’s delivery of its system to Southwest. Additionally, under the Southwest Agreement, Row 44 will provide various services to Southwest, including Wi-Fi service, in connection with the use of the Row 44 broadband system by Southwest and its customers. In that regard, the Southwest Agreement sets forth the (a) various services that Southwest agrees to purchase from Row 44, (b) service fees and charges to be paid to Row 44 by Southwest in connection with the delivery of such services, (c) elective services that Southwest may choose to purchase from Row 44 and the cost of each such elective service and (d) certain other terms and conditions ancillary to the purchase and use of various in-flight services by Southwest. The Southwest Agreement contains certain customary representations, warranties, covenants, conditions, indemnities and miscellaneous terms and conditions typically included in agreements of this nature. The description of the Southwest Agreement does not purport to be complete and is qualified in its entirety by reference to the text of the Southwest Agreement, which is included as Exhibit 10.12 to this Current Report on Form 8-K and incorporated by reference herein.

#### **Item 1.02 Termination of a Material Definitive Agreement.**

In connection with the Closing, the Investment Management Trust Agreement, dated May 12, 2011, between GEAC and American Stock Transfer & Trust Company, LLC, as trustee, was terminated.

#### **Item 2.01 Completion Of Acquisition Or Disposition of Assets.**

Reference is made to the disclosure set forth in Item 1.01 above, which is incorporated by reference herein. The material terms of the Row 44 Merger Agreement and the AIA Stock Purchase Agreement are described in the Proxy Statement in the section entitled “The Business Combination Agreements” beginning on page 119, which is incorporated by reference herein. In the Business Combination, a wholly owned subsidiary of the Company merged with and into Row 44, with Row 44 surviving the merger as a wholly owned subsidiary of the Company, and the Company acquired 86% of the issued and outstanding shares of AIA.

In connection with the Closing, former Row 44 stockholders agreed to deposit 10% of the shares of Global Eagle common stock issuable to them in the Row 44 Merger into escrow in order to secure (i) any post-Closing purchase price adjustment due to the Company from Row 44 under the terms of the Row 44 Merger Agreement, and (ii) the Row 44 stockholders’ indemnification obligation under the Row 44 Merger Agreement. All escrow shares not subject to a claim will be released on the date that is 18 months after the Closing Date.

The Business Combination was approved by GEAC's stockholders at the Special Meeting in Lieu of 2012 and 2013 Annual Meetings of the Stockholders held on January 31, 2013 (the "Special Meeting"). At the Special Meeting, 19,724,870 shares of common stock of GEAC were voted in favor of the proposal to approve the Business Combination, and 562,772 shares of common stock were voted against that proposal.

In connection with the closing of the Business Combination, the Company redeemed a total of 10,164,081 shares of its common stock pursuant to the terms of the Company's previous amended and restated certificate of incorporation, resulting in a total payment to redeeming stockholders of \$101,286,084. Additionally, the Company issued a total of 44,899,018 shares of capital stock in the Business Combination, including (i) pursuant to the Row 44 Merger Agreement, 23,405,785 shares of its capital stock issued to former Row 44 equity holders, subject to an escrow holdback and post-closing adjustment, (ii) pursuant to the AIA Stock Purchase Agreement, in consideration of the 20,464,581 shares of AIA, 14,368,233 shares of non-voting common stock issued to PAR, and (iii) 4,750,000 shares of non-voting common stock issued to PAR and 2,375,000 shares of common stock issued to Putnam Capital Spectrum Fund and Putnam Equity Spectrum Fund ("Putnam"), representing the maximum obligations under their respective backstop agreements (the "Backstop Agreements"), and resulting in the termination of their respective purchase options to acquire additional shares of the Company.

As of the Closing Date, there were:

- o 54,842,888 shares of capital stock of the Company issued and outstanding, consisting of (i) 35,724,655 shares of common stock (excluding 3,053,634 shares of common stock held by AIA, a majority-owned subsidiary of the Company) and (ii) 19,118,233 shares of non-voting common stock; and
- o warrants exercisable for 28,840,629 shares of Company common stock, consisting of (i) warrants exercisable for 26,659,167 shares of Company common stock issued pursuant to the warrant agreement entered into in connection with the Company's initial public offering and (ii) Row 44 warrants assumed by the Company in connection with Business Combination and exercisable for 2,181,462 shares of Company common stock.

As of the Closing Date, assuming the conversion of all shares of non-voting common stock held by PAR, and excluding the shares of common stock of the Company held by AIA, the pre-Closing public stockholders of GEAC held 16%, former directors and executive officers of GEAC held 8%, former Row 44 equity holders (other than PAR) held 19%, PAR held 53%, and Putnam held 4%, of the issued and outstanding shares of common stock of the Company.

Upon the Closing, the Company had total cash and cash equivalents of approximately \$147 million, before payment of deferred underwriting fees and other fees and expenses associated with the Business Combination expected to total approximately \$20.9 million in the aggregate, although actual fees and expenses may exceed this estimate.

Prior to the Closing, the Company was a shell company with no operations, formed as a vehicle to effect a business combination with one or more operating businesses. After the Closing, the Company became a holding company whose assets primarily consist of shares of its wholly owned subsidiary, Row 44, and its majority owned subsidiary, AIA. The following information is provided about the business and securities of the post-Closing combined company reflecting consummation of the Business Combination.

#### **CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS**

The Company makes forward-looking statements in this Current Report on Form 8-K and the documents incorporated by reference herein. These forward-looking statements relate to outlooks or expectations for earnings, revenues, expenses or other future financial or business performance, strategies or expectations, or the impact of legal or regulatory matters on business, results of operations or financial condition. Specifically, forward-looking statements may include statements relating to:

- the benefits of the Business Combination;
- the future financial performance of the Company following the Business Combination;
- changes in the market for Row 44 or AIA products and services;
- expansion plans and opportunities; and
- other statements preceded by, followed by or that include the words "estimate," "plan," "project," "forecast," "intend," "expect," "anticipate," "believe," "seek," "target" or similar expressions.

These forward-looking statements are based on information available to the Company as of the date of this report, and current expectations, forecasts and assumptions, and involve a number of risks and uncertainties. Accordingly, forward-looking statements should not be relied upon as representing the Company's views as of any subsequent date, and the Company does not undertake any obligation to update forward-looking statements to reflect events or circumstances after the date they were made, whether as a result of new information, future events or otherwise, except as may be required under applicable securities laws.

As a result of a number of known and unknown risks and uncertainties, the Company's actual results or performance may be materially different from those expressed or implied by these forward-looking statements. Some factors that could cause actual results to differ include:

- the ability to obtain or maintain the listing of the Company's common stock on the Nasdaq Stock Market LLC ("Nasdaq");
- the risk that the Business Combination disrupts current plans and operations of the Company, Row 44 and/or AIA;
- the ability to recognize the anticipated benefits of the Business Combination, which may be affected by, among other things, competition, the ability to integrate the Row 44 and AIA businesses, and the ability of the combined business to grow and manage growth profitably;
- costs related to the Business Combination;
- the outcome of any legal proceedings that may be instituted against the Company;
- changes in applicable laws or regulations;
- the possibility that the Company may be adversely affected by other economic, business, and/or competitive factors; and
- other risks and uncertainties set forth in the Proxy Statement in the section entitled "Risk Factors" beginning on page 54, which are incorporated herein by reference.

### ***Business***

The business of GEAC prior to the Business Combination is described in the Proxy Statement in the section entitled "Information about GEAC" beginning on page 138, which is incorporated by reference herein. The businesses of Row 44 and AIA are described in the Proxy Statement in the sections entitled "Information About Row 44," and "Information About AIA" beginning on pages 151 and 177, respectively, which are both incorporated herein by reference.

### ***Risk Factors***

The risks associated with the businesses of GEAC, Row 44 and AIA are described in the Proxy Statement in the section entitled "Risk Factors" beginning on page 54, which is incorporated herein by reference.

### ***Financial Information***

#### **GEAC**

Selected financial information and management's discussion and analysis of financial condition and results of operations of GEAC are set forth in the Proxy Statement in the sections entitled "Selected Historical Financial Information of GEAC" and "GEAC Management's Discussion and Analysis of Financial Condition and Results of Operations" beginning on pages 28 and 148, respectively, which are incorporated herein by reference.

## AIA

Selected financial information and management's discussion and analysis of financial condition and results of operations of AIA are included in the Proxy Statement in the sections entitled "Selected Consolidated Historical Financial Information of AIA" and "AIA Operating and Financial Review and Prospects" beginning on pages 30 and 185, respectively, which are incorporated herein by reference.

## Row 44

Selected financial information for Row 44 is included in the Proxy Statement in the section entitled "Selected Historical Financial Information of Row 44" beginning on pages 29, which is incorporated herein by reference. Management's discussion and analysis of financial condition and results of operations for Row 44 is set forth below.

### **ROW 44 MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

*You should read the following discussion and analysis together with "Selected Historical Financial Information of Row 44" and Row 44's financial statements and the related notes incorporated by reference elsewhere in this report. Among other things, those historical financial statements include more detailed information regarding the basis of presentation for the financial data than included in the following discussion. This discussion contains forward-looking statements about Row 44's business, operations and industry that involve risks and uncertainties, such as statements regarding Row 44's plans, objectives, expectations and intentions. Row 44's future results and financial condition may differ materially from those currently anticipated by Row 44 as a result of the factors described or incorporated by reference in the sections entitled "Risk Factors" and "Cautionary Note Regarding Forward-Looking Statements" included elsewhere in this report.*

#### **Overview**

Row 44 is a global satellite-based broadband services provider to the worldwide commercial airline industry. Its network enables airlines to connect to orbiting Ku-band satellites and to communicate with existing satellite ground earth stations. Row 44's in-cabin communications link currently provides airline passengers with Internet access, live television, shopping and flight and destination information. In the near future, Row 44 expects to deliver to airline passengers additional content, on-demand media, and other desired communication services and to provide airlines with valuable aircraft operations data and applications.

Row 44 was formed in 2004, its Wi-Fi connectivity system was first deployed by a domestic commercial airline in 2009 and its broadband services were fully operational in 2010. Currently installed on more than 400 aircraft worldwide, Row 44 services the largest fleet of connected entertainment enabled planes that operate over land and sea.

Since its formation, Row 44 has funded operations primarily through the private placement of preferred stock and short term convertible notes. Invested funds have been used by Row 44 to complete the research, development and engineering and to secure the complex regulatory certifications necessary to produce a fully functional satellite based communications system for commercial airlines. The development of the Row 44 system and network included the following:

- the design and creation of a turnkey system for in-flight broadband connectivity through a satellite link, including a fully operational antenna, an in-cabin modem and several other key operational components;
- the registration, testing and licensing of the Row 44 system with the FAA and the FCC;
- the establishment of a company-managed network operating center to allow for the full time monitoring of the operation of all Row 44 systems in-flight;
- the acquisition of satellite transponder space with sufficient capacity to support the connectivity demands of Row 44's airline customers worldwide; and
- the development of a just-in-time manufacturing process to allow for the efficient delivery of the Row 44 system for installation on customer aircraft on an as-needed basis.

Following the completion of the development of a licensed and operational in-flight broadband system, in 2010, Row 44 commenced the installation of its equipment on the aircraft of Southwest Airlines and began to generate revenues from operations. Row 44 generates revenues from the following sources:

- sale of Row 44's connectivity equipment to its commercial airline customers;
- fees paid by airlines and/or airline passengers for the delivery of in-flight services, such as Internet access and live television; and
- revenue sharing arrangements with commercial airlines for Internet based services used by their passengers, such as shopping.

Beginning in 2009, management at Row 44 began to focus on the global rollout of its satellite-based system and on domestic and international customer acquisitions, signing its first commercial passenger airline in 2010. Row 44 has achieved the following customer installation milestones during the past three years:

- 2010 — Southwest Airlines Co.;
- 2011 — Norwegian Air Shuttle;
- 2011 — WirelessG (Mango Airlines);
- 2012 — Transaero Airlines;
- 2012 — UTair Airlines; and
- 2012 — Icelandair.

The combined satellite coverage with these customers spans from Alaska to Japan, covering North America, the North Atlantic, Europe, a substantial portion of the Middle East, Russia and Asia.

### **Factors and Trends Affecting Row 44's Results of Operations**

Row 44's operating and business performance is driven by various economic and airline industry factors, including the following:

- The costs associated with the long-term satellite coverage for Row 44's broadband services, especially as it expands internationally;
- The availability of satellite transponder space, especially in oceanic regions of the world;
- The costs associated with complying with the regulatory, aeronautical, telecommunications and legal requirements of the many countries where Row 44 intends to provide its services;
- The number of aircraft in service in Row 44's markets;
- The domestic and international economic environment and other trends and developments that affect business and leisure travel around the world;
- The operating rate of spending in the airline industry; and
- The continued demand for connectivity based in-flight entertainment services and the growing proliferation of Wi-Fi enabled devices such as smartphones, tablets and laptops.

### **Key Components of Row 44's Statements of Operations**

The following briefly describes certain key elements or revenues and expenses as presented in the Row 44 statements of operations.

*Revenues.* Row 44 generates revenues from the sale of equipment to its commercial airline customers and from service revenue derived from the sale of in-flight connectivity and content delivery to airlines and their passengers.

*Equipment revenue.* Row 44 purchases hardware, equipment and related components from third party vendors, assembles these components and oversees the installation of the Row 44 system in the cabin of an aircraft. Equipment revenue is derived from the sale of the Row 44 system to various customers.

*Service revenue.* Row 44 also receives service revenue for providing in-flight Wi-Fi services such as Internet connectivity and live television. Service revenue can be paid to Row 44 via a fee per boarded passenger, regardless of the number of actual users of the connectivity service during a flight. Under this model the airline customer pays Row 44 a fee per passenger per flight that is generally flat for the duration of the agreement with such customer. Payments are made from the applicable customer to Row 44 typically on a monthly or quarterly basis with payment amounts that may vary based on actual load factors. Service revenue can also be a fee charged on the actual use of the provided service in-flight or revenue generated from the sale of products and advertisement. In the latter instance, Row 44 and its airline customers agree to split ad and transaction based service revenue according to a negotiated formula that varies amongst customers. Row 44 has also offered potential customers blended versions of the foregoing business models whereby an airline customer would pay Row 44 a flat fee per flight and a per device charge for devices that use the Row 44 system on that flight. Row 44 has not yet identified a compelling trend as to which of the foregoing business models is better suited for the market, and expects to continue to evaluate these business models and explore additional opportunities to generate revenue from its commercial airline customers for Row 44's in-flight products and services.

*Revenue recognition.* Row 44 recognizes revenues when all of the following have occurred:

- Persuasive evidence of an agreement with a customer exists;
- Equipment has been shipped and the customer takes delivery;



- The price for the equipment or services sold is set or easily determinable; and
- Collectability is reasonably assured.

*Deferred revenue.* Row 44 regularly receives deposits from its commercial airline customers at the time that a customer places a purchase order for equipment with Row 44. These deposits are considered prepayments and initially recorded on Row 44's balance sheet as deferred revenue if Row 44's revenue recognition criteria have not been satisfied as of the date the deposits are received from a customer. Once Row 44's revenue recognition standards have been met, deferred revenue will be recognized as equipment sales revenue on Row 44's income statement, and the corresponding liability will be removed from its balance sheet.

*Operating expenses:*

Row 44's operating expenses include the following:

- equipment cost of sales;
- cost of services;
- personnel;
- research and development; and
- selling, general and administrative.

Equipment cost of sales includes the acquisition cost of all hardware, equipment and componentry that Row 44 purchases for its system and platform from third party vendors. Cost of services includes the cost of satellite transponder leases and content licensing and related management fees. Personnel expenses include the costs relating to the salaries and benefits of Row 44's executive officers, employees and consultants. Research and development expenses include all costs and expenses relating to Row 44's research and development efforts, including all system engineering costs and the expenses relating to the procurement of supplement type certificates ("STCs") from the FAA and international authorities for specific aircraft modified to accommodate the Row 44 system. Selling, general and administrative expenses include all of the other operating expenses of Row 44.

## **Results of Operations**

The following table sets forth, for the periods presented, certain data from Row 44's statements of operations. The information contained in the table below should be read in conjunction with Row 44's financial statements and related notes, which are incorporated by reference elsewhere in this report.

### Statement of Operations Data

	Year Ended December 31,			Nine Months Ended September 30,	
	2011	2010	2009	2012	2011
<b>Revenues</b>					
Equipment revenue	\$ 32,852,829	\$ 15,778,619	\$ 374,427	\$ 49,707,279	\$ 20,246,002
Service revenue	3,182,188	283,707	—	7,886,974	1,786,918
<b>TOTAL REVENUES</b>	<b>36,035,017</b>	<b>16,062,326</b>	<b>374,427</b>	<b>57,594,253</b>	<b>22,032,920</b>
<b>Operating Expenses</b>					
Equipment cost of sales	29,343,601	16,933,723	262,747	46,805,636	18,467,074
Cost of services	8,089,437	2,353,595	5,914,933	14,694,337	5,059,295
Personnel	5,725,083	3,688,450	2,268,971	5,386,297	4,257,494
Research and development	3,392,101	4,241,704	3,474,699	2,256,748	2,404,941
Selling, general and administrative	6,980,663	4,234,172	3,690,296	7,298,160	5,529,981
<b>Total operating expenses</b>	<b>53,530,885</b>	<b>31,451,644</b>	<b>15,611,646</b>	<b>76,441,178</b>	<b>35,718,785</b>
<b>Operating Loss</b>	<b>(17,495,868)</b>	<b>(15,389,318)</b>	<b>(15,237,219)</b>	<b>(18,846,925)</b>	<b>(13,685,865)</b>
<b>Other Income (Expense)</b>					
Miscellaneous income (expense)	92	(58,054)	(200)	—	92
Interest income	53,442	82,169	31,322	50,110	39,491
Changes in value of derivative instruments	—	—	—	247,533	—
Loss on disposal of assets	(60,491)	(26,098)	—	(21,097)	(61,075)
Interest expense	(286,261)	(3,664,829)	(11,649,842)	(19,431,997)	(6,537)
<b>Total Other Income (Expenses)</b>	<b>(293,218)</b>	<b>(3,666,812)</b>	<b>(11,618,720)</b>	<b>(10,155,451)</b>	<b>(28,029)</b>
<b>NET LOSS</b>	<b>(17,789,086)</b>	<b>(19,056,130)</b>	<b>(26,855,939)</b>	<b>(29,002,376)</b>	<b>(13,713,894)</b>
Less: Preferred stock dividends	(5,360,496)	(3,811,340)	(1,804,819)	(5,467,534)	(3,969,661)
Less: Accretion of preferred stock	—	—	—	(463,702)	—
<b>Net Loss Available to Common Stockholders</b>	<b>\$ (23,149,582)</b>	<b>\$ (22,867,470)</b>	<b>\$ (28,660,758)</b>	<b>\$ (34,933,612)</b>	<b>\$ (17,683,555)</b>
Net loss attributable to common stock per share – basic and diluted	\$ (0.57)	\$ (0.93)	\$ (1.16)	\$ (0.36)	\$ (0.71)
Weighted average number of common shares, basic and diluted	40,313,201	24,663,510	24,663,510	97,352,138	24,888,495

### Comparison of Results of Operations for the Nine Months Ended September 30, 2012 and September 30, 2011

#### Revenues:

The percentage changes in revenue for the nine months ended September 30, 2012 and 2011 were as follows:

	Nine Months Ended September 30,			
	2012	2011	\$ Change	% Change
Equipment revenue	\$ 49,707,279	\$ 20,246,002	\$ 29,461,277	146%
Service revenue	7,886,974	1,786,918	6,100,056	342%
<b>Total Revenues</b>	<b>\$ 57,594,253</b>	<b>\$ 22,032,920</b>	<b>\$ 35,561,333</b>	<b>162%</b>

Row 44's total revenues increased by 162% to \$57,594,253 for the nine months ended September 30, 2012 compared to \$22,032,920 for the prior year period due to a considerable increase in equipment sales and substantial growth in the use of Row 44 in-flight services, which resulted from greater deployment of its equipment on commercial flights, especially on the Southwest Airlines domestic fleet. Equipment revenue increased by 146% to \$49,707,279 for the nine months ended September 30, 2012 compared to \$20,246,002 for the prior year for the reason noted above. Service revenue increased by 342% to \$7,886,974 for the nine months ended September 30, 2012 compared to \$1,786,918 for the prior year period due to increased passengers available to use of Row 44's system given its greater availability.

Total operating expenses increased by 114% to \$76,441,178 for the nine months ended September 30, 2012 compared to \$35,718,785 for the prior year period. Equipment cost of sales increased by 153% to \$46,805,636 for the nine months ended September 30, 2012 compared to \$18,467,074 for the prior year period due to a considerable increase in equipment sold based on an increase in orders from Row 44's new and existing commercial airline customers. Cost of services increased by 190% to \$14,694,337 for the nine months ended September 30, 2012 compared to \$5,059,295 for the prior year period due to a significant increase in the cost of satellite transponder space, largely due to the expansion of Row 44's business outside of the United States, and to an increase in upfront fees relating to the content delivered by Row 44's system to airlines and their passengers. Personnel expenses increased by 27% to \$5,386,297 for the nine months ended September 30, 2012 compared to \$4,257,494 for the prior year period primarily due to Row 44's addition of staff to service its growing customer base and to the funding of certain severance obligations. Research and development expenses declined by 6% to \$2,256,748 for the nine months ended September 30, 2012 compared to \$2,404,941 for the prior year period primarily due to a reduction in STC procurement related costs. Row 44 anticipates that research and development expense will increase in future periods as it procures additional STCs and expands its research and development efforts with respect to Ka band satellite connectivity. Selling, general and administrative expenses increased by 24% to \$7,298,160 for the nine months ended September 30, 2012 compared to \$5,529,981 for the prior year period largely due to the expansion of Row 44's facilities domestically and abroad to support its growth.

Operating loss increased by 38% to \$18,846,925 for the nine months ended September 30, 2012 compared to \$13,685,865 for the prior year period due to an increase in operating expenses as a result of Row 44's accelerated acquisition of additional satellite transponder space and content delivery costs, in addition to an increase in its headcount and the expansion of office space. Total other expenses grew 36,132% to a loss of \$10,155,451 for the nine months ended September 30, 2012 from a loss of \$28,029 for the prior year period primarily due to a considerable growth in Row 44's interest expense relating to certain warrants issued in connection with its short term convertible promissory notes in December 2011 and March 2012, as well as the warrant expense associated with the warrant purchase agreement entered into by Row 44 with Major League Baseball Advanced Media in March 2012.

Net loss rose by 112% to a loss of \$29,002,376 for the nine months ended September 30, 2012 compared to \$13,713,895 for the prior year period primarily due to the significant increase in interest expense and warrant expense relating to Row 44's short term convertible promissory notes in December 2011 and March 2012.

## Comparison of Results of Operations for the Years Ended December 31, 2011 and 2010

### Revenues:

The percentage changes in revenue for the years ended December 31, 2011 and 2010 were as follows:

	Year Ended December 31,			
	2011	2010	\$ Change	%Change
Equipment revenue	\$ 32,852,829	\$ 15,778,619	\$ 17,074,210	108%
Service revenue	3,182,188	283,707	2,898,481	1022%
<b>Total Revenues</b>	<b>\$ 36,035,017</b>	<b>\$ 16,062,326</b>	<b>\$ 19,972,691</b>	<b>124%</b>

Total revenues increased by 124% to \$36,035,017 for the year ended December 31, 2011 compared to \$16,062,326 for the prior year due to an increase in equipment sales and substantial growth in the use of Row 44 in-flight services, which resulted from greater deployment of its equipment on commercial airlines.

Total operating expenses increased by 70% to \$53,530,885 for the year ended December 31, 2011 compared to \$31,451,644 for the prior year. Equipment cost of sales increased by 73% to \$29,343,601 for the year ended December 31, 2011 compared to \$16,933,723 for the prior year to a considerable increase in equipment sold based on an increase in orders from Row 44's airline customers. Cost of services increased by 244% to \$8,089,437 for the year ended December 31, 2011 compared to \$2,353,595 for the prior year due to a significant increase in the cost of satellite transponder space, largely due to the expansion of Row 44's business outside of the United States, and to an increase in fees relating to the content delivered by Row 44's system. Personnel expenses increased by 55% to \$5,725,083 for the year ended December 31, 2011 compared to \$3,688,450 for the prior year primarily due to Row 44's addition of staff to service its growing customer base, the staffing of Row 44's Las Vegas office and the expansion of its Lombard facilities. Research and development expenses declined by 20% to \$3,392,101 for the year ended December 31, 2011 compared to \$4,241,704 for the prior year primarily due to a reduction in STC procurement related costs. Selling, general and administrative expenses increased by 65% to \$6,980,663 for the year ended December 31, 2011 compared to \$4,234,172 for the prior year largely as a result of increased headcount commensurate with its growth, considerable executive travel relating to customer acquisition efforts and an increase in trade show expenses.

Operating loss increased by 14% to \$17,495,868 for the year ended December 31, 2011 compared to \$15,389,318 for the prior year primarily due to an increase in selling, general and administrative expenses, as noted above. Total other expenses fell by 92% to \$293,218 for the year ended December 31, 2011 from \$3,666,812 for the prior year primarily due to a considerable reduction in interest expense as outstanding short term convertible promissory notes were converted into preferred equity.

Net loss fell by 7% to a loss of \$17,789,086 for the year ended December 31, 2011 compared to \$19,056,130 for the prior year primarily due to the overall growth of total revenues in 2011.

## Comparison of Results of Operations for the Years Ended December 31, 2010 and 2009

### Revenues:

The percentage changes in revenue for the years ended December 31, 2010 and 2009 were as follows:

	Year Ended December 31,			
	2010	2009	\$ Change	%Change
Equipment revenue	\$ 15,778,619	\$ 374,427	\$ 15,404,192	4,114%
Service revenue	283,707	—	283,707	~%
<b>Total Revenues</b>	<b>\$ 16,062,326</b>	<b>\$ 374,427</b>	<b>\$ 15,687,899</b>	<b>4,190%</b>

Total revenues increased by 4,190% to \$16,062,326 for the year ended December 31, 2010 compared to \$374,427 for the prior year due to the commencement of equipment sales under Row 44's contract with Southwest Airlines, which resulted in the initial deployment of its equipment on the Southwest Airlines fleet, a development that also lead to Row 44's ability to initiate the collection of services revenue for the first time.

Total operating expenses increased by 101% to \$31,451,644 for the year ended December 31, 2010 compared to \$15,611,646 for the prior year. Equipment cost of sales increased by 6,345% to \$16,933,723 for the year ended December 31, 2010 compared to \$262,747 for the prior year due to the considerable increase in equipment sold based on the first material purchase order from Row 44's airline customers, primarily Southwest Airlines. Cost of services decreased by 160% to \$2,353,595 for the year ended December 31, 2010 compared to \$5,914,933 for the prior year due Row 44's negotiation of an amendment to Row 44's network service agreement with Hughes Network Systems (HNS), reducing the amount of transponder capacity purchased by Row 44. Personnel expenses increased by 63% to \$3,688,450 for the year ended December 31, 2010 compared to \$2,268,971 for the prior year primarily due to Row 44's addition of staff to service its growing customer base, including the expansion of its Lombard facilities. Research and development expenses increased by 22% to \$4,241,704 for the year ended December 31, 2010 compared to \$3,474,699 for the prior year primarily due to an increase in STC procurement related costs. Selling, general and administrative expenses increased by 15% to \$4,234,172 for the year ended December 31, 2010 compared to \$3,690,296 for the prior year largely as a result of Row 44's expansion of its Lombard facilities, additional travel required to support Row 44's customer base, increase in insurance requirements associated with installation of equipment and increase in depreciation expense.

Operating loss increased by 1% to \$15,389,318 for the year ended December 31, 2010 compared to \$15,237,219 for the prior year primarily due to an increase in equipment revenue, offset by an increase in equipment cost of sales, personnel costs, research and development costs, selling, general and administrative expenses and a reduction in costs of services, as noted above. Total other expenses fell by 68% to \$3,666,812 for the year ended December 31, 2010 from \$11,618,720 for the prior year primarily due to a considerable reduction in interest expense associated with convertible bridge loans issued in 2009, which were converted into shares of Row 44's Series B-2 preferred stock in 2010, and interest expense associated with warrants and penalty warrants issued in 2009 in connection with the funding of those convertible bridge loans and related loan extensions.

Net loss fell by 29% to a loss of \$19,056,130 for the year ended December 31, 2010 compared to \$26,855,939 for the prior year primarily due to the meaningful growth of total revenues in 2010 with the rollout of the Row 44's system to its commercial airline customers and to a significant reduction in interest expense.

## Liquidity and Capital Resources

Row 44's overall financial condition has improved in 2012, as its financing cash flow increased in 2012 by an amount greater than cash used in operating and investing activities during the year. For the period ended December 31, 2011, Row 44's auditors issued a "going concern" opinion, primarily because, as of that time, Row 44 had not generated sufficient cash flow from operations to cover its operating losses.

	Year Ended December 31,			Nine Months Ended September 30,	
	2011	2010	2009	2012	2011
Net cash used in operating activities	\$ (3,995,019)	\$ (16,071,881)	\$ (14,156,574)	\$ (28,627,536)	\$ (1,867,878)
Net cash used in investing activities	(587,239)	(915,339)	(114,187)	(2,189,394)	(583,352)
Net cash provided by (used in) financing activities	9,902,937	20,371,305	13,999,438	34,979,500	(92,898)
Net increase (decrease) in cash and cash equivalents	5,320,679	3,384,085	(271,296)	4,165,727	(2,544,128)
Cash and cash equivalents at beginning of period	3,489,000	104,915	376,211	8,809,679	3,489,000
Cash and cash equivalents at end of period	\$ 8,809,679	\$ 3,489,000	\$ 104,915	\$ 12,975,406	\$ 944,872

Row 44 has historically financed its growth and cash needs through the issuance of convertible preferred stock and short term convertible notes.

Row 44's near and long-term liquidity needs will increase in connection with its growth and anticipated capital expenditures, as well as its anticipated increase in selling, general and administrative costs in connection with Row 44's expansion into Europe and Asia. Row 44 experienced operating losses for the years ended December 31, 2009, 2010 and 2011 and for the nine months ended September 30, 2012 and management of Row 44 expects that such losses from operations will continue for the foreseeable future.

Following completion of the Business Combination, it is anticipated that at least \$100 million of cash will be available to fund operations, including those relating to the expansion of Row 44's business. Management of Row 44 believes that cash and cash equivalents on hand both at Row 44 and at the Company, and anticipated cash flow generated from Row 44's operating activities should be sufficient to meet its working capital and capital expenditure requirements for at least 12 months. Management of Row 44 also believes that its improved financial position will allow Row 44 to finance future equipment purchases on attractive terms.

### *Off-Balance Sheet Financing Arrangements*

Row 44 has no obligations, assets or liabilities that could be considered off-balance sheet arrangements. It does not participate in transactions that create relationships with unconsolidated entities or financial partnerships, often referred to as variable interest entities, which are established to facilitate off-balance sheet arrangements. Row 44 has not established any special purpose entities, guaranteed any debt or commitments of other entities or entered into any non-financial assets.

### ***Contractual Obligations***

Row 44's long term obligations include contracts for satellite transponder space, office space leases and certain guaranteed minimum payments owed to live television and video on demand content providers. In connection with the purchase of satellite bandwidth, Row 44 signed a Master Services Agreement (MSA) with HNS to provide for satellite capacity in North America and Europe. Under the MSA, Row 44 sources satellite capacity from satellite operators through HNS, while HNS enters into direct relationships with specific satellite operators. Row 44 and HNS enter into an amendment to the MSA each time that Row 44 needs to add a new satellite transponder or change its capacity needs with respect to an existing satellite transponder. Row 44 pays HNS on a monthly basis for the transponder capacity that Row 44 purchases. The length of time Row 44 purchases capacity on a particular transponder varies based on Row 44's needs and the demand for capacity on a particular satellite, but typically is for one to three year periods.

In June 2012, Row 44 and HNS signed an agreement to extend the MSA an additional 3 years from December 31, 2012 to December 31, 2015. Accordingly, the total contractual obligation under the MSA and subsequent agreements as of September 31, 2012 increased to \$86,077,725, with \$7,005,304 of payments to be made through December 31, 2012 and the remaining amount of \$79,072,421 to be paid over the next three years.

As of December 31, 2011, expected future cash payments under contractual obligations and the estimated timeframe in which such obligations are expected to be fulfilled were as follows:

	Payments Due By Period				
	Total	Less than 1 Year	1-3 Years	3-5 Years	More Than 5 Years
Notes payable (a)	\$ 10,065,856	\$ 10,013,244	\$ 46,700	\$ 5,912	\$ -
Operating lease obligations (b)	1,763,208	417,392	1,178,412	167,404	-
Satellite cost commitments (c)	10,625,973	10,625,973	-	-	-
Video license commitments (d)	2,955,500	525,500	2,310,000	120,000	-
Other purchase obligations (e)	30,254,745	30,254,745	-	-	-
Employment agreement (f)	1,050,000	175,000	875,000	-	-
Total	\$ 56,715,282	\$ 52,011,854	\$ 4,410,112	\$ 293,316	\$ -

(a) Notes payable represents the minimum principal payments required under notes payable including \$10 million related to convertible bridge loans that was converted into Series C-2 Preferred Stock in June 2012.

(b) Operating lease obligations consist of minimum rental payments under a non-cancelable operating lease.

(c) Satellite cost commitments relate to Row 44's obligations under the MSA.

(d) Video license commitments represent contracted commitments with various video content providers in connection with the distribution of entertainment services.

(e) Other purchase obligations primarily consist of contracts for the purchase of equipment sets that are to be resold to commercial airlines in line with existing sales orders.

(f) Employment agreement relates to an employment agreement entered into on July 1, 2011 with John Guidon, who is currently Row 44's Chief Technology Officer.

### **Critical Accounting Policies and Estimates**

#### ***Cash and Cash Equivalents***

Row 44 considers all highly liquid investments with original maturities or three months or less to be cash equivalents.

#### ***Use of Estimates***

The preparation of financial statements in accordance with GAAP requires management to make estimates and assumptions that affect the reported amount of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from any of the estimates made by Row 44.

## ***Income Taxes***

As of December 31, 2011 Row 44 had federal and state operating loss carry forwards of \$57.9 million and \$55.3 million, respectively, which losses will begin to expire during the fiscal years ending in December 31, 2028 and 2018, respectively. To the extent available, these net operating losses may be used to offset future taxable income generated by Row 44, thereby reducing future federal and state income taxes otherwise payable. Row 44's use of offsetting net operating losses is subject to the restrictions imposed by Section 382 of the Internal Revenue Code.

## ***Recent Accounting Announcements***

Management of Row 44 does not believe that any recently issued, but not effective, accounting standards, if currently adopted, would have a material effect on its financial statements.

## ***Revenue Recognition Policies***

Row 44's contracts with its commercial airline customers and a service provider, WirelessG to Mango Airlines, provide for the sale of equipment for installation on the aircraft. The equipment is purchased by the airline and the airline is responsible for the installation and maintenance of the equipment. Row 44 is not directly responsible for any repair or warranty costs related to equipment sales as the vendors that supplied the individual parts provide the repair and warranty. The sale of equipment is not dependent on providing in-flight services to the customer. Row 44 recognizes revenues on equipment sales when all of the following have occurred:

- Persuasive evidence of an agreement with a customer exists;
- Equipment has been shipped and the customer takes delivery;
- The price for the equipment sold is set or easily determinable; and
- Collectability is reasonably assured.

Row 44's contracts with its commercial airline customers may also include services to provide in-flight connectivity and content delivery to the airlines and their passengers. Row 44's contract with service provider WirelessG does not include such a provision. Service revenues paid to Row 44 are generated based on a fee per boarded passenger, regardless of the number of actual users of the connectivity and content delivery service during the flight, or revenues generated from the sale of content purchased by a passenger and advertisements presented to passengers while in flight. Row 44 records service revenues under the fee per boarded passenger formula based on passenger count data provided monthly by its airline customers. Row 44's service revenues to-date have substantially been related to the fee per boarded passenger formula. Row 44 recognizes revenues on services when all of the following have occurred:

- Persuasive evidence of an agreement with a customer exists;
- Service is available and has been delivered;
- The price for the services sold is set or easily determinable; and
- Collectability is reasonably assured.



### **Pro Forma Financial Information**

Pro forma financial information for the Company is set forth in the Proxy Statement in the section entitled “Unaudited Pro Forma Condensed Combined Financial Information” beginning on page 32, which is incorporated herein by reference.

### **Properties**

The Company’s principal executive office is located at 10900 Wilshire Blvd, Suite 1500, Los Angeles, CA 90024. Row 44’s and AIA’s facilities are described in the Proxy Statement in the sections entitled “Information About Row 44” beginning on page 151, and “Information About AIA” beginning on page 177, which are both incorporated herein by reference.

### **Security Ownership of Certain Beneficial Owners and Management**

The following table sets forth information known to the Company regarding beneficial ownership of shares of common stock of the Company and shares of non-voting common stock of the Company as of the Closing Date by:

- each person who is the beneficial owner of more than 5% of the outstanding shares of common stock of the Company;
- each of the Company’s executive officers and directors; and
- all executive officers and directors of the Company as a group.

Beneficial ownership is determined according to the rules of the SEC, which generally provide that a person has beneficial ownership of a security if he, she or it possesses sole or shared voting or investment power over that security, including options and warrants that are currently exercisable or exercisable within 60 days.

Beneficial ownership of common stock of the Company is based on 35,724,655 shares of common stock of the Company (excluding 3,053,634 shares of common stock held by AIA, a majority-owned subsidiary of the Company) issued and outstanding as of the Closing Date. Beneficial ownership of the common stock together with non-voting common stock is based on 54,842,888 shares of capital stock of the Company issued and outstanding as of the Closing Date, consisting of 35,724,655 shares of common stock and 19,118,233 shares of non-voting common stock.

Name and Address of Beneficial Owner <sup>(1)</sup>	Number of Shares of Common Stock	Percent of Outstanding Common Stock	Number of Shares of Common and Non-Voting Common Stock	Percent of Outstanding Common and Non-Voting Common Stock
Global Eagle Acquisition LLC (the Sponsor) <sup>(2)</sup>	11,443,243	26.6%	11,443,243	18.4%
Harry E. Sloan <sup>(2)</sup>	11,443,243	26.6%	11,443,243	18.4%
Jeff Sagansky <sup>(2)</sup>	11,443,243	26.6%	11,443,243	18.4%
PAR Investment Partners, L.P. <sup>(3)</sup>	9,374,751	25.9%	28,492,984	51.4%
Wellington Management Company, LLP <sup>(4)</sup>	3,562,285	9.9%	3,562,285	6.5%
AQR Capital Management LLC <sup>(5)</sup>	3,360,000	9.0%	3,360,000	5.9%
John LaValle	257,240	*	257,240	*
David M. Davis	19,347	*	19,347	*
Edward L. Shapiro <sup>(2)</sup>	—		—	
Louis Bélanger-Martin	—		—	
Jeffrey A. Leddy	—		—	
Jeffrey E. Epstein	—		—	
Robert W. Reding	—		—	
All executive officers and directors as a group (9 individuals)	11,719,830	27.2%	11,719,830	18.9%
* Less than 1%				

(1) Unless otherwise indicated, the business address of each individual is 10900 Wilshire Blvd., Suite 1500, Los Angeles, California 90024.

(2) Includes shares underlying 7,328,334 warrants (“sponsor warrants”) held by Global Eagle Acquisition LLC (the “Sponsor”) that will become exercisable 30 days after completion of the Business Combination. Messrs. Sloan and Sagansky, are members of the Sponsor. Includes 926,463 shares of common stock of the Company that are subject to forfeiture by the Sponsor on January 31, 2016 in the event that the last sales price of common stock of the Company does not equal or exceed \$13.00 per share (as adjusted for stock splits, stock dividends, reorganizations, recapitalizations and the like) for any 20 trading days within any 30-trading day period within 24 months following the completion of the Business Combination. Messrs. Sloan and Sagansky have voting and dispositive control of the shares of common stock of the Company held by the Sponsor. Each of Messrs. Sloan and Sagansky disclaim beneficial ownership of these shares except to the extent of his pecuniary interest therein.

(3) Includes 509,512 shares of common stock underlying warrants exercisable for shares of common stock of the Company as result of the assumption by the Company of certain Row 44 warrants in the Business Combination. Excludes 985,027 shares of common stock held in escrow to secure (A) any post-closing purchase price adjustment due to the Company from Row 44 pursuant to the terms of the Row 44 Merger Agreement and (B) Row 44's indemnification obligations under the Row 44 Merger Agreement. All shares are held directly by PAR Investment Partners, L.P. (“PAR”). PAR Capital Management, Inc. (“PCM”), as the general partner of PAR Group, L.P., which is the general partner of PAR, has investment discretion and voting control over shares held by PAR. No stockholder, director, officer or employee of PCM has beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of any shares held by PAR. The shares held by PAR are part of a portfolio managed by Edward L. Shapiro. As an employee of PCM, Mr. Shapiro has the authority to make investment decisions with respect to shares of capital stock of the Company held by PAR. The address of PAR is One International Place, Suite 2401, Boston, MA 02110.

(4) Includes 257,058 shares of common stock underlying warrants exercisable for shares of common stock of the Company as a result of the assumption by the Company of certain Row 44 warrants in the Business Combination. Excludes (i) 536,229 shares of common stock held in escrow, registered in the name of the escrow agent, to secure (A) any post-closing purchase price adjustment due to the Company from Row 44 pursuant to the terms of the Row 44 Merger Agreement and (B) Row 44's indemnification obligations under the Row 44 Merger Agreement and (ii) 2,007,317 shares of common stock issued in the Business Combination and held in escrow, registered in the name of the escrow agent, pursuant to an agreement between Wellington Management Company, LLP ("Wellington Management"), certain affiliates of Wellington Management and certain client accounts of Wellington Management (collectively, the "Wellington Entities") and the Company, pursuant to which the Wellington Entities expressly disclaimed and relinquished any right to exercise voting power or investment power with respect to any shares of common stock issued in the Business Combination to the extent (but only to the extent) that ownership of such shares would otherwise cause any Wellington Entity to beneficially own in excess of 9.9% of the Company's voting common stock. None of the Wellington Entities have voting power or investment power with respect to such excluded shares. Wellington Management is an investment adviser registered under the Investment Advisers Act of 1940. Wellington Management, in such capacity, may be deemed to share beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act), over the shares held by its client accounts. The address for Wellington Management is 280 Congress Street, Boston, MA 02210.

(5) According to a Schedule 13G filed with the SEC on February 14, 2012 on behalf of AQR Capital Management, LLC, a Delaware limited liability company ("AQR LLC"), AQR LLC beneficially owned of 1,680,000 units of the Company as a result of being the investment manager of AQR Diversified Arbitrage Fund. At the Closing, the units of the Company separated into their component share of common stock and warrant to purchase one share of common stock of the Company. As such, the information presented includes 1,680,000 warrants to purchase common stock of the Company, which will become exercisable 30 days after Closing. The business address of this stockholder is Two Greenwich Plaza, 3rd floor, Greenwich, CT 06830.

#### ***Directors and Executive Officers***

Information with respect to the Company's directors and executive officers immediately after the consummation of the Business Combination is set forth in the Proxy Statement in the section entitled "Management After the Business Combination" beginning on page 204, which is incorporated herein by reference.

On January 31, 2013, Jeffrey A. Leddy and Jeffrey E. Epstein were elected by the Company's stockholders to serve as Class I directors, with terms expiring at the Company's annual meeting of stockholders in 2015, and Harry E. Sloan, Jeff Sagansky and Edward L. Shapiro were elected by the Company's stockholders to serve as Class II directors, with terms expiring at the annual meeting of stockholders in 2016. Immediately after the Closing, the size of the Board was increased to eight members, and, upon the recommendation of the Nominating Committee of the Board, the Board appointed Louis Bélanger-Martin, John LaValle and Robert W. Reding to serve as Class III directors, with terms expiring at the Company's Annual Meeting of Stockholders in 2014.

Robert W. Reding, 63, has been a consultant in the commercial airline industry since January 2012. From September 2007 until December 2012, Mr. Reding was Executive Vice President — Operations for American Airlines and Executive Vice President of AMR Corporation. Prior to that, Mr. Reding served as Senior Vice President — Technical Operations for American from May 2003 to September 2007. In November 2011, AMR Corporation filed for protection under Chapter 11 of the United States Bankruptcy Code pursuant to a pre-packaged plan of reorganization. Mr. Reding joined AMR Corporation in March 2000 and served as Chief Operations Officer of AMR Eagle through May 2003. Prior to joining AMR Corporation, Mr. Reding served as President and Chief Executive Officer of Reno Air from 1992 to 1998 and President and Chief Executive Officer of Canadian Regional Airlines from 1998 to March 2000. Mr. Reding is a distinguished graduate of the United States Air Force pilot training program and served as an officer and pilot flight examiner with the United States Air Force from 1972 to 1979. He has an FAA Air Transport Pilot Rating for Douglas DC-9-MD-80 and Boeing 737 series aircraft and has accumulated over 10,000 hours as a commercial pilot. Mr. Reding is an honors graduate from the California State Polytechnic University with a Bachelor of Science degree in Aeronautical Engineering and received his master's degree in Business Administration from Southern Illinois University. He is a member of the President's Council of the California State Polytechnic University and has served as a board member on numerous aviation, civic and charitable organizations. Mr. Reding's specific qualifications, experience and skills include extensive executive experience as an Executive Vice President of the parent company of American Airlines, which is a global commercial airline.

As of the Closing Date, Mr. Reding was appointed by the Board of Directors to serve on the Board's Compensation Committee. As a result, the Compensation Committee of the Company currently consists of Messrs. Sloan (Chairman), Sagansky, Leddy and Reding. Information with respect to the members of the Company's Audit Committee and Nominating Committee is set forth in the Proxy Statement in the section entitled "Management After the Business Combination—Committees of the Board of Directors," which is incorporated herein by reference.

Upon the Closing, John LaValle was appointed by the Company's Board of Directors to serve as the Company's Chief Executive Officer and David M. Davis was appointed by the Board to serve as the Company's Chief Financial Officer and Treasurer. Biographical information for Messrs. LaValle and Davis is set forth in the Proxy Statement in the section entitled "Information About Row 44—Management—Directors and Executive Officers" beginning on page 160, which is incorporated herein by reference.

In connection with the Closing and pursuant to the terms of the Row 44 Merger Agreement, each member of the Board of Directors of GEAC and each executive officer of GEAC immediately prior to the Closing resigned from their respective positions as board members and/or executive officers.

#### ***Director and Executive Officer Compensation***

The compensation of Global Eagle executive officers is generally described in the Proxy Statement in the section entitled "Management After the Business Combination—Executive Compensation" beginning on page 207, which is incorporated herein by reference. The compensation of certain Row 44 executive officers is set forth in the Proxy Statement in the section entitled "Information About Row 44—Executive Compensation" beginning on page 163, which is incorporated herein by reference. The compensation of certain AIA executive officers is set forth in the Proxy Statement in the section entitled "Information About AIA—AIA Executive Compensation" beginning on page 183, which is incorporated herein by reference.

On January 31, 2013, the Company entered into an executive employment agreement with John LaValle (the "LaValle Agreement") providing for his employment as Chief Executive Officer of the Company with an annual base salary of \$450,000, subject to annual increases as determined by the Company's Board of Directors. Mr. LaValle is also entitled, upon achieving certain performance goals to be determined by the Board of Directors, to an annual bonus in the amount determined by the Board of Directors with a target of 50% and not to exceed 100% of Mr. LaValle's base salary. Mr. LaValle is entitled to receive severance benefits, including continued payment of his base salary for one year, if his employment is terminated either (a) by the Company without "Cause," as defined in the LaValle Agreement, or (b) by Mr. LaValle with "Good Reason," as defined in the LaValle Agreement, subject to execution of a full release in favor of the Company and its subsidiaries. If within one year of a change of control of the Company, Mr. LaValle terminates the LaValle Agreement for Good Reason, or the Company terminates the executive employment agreement without Cause, subject to execution of a full release in favor of the Company and its subsidiaries, then Mr. LaValle will be entitled (i) to receive his base salary for one year, (ii) to acceleration with respect to any unvested equity awards and (iii) to exercise all vested equity incentive awards for a period of six months following his last day of employment. During Mr. LaValle's employment, he is required to submit to the Board of Directors all corporate opportunities or offers presented to him or of which he becomes aware which relate to the business of the Company or its subsidiaries and Mr. LaValle may not accept any corporate opportunities on his own behalf. The description of the LaValle Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the LaValle Agreement, which is included as Exhibit 10.4 to this Current Report on Form 8-K and incorporated by reference herein.

On January 31, 2013, the Company entered into an executive employment agreement with David M. Davis (the “Davis Agreement”) providing for his employment as Chief Financial Officer with an annual base salary of \$425,000 and an annual base salary of \$450,000 upon Mr. Davis establishing a permanent residence in Los Angeles, California, subject to annual increases as determined by the Board of Directors. Mr. Davis is also entitled, upon achieving certain performance goals to be determined by the Board of Directors, to an annual bonus in an amount determined by the Board of Directors, with a target of 50% and not to exceed 100% of Mr. Davis’ base salary. Mr. Davis is entitled to receive severance benefits if his employment is terminated either (a) by the Company due to Mr. Davis’ failure to establish a permanent residence in Los Angeles, California, or otherwise without “Cause,” as defined in the Davis Agreement, subject to execution of a full release in favor of the Company and its subsidiaries. Mr. Davis is also entitled to continued benefits and payment of his base salary for six months, in the event that his employment is terminated due to his failure to establish permanent residence in Los Angeles, California, or twelve months if his employment is terminated for Cause. If, within one year of a change of control of the Company, Mr. Davis terminates his employment for “Good Reason,” as defined in the Davis Agreement, or the Company terminates his employment without Cause, then, subject to execution of a full release in favor of the Company and its subsidiaries, Mr. Davis will be entitled (i) to receive his base salary and benefits for one year, (ii) to acceleration with respect to any unvested equity awards, and (iii) to exercise all vested equity incentive awards a period of six months following his last day of employment. During Mr. Davis’ employment, he is required to submit to the Board of Directors all corporate opportunities or offers presented to him or of which he becomes aware which relate to the business of the Company or its subsidiaries, and Mr. Davis may not accept any corporate opportunities on his own behalf. The description of the Davis Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Davis Agreement, which is included as Exhibit 10.5 to this Current Report on Form 8-K and incorporated by reference herein.

Upon the Closing, the Company granted stock options pursuant to the Company’s 2013 Equity Incentive Plan to Messrs. Bélanger-Martin, LaValle and Davis. The Company granted to each of Messrs. Bélanger-Martin and LaValle a stock option to purchase 750,000 shares of common stock of the Company. The Company granted to Mr. Davis a stock option to purchase 675,000 shares of common stock of the Company. The exercise price per share for each of the options granted was \$10.00. The options will vest with respect to 25% of their underlying shares on the first anniversary of the date of grant and with respect to the remaining 75% ratably over the next three years until fully vested.

The Company has not yet entered into any compensation arrangements with its directors in connection with their service as directors.

#### ***Certain Relationships and Related Transactions***

The description of certain relationships and related transactions is included in the Proxy Statement in the section entitled “Certain Relationships and Related Transactions” beginning on page 224, which is incorporated herein by reference.

Additionally, on November 21, 2012, the Sponsor advanced to the Company \$500,000 pursuant to a convertible note issued by the Company to the Sponsor. Prior to the Closing, the Sponsor advanced an additional \$77,000 to the Company pursuant to the convertible note. At the closing, the Sponsor converted an aggregate principal amount of \$500,000 outstanding under the convertible note into 666,667 sponsor warrants. These warrants will become exercisable 30 days after the completion of the Business Combination, and will expire at 5:00 p.m., New York time, five years after the completion of the Business Combination or earlier upon redemption or liquidation. The exercise price of these warrants is \$11.50 per share. Also at the Closing, the Company repaid in cash the remaining \$77,000 outstanding under the convertible note.

### ***Independence of Directors***

The Company's Board of Directors has determined that Messrs. Sloan, Sagansky, Leddy, Reding and Epstein are each independent within the meaning of Nasdaq Rule 5605(a)(2). The Company's Board of Directors has also determined that each member of its Audit Committee, Compensation Committee and Nominating Committee is independent under Nasdaq Rule 5605(a)(2).

### ***Legal Proceedings***

Global Eagle, Row 44 and AIA are not currently a party to any material pending legal proceedings.

Reference is made to the disclosure set forth in the Proxy Statement in the section entitled "Information About Row 44—Legal Proceedings" beginning on page 160, which is incorporated herein by reference.

### ***Market Price of and Dividends on the Registrant's Common Equity and Related Stockholder Matters***

Information about the market price, number of stockholders and dividends for the Company's securities is described in the Proxy Statement in the section entitled "Price Range of Securities and Dividends" beginning on page 228, which is incorporated herein by reference. As of the Closing Date, there were 8 holders of record of capital stock of the Company.

Global Eagle's common stock is listed on Nasdaq Capital Market under the symbol "ENT." Global Eagle's warrants are listed on the Nasdaq Capital Market under the symbol "ENTWW." The Company has notified Nasdaq of its intent to voluntarily delist the warrants in connection with the Closing, and expects the warrants to cease trading on Nasdaq and be quoted on the OTC market beginning on or about February 11, 2013 under the same symbol.

On January 2, 2013, the Company received a letter from the staff of the Listing Qualifications Department of Nasdaq, stating that it had determined to initiate procedures to delist the Company's securities from Nasdaq because the Company did not hold an annual meeting of stockholders in 2012 and because its common stock does not comply with the minimum 300 public holders requirement for continued listing. The Company has appealed the determination, which has stayed the delisting of the Company's securities from Nasdaq pending a hearing before Nasdaq's Hearing Panel. The hearing has been scheduled for March 7, 2013.

The closing price of Global Eagle's common stock as reported on Nasdaq on February 5, 2013, was \$9.50.

### ***Recent Sales of Unregistered Securities***

Reference is made to the disclosure set forth in Items 1.01 and 3.02 of the Company's Current Report on Form 8-K filed on November 14, 2012, and Items 1.01 and 2.01 of this Current Report on Form 8-K, all of which is incorporated herein by reference. The issuance of shares of capital stock of the Company pursuant to the Row 44 Merger Agreement, the AIA Stock Purchase Agreement and the Backstop Agreements was made in reliance upon an available exemption from registration under the Securities Act, by reason of Section 4(a)(2) thereof, and/or Regulation D promulgated thereunder.

As disclosed under “***Certain Relationships and Related Transactions***” above, on the Closing Date, the Company issued 666,667 sponsor warrants to the Sponsor in satisfaction of an aggregate principal amount of \$500,000 outstanding under a convertible note issued by the Company to the Sponsor. The terms of the sponsor warrants are set forth in the Proxy Statement in the section entitled “Description of Securities” beginning on page 210, which is incorporated by reference herein.

#### ***Description of the Company’s Securities***

Reference is made to the disclosure in the Proxy Statement in the section entitled “Description of Securities” beginning on page 210, which is incorporated by reference herein.

The Company has authorized 401,000,000 shares of capital stock, consisting of 375,000,000 shares of common stock, \$0.0001 par value per share, 25,000,000 shares of non-voting common stock, \$0.0001 par value per share, and 1,000,000 shares of undesignated preferred stock, \$0.0001 par value. As of the Closing Date, there were 54,842,888 shares of capital stock of the Company issued and outstanding, consisting of (i) 35,724,655 shares of common stock (excluding 3,053,634 shares of common stock held by AIA, a majority-owned subsidiary of the Company) and (ii) 19,118,233 shares of non-voting common stock. As of the Closing Date, there were 8 holders of record of the Company’s capital stock.

#### ***Indemnification of Directors and Officers***

Information about the indemnification of the Company’s directors and officers is described in the Part II of Amendment No. 4 to GEAC’s Registration Statement on Form S-1 (File No. 333-172267) filed with the SEC on May 10, 2011, which is incorporated herein by reference. Additionally, the Company has entered into indemnity agreements with all of the members of the Company’s Board of Directors and executive officers. A form of such indemnity agreement is attached as Exhibit 10.15 to this Current Report on Form 8-K and incorporated herein by reference.

#### ***Financial Statements and Supplementary Data***

Reference is made to the disclosure set forth under Item 9.01 of this Current Report on Form 8-K, which is incorporated herein by reference.

#### ***Financial Statements and Exhibits***

Reference is made to the disclosure set forth under Item 9.01 of this Current Report on Form 8-K, which is incorporated herein by reference.

#### **Item 2.02 Results of Operations and Financial Condition.**

Reference is made to the disclosure set forth under Items 2.01 and 9.01 of this Current Report on Form 8-K concerning financial information of Row 44, which is incorporated herein by reference.

#### **Item 3.01 Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.**

On January 31, 2013, Global Eagle notified Nasdaq that it intends to voluntarily delist its outstanding warrants, which currently trade on Nasdaq under the symbol “ENTWW,” in order to have the warrants quoted on the OTC market. The Company expects the warrants to cease trading on Nasdaq and be quoted the OTC market beginning on or about February 11, 2013 under the same symbol.

### **Item 3.02 Unregistered Sales of Equity Securities.**

Reference is made to the disclosure set forth in Items 1.01 and 3.02 of the Company's Current Report on Form 8-K filed on November 14, 2012, and Items 1.01 and 2.01 of this Current Report on Form 8-K, all of which is incorporated herein by reference. The issuance of shares of capital stock of the Company pursuant to the Row 44 Merger Agreement, the AIA Stock Purchase Agreement and the Backstop Agreements was made in reliance upon an available exemption from registration under the Securities Act, by reason of Section 4(a)(2) thereof, and/or Regulation D promulgated thereunder.

As disclosed under "*Certain Relationships and Related Transactions*" in Item 2.01 above, on the Closing Date, the Company issued 666,667 sponsor warrants to the Sponsor in satisfaction of an aggregate principal amount of \$500,000 outstanding under a convertible note issued by the Company to the Sponsor. The terms of the sponsor warrants are set forth in the Proxy Statement in the section entitled "Description of Securities" beginning on page 210, which is incorporated by reference herein.

### **Item 3.03 Material Modification To Rights of Security Holders**

On January 31, 2013, the Company filed a Second Amended and Restated Certificate of Incorporation, or the Restated Certificate, with the Secretary of State of the State of Delaware. The material terms of the Restated Certificate and the general effect upon the rights of holders of the Company's capital stock are included in the Proxy Statement under the section entitled "Proposal No. 2 – Approval of the Second Amended and Restated Certificate of Incorporation" beginning on page 105, which is incorporated herein by reference. A copy of the Restated Certificate is filed as Exhibit 3.1 to this Current Report on Form 8-K and is incorporated herein by reference.

### **Item 5.01 Changes in Control of Registrant.**

Reference is made to the disclosure provided under Items 1.01 and 2.01 of this Current Report on Form 8-K, which is incorporated herein by reference.

### **Item 5.02 Departure Of Directors Or Certain Officers; Election of Directors; Appointment Of Certain Officers; Compensatory Arrangements Of Certain Officers.**

Reference is made to the disclosure set forth in Item 2.01 under the subheading "Directors and Executive Officers," which is incorporated herein by reference.

Upon the Closing, the Board appointed John LaValle as Chief Executive Officer of the Company and David M. Davis as Chief Financial Officer and Treasurer of the Company. Biographical information for Messrs. LaValle and Davis is set forth in the Proxy Statement in the section entitled "Information About Row 44—Management—Directors and Executive Officers" beginning on page 160, which is incorporated by reference herein.

Reference is made to the disclosure set forth in Item 2.01 under the subheading and "Director and Executive Officer Compensation" and to Exhibits 10.4 and 10.5, with respect to the executive employment agreements entered into between the Company and Messrs. LaValle and Davis, which are incorporated herein by reference.

As of the Closing Date, Mr. Reding was appointed by the Board to serve on the Board's Compensation Committee. As a result, the Compensation Committee consists of Messrs. Sloan (Chairman), Sagansky, Leddy and Reding.

On January 31, 2013, the stockholders of the Company approved the Global Eagle Entertainment Inc. 2013 Equity Incentive Plan (the "Plan"). Reference is made to the disclosure set forth in the Proxy Statement in the section entitled "Proposal No. 4 – Approval and Adoption of the Global Eagle Entertainment Inc. 2013 Equity Incentive Plan" beginning on page 113, which is incorporated herein by reference. The full text of the Plan is included as Annex D to the Proxy Statement, which is incorporated by reference herein.



### **Item 5.03 Amendments To Articles Of Incorporation Or Bylaws; Change In Fiscal Year.**

Reference is made to the disclosure set forth under Item 3.03 of the Current Report on Form 8-K, which is incorporated herein by reference.

On January 31, 2013, the Board of Directors of the Company adopted the Amended and Restated Bylaws of the Company. The amended and restated bylaws modify the prior bylaws (i) to provide that no action may be taken by written consent of the stockholders (the previous provision provided that written consent could be used prior to the Company's initial public offering), (ii) to provide that regular meeting of the Board may be held without notice but must be publicized by means of reasonable notice given to any director who is not present at the meeting at which a resolution providing for such meeting is adopted and (iii) to revise the description of the Chairman of the Board to remove the provision that the Chairman of the Board has general supervision and control of the acquisition activities of the Company subject to the ultimate authority of the Board (since the Company is no longer primarily focused on acquisition). The foregoing description of the Amended and Restated Bylaws does not purport to be complete and is qualified in its entirety by reference to the full text of the Amended and Restated Bylaws, which is included as Exhibit 3.2 to this Current Report on Form 8-K and incorporated herein by reference.

### **Item 5.06 Change In Shell Company Status.**

As a result of the Business Combination, which fulfilled the definition of an initial business combination as required by GEAC's Amended and Restated Certificate of Incorporation, the Company ceased to be a shell company as of the Closing Date. The material terms of the Business Combination are described in the Proxy Statement in the sections entitled "Proposal No. 1 – Approval of the Business Combination" beginning on page 88 and "The Business Combination Agreements" beginning on page 119, which are both incorporated herein by reference.

### **Item 9.01 Financial Statements And Exhibits.**

The financial statements of GEAC, Row 44 and AIA included in the Proxy Statement beginning on pages F-1, F-29 and F-72, respectively, and the Unaudited Pro Forma Condensed Combined Financial Statements of the Company included in the Proxy Statement beginning on page 32 are incorporated herein by reference.

Attached as Exhibit 99.1 to this Current Report on Form 8-K are the audited financial statements of Row 44 for the fiscal year ended December 31, 2009, which are incorporated herein by reference.

(d) Exhibits

<b>Exhibit No.</b>	<b>Document</b>
2.1*	Agreement and Plan of Merger and Reorganization, dated as of November 8, 2012, by and among Global Eagle Acquisition Corp., EAGL Merger Sub Corp., Row 44, Inc. and PAR Investment Partners, L.P. (incorporated by reference to Exhibit 10.2 of the Company's Quarterly Report on Form 10-Q filed with the SEC on November 14, 2012)
2.2*	Stock Purchase Agreement, dated as of November 8, 2012, by and between Global Eagle Acquisition Corp. and PAR Investment Partners, L.P. (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed with the SEC on November 14, 2012)
3.1	Second Amended and Restated Certificate of Incorporation.
3.2	Amended and Restated Bylaws.
4.1	Specimen Common Stock Certificate (incorporated by reference to Exhibit 4.2 to Amendment No. 4 to the Company's Registration Statement on Form S-1 (File No. 333-172267), filed with the Securities and Exchange Commission on May 11, 2011).
4.2	Form of Warrant Agreement by and between the Company and American Stock Transfer & Trust Company, LLC (incorporated by reference to Exhibit 4.4 to Amendment No. 2 to the Company's Registration Statement on Form S-1 (File No. 333-172267), filed with the Securities and Exchange Commission on April 6, 2011).

- 4.3 Specimen Warrant Certificate (incorporated by reference to Exhibit 4.3 to Amendment No. 1 to the Company's Registration Statement on Form S-1 (File No. 333-172267), and included as an exhibit in the Warrant Agreement, filed with the Securities and Exchange Commission on March 21, 2011).
- 10.1 Amended and Restated Registration Rights Agreement, dated as of January 31, 2013, by and among the Company and the parties named on the signature pages thereto.
- 10.2 Amended and Restated Common Stock Purchase Agreement, dated as of November 8, 2012, by and between Global Eagle Acquisition Corp. and PAR Investment Partners, L.P. (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed with the SEC on November 14, 2012)
- 10.3 Common Stock Purchase Agreement, dated as of November 8, 2012, by and among Global Eagle Acquisition Corp., Putnam Capital Spectrum Fund and Putnam Spectrum Equity Fund. (incorporated by reference to Exhibit 10.4 to the Company's Current Report on Form 8-K filed with the SEC on November 14, 2012)
- 10.4 Executive Employment Agreement, dated January 31, 2013, between the Company and John LaValle.
- 10.5 Executive Employment Agreement, dated January 31, 2013, between the Company and David M. Davis.
- 10.6 Global Eagle Entertainment Inc. 2013 Equity Incentive Plan (incorporated by reference to Annex D of the Company's Definitive Proxy Statement on Schedule 14A filed with the SEC on January 17, 2013)
- 10.7† System and Services Agreement dated January 2011 by and between Norwegian Air Shuttle and Row 44, Inc.
- 10.8† OEM Purchase and Development Agreement, dated October 12, 2009, by and between TECOM Industries, Inc. and Row 44, Inc., as amended on December 19, 2011, December 23, 2011, January 6, 2012 and January 18, 2012.
- 10.9† Master Equipment Purchase Agreement, dated December 21, 2007, by and between Hughes Network Systems, LLC and Row 44, Inc.
- 10.10† Master Services Agreement, dated December 21, 2007, by and between Hughes Network Systems, LLC and Row 44, Inc., as amended on June 6, 2008, June 30, 2009, November 15, 2010, November 18, 2010, January 15, 2011, March 30, 2011, July 29, 2011, August 3, 2011, September 7, 2011, December 19, 2011, January 23, 2012, September 11, 2012 and January 18, 2013.
- 10.11† Agreement by and among Cathay Pacific Airways Limited, Hong Kong Dragon Airlines Limited and Inflight Productions Limited for the Supply of Programming and Production Services for Inflight Entertainment, as amended.
- 10.12† Amended and Restated Supply and Services Agreement dated February 1, 2013 by and between Row 44, Inc. and Southwest Airlines Co.
- 10.13 Letter Agreement, dated January 31, 2013, between the Company and Wellington Management Company, LLP.
- 10.14 Escrow Agreement, dated January 31, 2013, by and among the Company, Wellington Management Company, LLP ("Wellington") and certain affiliates of Wellington.
- 10.15 Form of Indemnity Agreement for the Company's directors and executive officers.
- 10.16 Amendment to Securities Escrow Agreement, dated May 8, 2012 by and among the Company, American Stock Transfer & Trust Company, LLC, Cole A. Sirucek and the other persons party thereto (incorporated by reference to Exhibit 101 to the Company's Form 8-K (File No. 001-35176) filed with the Securities and Exchange Commission on May 9, 2012).
- 10.17 Amended and Restated Letter Agreement, dated as of May 10, 2011, among the Company, Global Eagle Acquisition LLC and each of the members of Global Eagle Acquisition LLC (incorporated by reference to Exhibit 10.2(a) to Amendment No. 4 to the Company's Registration Statement on Form S-1 (File No. 333-172267), filed with the Securities and Exchange Commission on May 11, 2011).
- 10.18 Amended and Restated Letter Agreement, dated as of May 10, 2011, between the Company and James M. McNamara (incorporated by reference to Exhibit 10.2(b) to Amendment No. 4 to the Company's Registration Statement on Form S-1 (File No. 333-172267), filed with the Securities and Exchange Commission on May 11, 2011).
- 10.19 Amended and Restated Letter Agreement, dated as of May 10, 2011, between the Company and Dennis A. Miller (incorporated by reference to Exhibit 10.2(c) to Amendment No. 4 to the Company's Registration Statement on Form S-1 (File No. 333-172267), filed with the Securities and Exchange Commission on May 11, 2011).

10.20	Letter Agreement, dated May 8, 2012, by and between the Company and Cole A. Sirucek (incorporated by reference to Exhibit 10.3 to the Company's Form 8-K (File No. 001-35176) filed with the Securities and Exchange Commission on May 9, 2012).
14.1	Form of Code of Ethics. (incorporated by reference to Exhibit 14 to the Company's Registration Statement on Form S-1, as amended, filed with the SEC on November 14, 2012)
21.1	List of Subsidiaries
99.1	Audited Financial Statements of Row 44 for the Fiscal Year Ended December 31, 2009.

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\*The exhibits and schedules to this Exhibit have been omitted in accordance with Regulation S-K Item 601(b)(2). The Registrant agrees to furnish supplementally a copy of all omitted exhibits and schedules to the Securities and Exchange Commission upon its request.

† Confidential treatment has been requested for certain portions omitted from this Exhibit pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

## **SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Dated: February 6, 2013

GLOBAL EAGLE ENTERTAINMENT INC.

By/s/ Michael Pigott

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Michael Pigott  
General Counsel, Vice President and Secretary

## EXHIBIT INDEX

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\*The exhibits and schedules to this Exhibit have been omitted in accordance with Regulation S-K Item 601(b)(2). The Registrant agrees to furnish supplementally a copy of all omitted exhibits and schedules to the Securities and Exchange Commission upon its request.

† Confidential treatment has been requested for certain portions omitted from this Exhibit pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

**SECOND AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION**

**OF**

**GLOBAL EAGLE ACQUISITION CORP.**

Global Eagle Acquisition Corp., a corporation organized and existing under the laws of the State of Delaware (the “*Corporation*”), DOES HEREBY CERTIFY AS FOLLOWS:

1. The name of the Corporation is Global Eagle Acquisition Corp. The original certificate of incorporation was filed with the Secretary of State of the State of Delaware on February 2, 2011 and was amended and restated by the Amended and Restated Certificate of Incorporation filed with the Secretary of State of the State of Delaware on May 12, 2011 (the “*Prior Certificate*”).

2. This Second Amended and Restated Certificate of Incorporation (the “*Amended and Restated Certificate*”) was duly adopted by the Board of Directors of the Corporation (the “*Board*”) and the stockholders of the Corporation in accordance with Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware.

3. This Amended and Restated Certificate restates, integrates and further amends the provisions of the certificate of incorporation of the Corporation as heretofore amended.

4. Certain capitalized terms used in this Amended and Restated Certificate are defined where appropriate herein.

5. The text of the certificate of incorporation of the Corporation is hereby amended and restated in its entirety to read as follows:

**ARTICLE I  
NAME**

The name of the corporation is Global Eagle Entertainment Inc. (the “*Corporation*”).

**ARTICLE II  
PURPOSE**

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the “*DGCL*”).

**ARTICLE III  
REGISTERED AGENT**

The address of the registered office of the Corporation in the State of Delaware is Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, City of Wilmington, County of New Castle, and the name of the Corporation’s registered agent at such address is The Corporation Trust Company.

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## ARTICLE IV CAPITALIZATION

Section 4.1 Authorized Capital Stock. The total number of shares of all classes of capital stock which the Corporation is authorized to issue is 401,000,000 shares, consisting of 375,000,000 shares of common stock, par value \$0.0001 per share (the “**Common Stock**”), 25,000,000 shares of non-voting common stock, par value \$0.0001 per share (the “**Non-Voting Common Stock**”) and 1,000,000 shares of preferred stock, par value \$0.0001 per share (the “**Preferred Stock**”).

Section 4.2 Preferred Stock. The Preferred Stock may be issued from time to time in one or more series. The Board is hereby expressly authorized to provide for the issuance of shares of the Preferred Stock in one or more series and to establish from time to time the number of shares to be included in each such series and to fix the voting rights, if any, designations, powers, preferences and relative, participating, optional and other special rights, if any, of each such series and any qualifications, limitations and restrictions thereof, as shall be stated in the resolution or resolutions adopted by the Board providing for the issuance of such series and included in a certificate of designation (a “**Preferred Stock Designation**”) filed pursuant to the DGCL, and the Board is hereby expressly vested with the authority to the full extent provided by law, now or hereafter, to adopt any such resolution or resolutions.

### Section 4.3 Common Stock and Non-Voting Common Stock.

(a) General. Except as expressly provided herein, the rights, powers, preferences and privileges of the Common Stock and the Non-Voting Common Stock shall be in all respects and for all purposes and in all circumstances completely identical, and shall rank equally and share ratably in all respects as to all matters.

#### (b) Voting Rights.

(i) Common Stock. The holders of shares of Common Stock shall be entitled to one vote for each such share on each matter properly submitted to the stockholders on which the holders of the Common Stock are entitled to vote. Except as otherwise required by law or this Amended and Restated Certificate (including any Preferred Stock Designation), at any annual or special meeting of the stockholders of the Corporation, the holders of the Common Stock shall have the exclusive right to vote for the election of directors and on all other matters properly submitted to a vote of the stockholders. Notwithstanding the foregoing, except as otherwise required by law or this Amended and Restated Certificate (including a Preferred Stock Designation), the holders of the Common Stock shall not be entitled to vote on any amendment to this Amended and Restated Certificate (including any amendment to any Preferred Stock Designation) that relates solely to the terms of one or more outstanding series of the Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Amended and Restated Certificate (including any Preferred Stock Designation).



(ii) Non-Voting Common Stock. Except as otherwise required by law, each share of Non-Voting Common Stock shall not entitle the holder thereof to any voting rights, including but not limited to, any right to approve any increase or decrease (but not below the number of shares then outstanding) in the number of authorized shares of Non-Voting Common Stock irrespective of the provisions of Section 242(b)(2) of the DGCL, or to have any right to be represented at, or to receive notice of, any meeting of stockholders of the Corporation. Notwithstanding the foregoing, any action to amend the terms of the Non-Voting Common Stock or that would adversely affect the rights of the Non-Voting Common Stock relative to the Common Stock, shall require the approval of the Non-Voting Common Stock voting separately as a class.

(b) Dividends. Subject to the rights, if any, of the holders of any outstanding series of the Preferred Stock, the holders of the Common Stock and Non-Voting Common Stock shall be entitled to receive such dividends and other distributions (payable in cash, property or capital stock of the Corporation) when, as and if declared thereon by the Board from time to time out of any assets or funds of the Corporation legally available therefor, and shall share equally, identically and ratably, on a per share basis, in such dividends and distributions, as if the two classes of stock constituted a single class. In no event shall any stock dividends or stock splits or combinations or subdivisions of stock be declared or made on Common Stock or Non-Voting Common Stock unless the shares of Common Stock and Non-Voting Common Stock at the time outstanding are treated equally, identically and ratably; *provided* that, in the event of a dividend payable in shares of Common Stock or Non-Voting Common Stock (or any rights to acquire such stock), shares of Non-Voting Common Stock shall only be entitled to receive shares of Non-Voting Common Stock (or rights to acquire such stock, as the case may be) and shares of Common Stock shall only be entitled to receive shares of Common Stock (or rights to acquire such stock, as the case may be).

(c) Liquidation, Dissolution and Winding Up. Subject to the rights, if any, of the holders of any outstanding series of the Preferred Stock, in the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation, the holders of the Common Stock and the Non-Voting Common Stock shall be entitled to receive all the remaining assets of the Corporation available for distribution to its stockholders, ratably in proportion to the number of shares of the Common Stock and Non-Voting Common Stock held by them, as if the two classes of stock constituted a single class.

(d) Equal Treatment in a Corporate Transaction. In furtherance of and not in limitation of any of the foregoing, in connection with any Corporate Transaction (as defined below), shares of Common Stock and Non-Voting Common Stock shall be treated equally, identically and ratably, on a per share basis, with respect to any consideration into which such shares are converted or any consideration paid or otherwise distributed to stockholders of the Corporation. “**Corporate Transaction**” means (i) the sale, lease, transfer, exclusive license, exchange or other disposition of any material portion of the Corporation’s property and assets (or any material portion of the property and assets of any direct or indirect subsidiary of the Corporation); (ii) the merger, consolidation, business combination, or other similar transaction of the Corporation (or any direct or indirect subsidiary of the Corporation) with any other entity; or (iii) the recapitalization, liquidation, dissolution, or other similar transaction involving the Corporation (or any direct or indirect subsidiary of the Corporation).

Section 4.4 Conversion of Non-Voting Common Stock to Common Stock. Any outstanding share of Non-Voting Common Stock shall, without the payment of any additional consideration or any other action on the part of the Corporation or the holder thereof, convert into one fully paid and non-assessable share of Common Stock immediately upon the earlier to occur of the following: (i) the delivery of written notice by the holder of such share of such holder's election to convert such share of Non-Voting Common Stock into a share of Common Stock (the "**Conversion Notice**") to the office of the transfer agent of the Corporation (the "**Transfer Agent**") during normal business hours at any time on or after October 31, 2013 and (ii) the sale or transfer of such share by the holder thereof to any person other than a PAR Holder (each, a "**Conversion Event**"). As used herein, the term "**PAR Holder**" shall mean PAR Investment Partners, L.P., a Delaware limited partnership ("**PAR**"), and any other person if the ownership of shares of Common Stock or Non-Voting Common Stock by such person would result in PAR having beneficial ownership of such shares within the meaning of Rule 13d-3 promulgated under the Securities Exchange Act of 1934, as amended. In the event of any such conversion in a Conversion Event, the Corporation shall deliver or cause to be delivered at the office of the Transfer Agent to or upon the written order of the converting holder (or, in the case of an underwritten offering, the underwriter or managing underwriter), a confirmation of book-entry transfer of shares representing the number of fully paid and non-assessable shares of Common Stock issuable upon such conversion, issued in such name or names as the converting holder (or, in the case of an underwritten offering, the underwriter or managing underwriter) may direct. When shares of Non-Voting Common Stock have been converted to Common Stock, such shares shall be cancelled and become authorized but unissued shares of Non-Voting Common Stock. For the avoidance of doubt, nothing in this Section 4.4 shall preclude the settlement of any transaction entered into through the facilities of any nationally recognized stock exchange (including any such exchange capable of listing securities not registered under the U.S. federal securities laws).

Section 4.5 Rights and Options. The Corporation has the authority to create and issue rights, warrants and options entitling the holders thereof to purchase shares of any class or series of the Corporation's capital stock or other securities of the Corporation, and such rights, warrants and options shall be evidenced by instrument(s) approved by the Board. The Board is empowered to set the exercise price, duration, times for exercise and other terms and conditions of such rights, warrants or options; provided, however, that the consideration to be received for any shares of capital stock subject thereto may not be less than the par value thereof.

## ARTICLE V BOARD OF DIRECTORS

Section 5.1 Board Powers. The business and affairs of the Corporation shall be managed by, or under the direction of, the Board. In addition to the powers and authority expressly conferred upon the Board by statute, this Amended and Restated Certificate or the Bylaws ("**Bylaws**") of the Corporation, the Board is hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the DGCL and this Amended and Restated Certificate.

Section 5.2 Number, Election and Term.

(a) The number of directors of the Corporation, other than those who may be elected by the holders of one or more series of the Preferred Stock voting separately by class or series, shall be fixed from time to time exclusively by the Board pursuant to a resolution adopted by the Board.

(b) Subject to Section 5.5 hereof, the Board shall be divided into three classes, designated Class I, Class II and Class III. The Board is authorized to assign members of the Board already in office to Class I, Class II or Class III. The term of the initial Class I Directors shall expire at the first annual meeting of the stockholders of the Corporation following the effectiveness of the Prior Certificate; the term of the initial Class II Directors shall expire at the second annual meeting of the stockholders of the Corporation following the effectiveness of the Prior Certificate; and the term of the initial Class III Directors shall expire at the third annual meeting of the stockholders of the Corporation following the effectiveness of the Prior Certificate. At each succeeding annual meeting of the stockholders of the Corporation, beginning with the first annual meeting of the stockholders of the Corporation following the effectiveness of the Prior Certificate, successors to the class of directors whose term expires at that annual meeting shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election. The Board shall have the exclusive authority to determine the authorized number of directorships in each class. Subject to Section 5.5 hereof, if the number of directors is changed, the Board shall determine the class or classes to which the increased or decreased number of directors shall be apportioned, but in no case shall a decrease in the number of directors shorten the term of any incumbent director.

(c) Subject to Section 5.5 hereof, a director shall hold office until the annual meeting for the year in which his or her term expires and until his or her successor has been elected and qualified, subject, however, to such director's earlier death, resignation, retirement, disqualification or removal.

(d) Unless and except to the extent that the Bylaws shall so require, the election of directors need not be by written ballot.

Section 5.3 Newly Created Directorships and Vacancies. Subject to Section 5.5 hereof, newly created directorships resulting from an increase in the number of directors and any vacancies on the Board resulting from death, resignation, retirement, disqualification, removal or other cause may be filled solely by a majority vote of the remaining directors then in office, even if less than a quorum, or by a sole remaining director (and not by stockholders), and any director so chosen shall hold office for the remainder of the full term of the class of directors to which the new directorship was added or in which the vacancy occurred and until his or her successor has been elected and qualified, subject, however, to such director's earlier death, resignation, retirement, disqualification or removal. In the event of a vacancy on the Board, the remaining directors, except as otherwise provided by law, shall exercise the powers of the full Board until the vacancy is filled.

Section 5.4 Removal. Subject to Section 5.5 hereof, any or all of the directors (including persons elected by directors to fill vacancies in the Board) may be removed from office at any time, but only for cause and only by the affirmative vote of holders of a majority of the voting power of all then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class. At least forty-five (45) days prior to any annual or special meeting of stockholders at which it is proposed that any director be removed from office, written notice of such proposed removal and the alleged grounds thereof shall be sent to the director whose removal will be considered at the meeting.

Section 5.5 Preferred Stock — Directors. Notwithstanding any other provision of this *Article V*, and except as otherwise required by law, whenever the holders of one or more series of the Preferred Stock shall have the right, voting separately by class or series, to elect one or more directors, the term of office, the filling of vacancies, the removal from office and other features of such directorships shall be governed by the terms of such series of the Preferred Stock as set forth in this Amended and Restated Certificate (including any Preferred Stock Designation) and such directors shall not be included in any of the classes created pursuant to this *Article V* unless expressly provided by such terms.

## **ARTICLE VI BYLAWS**

In furtherance and not in limitation of the powers conferred upon it by law, the Board shall have the power to adopt, amend, alter or repeal the Bylaws. The Bylaws also may be adopted, amended, altered or repealed by the stockholders; provided, however, that in addition to any vote of the holders of any class or series of capital stock of the Corporation required by law or by this Amended and Restated Certificate (including any Preferred Stock Designation), the affirmative vote of the holders of at least 66.667% of the voting power of all then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required for the stockholders to adopt, amend, alter or repeal the Bylaws; and provided further, however, that no Bylaws hereafter adopted by the stockholders shall invalidate any prior act of the Board that would have been valid if such Bylaws had not been adopted.

## **ARTICLE VII MEETINGS OF STOCKHOLDERS; ACTION BY WRITTEN CONSENT**

Section 7.1 Meetings. Except as otherwise expressly provided by the terms of any series of Preferred Stock permitting the holders of such series of Preferred Stock to call a special meeting of the holders of such series, and subject to the requirements of applicable law, special meetings of stockholders of the Corporation may be called only by the Chairman of the Board, Chief Executive Officer of the Corporation, or the Board pursuant to a resolution adopted by the Board, and the ability of the stockholders to call a special meeting is hereby specifically denied.

Section 7.2 Advance Notice. Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Corporation shall be given in the manner provided in the Bylaws.

Section 7.3 Action by Written Consent. Except as otherwise expressly provided by the terms of any series of Preferred Stock permitting the holders of such series of Preferred Stock to act by written consent, any action required or permitted to be taken by the stockholders of the Corporation must be effected by a duly called annual or special meeting of such holders and may not be effected by written consent of the stockholders.

## **ARTICLE VIII LIMITED LIABILITY; INDEMNIFICATION**

Section 8.1 Limitation of Director Liability. A director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL as the same exists or may hereafter be amended. Any amendment, modification or repeal of the foregoing sentence shall not adversely affect any right or protection of a director of the Corporation hereunder in respect of any act or omission occurring prior to the time of such amendment, modification or repeal.

### Section 8.2 Indemnification and Advancement of Expenses.

(a) To the fullest extent permitted by applicable law, as the same exists or may hereafter be amended, the Corporation shall indemnify and hold harmless each person who is or was made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "*proceeding*") by reason of the fact that he or she is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, other enterprise or nonprofit entity, including service with respect to an employee benefit plan (an "*indemnitee*"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent, or in any other capacity while serving as a director, officer, employee or agent, against all liability and loss suffered and expenses (including, without limitation, attorneys' fees, judgments, fines, ERISA excise taxes and penalties and amounts paid in settlement) reasonably incurred by such indemnitee in connection with such proceeding. The Corporation shall to the fullest extent not prohibited by applicable law pay the expenses (including attorneys' fees) incurred by an indemnitee in defending or otherwise participating in any proceeding in advance of its final disposition; provided, however, that, to the extent required by applicable law, such payment of expenses in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking, by or on behalf of the indemnitee, to repay all amounts so advanced if it shall ultimately be determined that the indemnitee is not entitled to be indemnified under this Section 8.2 or otherwise. The rights to indemnification and advancement of expenses conferred by this Section 8.2 shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators. Notwithstanding the foregoing provisions of this Section 8.2(a), except for proceedings to enforce rights to indemnification and advancement of expenses, the Corporation shall indemnify and advance expenses to an indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board.

(b) The rights to indemnification and advancement of expenses conferred on any indemnitee by this Section 8.2 shall not be exclusive of any other rights that any indemnitee may have or hereafter acquire under law, this Amended and Restated Certificate, the Bylaws, an agreement, vote of stockholders or disinterested directors, or otherwise.

(c) Any repeal or amendment of this Section 8.2 by the stockholders of the Corporation or by changes in law, or the adoption of any other provision of this Amended and Restated Certificate inconsistent with this Section 8.2, shall, unless otherwise required by law, be prospective only (except to the extent such amendment or change in law permits the Corporation to provide broader indemnification rights on a retroactive basis than permitted prior thereto), and shall not in any way diminish or adversely affect any right or protection existing at the time of such repeal or amendment or adoption of such inconsistent provision in respect of any proceeding (regardless of when such proceeding is first threatened, commenced or completed) arising out of, or related to, any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision.

(d) This Section 8.2 shall not limit the right of the Corporation, to the extent and in the manner authorized or permitted by law, to indemnify and to advance expenses to persons other than indemnitees.

#### **ARTICLE IX EXCLUSIVE JURISDICTION OF DELAWARE COURTS**

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL or the Corporation's Certificate of Incorporation or Bylaws, or (iv) any action asserting a claim against the Corporation governed by the internal affairs doctrine. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this *Article IX*.

**ARTICLE X**  
**AMENDMENT OF AMENDED AND RESTATED**  
**CERTIFICATE OF INCORPORATION**

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate (including any Preferred Stock Designation), in the manner now or hereafter prescribed by this Amended and Restated Certificate and the DGCL; and, except as set forth in *Article VIII*, all rights, preferences and privileges herein conferred upon stockholders, directors or any other persons by and pursuant to this Amended and Restated Certificate in its present form or as hereafter amended are granted subject to the right reserved in this *Article X*.

Notwithstanding anything contained in this Amended and Restated Certificate or in the Corporation's Bylaws to the contrary, and notwithstanding the fact that a lesser percentage may be specified by the DGCL, the provisions set forth in *Sections 4.2, 4.3 and 4.4, and Articles V, VI, VII, VIII, IX* and this *Article X* may not be repealed or amended in any respect, and no other provisions may be adopted, amended, or repealed which would have the effect of modifying or permitting the circumvention of the provisions set forth in *Sections 4.2, 4.3 and 4.4 and Articles V, VI, VII, VIII, IX* and this *Article X*, unless such action is approved by the affirmative vote of the holders of not less than 66.667% of the total voting power of all outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

IN WITNESS WHEREOF, Global Eagle Acquisition Corp. has caused this Amended and Restated Certificate to be duly executed in its name and on its behalf by an authorized officer this 31st day of January, 2013.

GLOBAL EAGLE ACQUISITION CORP.

By: /s/ James A. Graf

Name: James A. Graf

Title: Vice President



**AMENDED AND RESTATED**  
**BY LAWS**  
**OF**  
**GLOBAL EAGLE ENTERTAINMENT INC.**

**ARTICLE I**

**OFFICES**

Section 1.1. Registered Office. The registered office of the Corporation within the State of Delaware shall be located at either (a) the principal place of business of the Corporation in the State of Delaware or (b) the office of the corporation or individual acting as the Corporation's registered agent in Delaware.

Section 1.2. Additional Offices. The Corporation may, in addition to its registered office in the State of Delaware, have such other offices and places of business, both within and outside the State of Delaware, as the Board of Directors of the Corporation (the "Board") may from time to time determine or as the business and affairs of the Corporation may require.

**ARTICLE II**

**STOCKHOLDERS MEETINGS**

Section 2.1. Annual Meetings. The annual meeting of stockholders shall be held at such place and time and on such date as shall be determined by the Board and stated in the notice of the meeting, provided that the Board may in its sole discretion determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication pursuant to Section 9.5(a). At each annual meeting, the stockholders shall elect those directors of the Corporation to fill any term of a directorship that expires on the date of such annual meeting and may transact any other business as may properly be brought before the meeting.

Section 2.2. Special Meetings. Subject to the rights of the holders of any outstanding series of the Preferred Stock, and to the requirements of applicable law, special meetings of stockholders, for any purpose or purposes, may be called only by the Chairman of the Board, Chief Executive Officer, or the Board pursuant to a resolution adopted by a majority of the directors then in office. Special meetings of stockholders shall be held at such place and time and on such date as shall be determined by the Board and stated in the Corporation's notice of the meeting, provided that the Board may in its sole discretion determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication pursuant to Section 9.5(a).

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Section 2.3. Notices. Notice of each stockholders meeting stating the place, if any, date, and time of the meeting, and the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, shall be given in the manner permitted by Section 9.3 to each stockholder entitled to vote thereat by the Corporation not less than 10 nor more than 60 days before the date of the meeting. If said notice is for a stockholders meeting other than an annual meeting, it shall in addition state the purpose or purposes for which the meeting is called, and the business transacted at such meeting shall be limited to the matters so stated in the Corporation's notice of meeting (or any supplement thereto). Any meeting of stockholders as to which notice has been given may be postponed, and any special meeting of stockholders as to which notice has been given may be cancelled, by the Board upon public announcement (as defined in Section 2.7(c)) given before the date previously scheduled for such meeting.

Section 2.4. Quorum. Except as otherwise provided by applicable law, the Corporation's Certificate of Incorporation, as the same may be amended or restated from time to time (the "Certificate of Incorporation") or these By Laws, the presence, in person or by proxy, at a stockholders meeting of the holders of shares of outstanding capital stock of the Corporation representing a majority of the voting power of all outstanding shares of capital stock of the Corporation entitled to vote at such meeting shall constitute a quorum for the transaction of business at such meeting, except that when specified business is to be voted on by a class or series of stock voting as a class, the holders of shares representing a majority of the voting power of the outstanding shares of such class or series shall constitute a quorum of such class or series for the transaction of such business. If a quorum shall not be present or represented by proxy at any meeting of the stockholders of the Corporation, the chairman of the meeting may adjourn the meeting from time to time in the manner provided in Section 2.6 until a quorum shall attend. The stockholders present at a duly convened meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the voting power of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation or any such other corporation to vote shares held by it in a fiduciary capacity.

#### Section 2.5. Voting of Shares.

(a) Voting Lists. The Secretary shall prepare, or shall cause the officer or agent who has charge of the stock ledger of the Corporation to prepare, at least 10 days before every meeting of stockholders, a complete list of the stockholders of record entitled to vote thereat arranged in alphabetical order and showing the address and the number of shares registered in the name of each stockholder. Nothing contained in this Section 2.5(a) shall require the Corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If a meeting of stockholders is to be held solely by means of remote communication as permitted by Section 9.5(a), the list shall be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of meeting. The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list required by this Section 2.5(a) or to vote in person or by proxy at any meeting of stockholders.

(b) Manner of Voting. At any stockholders meeting, every stockholder entitled to vote may vote in person or by proxy. If authorized by the Board, the voting by stockholders or proxy holders at any meeting conducted by remote communication may be effected by a ballot submitted by electronic transmission (as defined in Section 9.3), provided that any such electronic transmission must either set forth or be submitted with information from which the Corporation can determine that the electronic transmission was authorized by the stockholder or proxy holder. The Board, in its discretion, or the chairman of the meeting of stockholders, in such person's discretion, may require that any votes cast at such meeting shall be cast by written ballot.

(c) Proxies. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. Proxies need not be filed with the Secretary of the Corporation until the meeting is called to order, but shall be filed with the Secretary before being voted. Without limiting the manner in which a stockholder may authorize another person or persons to act for such stockholder as proxy, either of the following shall constitute a valid means by which a stockholder may grant such authority.

(i) A stockholder may execute a writing authorizing another person or persons to act for such stockholder as proxy. Execution may be accomplished by the stockholder or such stockholder's authorized officer, director, employee or agent signing such writing or causing such person's signature to be affixed to such writing by any reasonable means, including, but not limited to, by facsimile signature.

(ii) A stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of an electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder.

Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission authorizing another person or persons to act as proxy for a stockholder may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used; provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

(d) Required Vote. Subject to the rights of the holders of one or more series of preferred stock of the Corporation ("Preferred Stock"), voting separately by class or series, to elect directors pursuant to the terms of one or more series of Preferred Stock, the election of directors shall be determined by a plurality of the votes cast by the stockholders present in person or represented by proxy at the meeting and entitled to vote thereon. All other matters shall be determined by the vote of a majority of the votes cast by the stockholders present in person or represented by proxy at the meeting and entitled to vote thereon, unless the matter is one upon which, by applicable law, the Certificate of Incorporation, these By Laws or applicable stock exchange rules, a different vote is required, in which case such provision shall govern and control the decision of such matter.

(e) Inspectors of Election. The Board may, and shall if required by law, in advance of any meeting of stockholders, appoint one or more persons as inspectors of election, who may be employees of the Corporation or otherwise serve the Corporation in other capacities, to act at such meeting of stockholders or any adjournment thereof and to make a written report thereof. The Board may appoint one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspectors of election or alternates are appointed by the Board, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before discharging his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall ascertain and report the number of outstanding shares and the voting power of each; determine the number of shares present in person or represented by proxy at the meeting and the validity of proxies and ballots; count all votes and ballots and report the results; determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors; and certify their determination of the number of shares represented at the meeting and their count of all votes and ballots. No person who is a candidate for an office at an election may serve as an inspector at such election. Each report of an inspector shall be in writing and signed by the inspector or by a majority of them if there is more than one inspector acting at such meeting. If there is more than one inspector, the report of a majority shall be the report of the inspectors.

Section 2.6. Adjournments. Any meeting of stockholders, annual or special, may be adjourned by the chairman of the meeting, from time to time, whether or not there is a quorum, to reconvene at the same or some other place. Notice need not be given of any such adjourned meeting if the date, time, and place, if any, thereof, and the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting the stockholders, or the holders of any class or series of stock entitled to vote separately as a class, as the case may be, may transact any business that might have been transacted at the original meeting. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 2.7. Advance Notice for Business.

(a) Annual Meetings of Stockholders. No business may be transacted at an annual meeting of stockholders, other than business that is either (i) brought before the annual meeting by or at the direction of the Board or (ii) otherwise properly brought before the annual meeting by any stockholder of the Corporation (x) who is a stockholder of record on the date of the giving of the notice provided for in this Section 2.7(a) and on the record date for the determination of stockholders entitled to vote at such annual meeting and (y) who complies with the notice procedures set forth in this Section 2.7(a). Notwithstanding anything in this Section 2.7(a) to the contrary, only persons nominated for election as a director to fill any term of a directorship that expires on the date of the annual meeting pursuant to Section 3.2 will be considered for election at such meeting.

(i) In addition to any other applicable requirements, for business (other than nominations) to be properly brought before an annual meeting by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation and such business must otherwise be a proper matter for stockholder action. Subject to Section 2.7(a)(iii), a stockholder's notice to the Secretary with respect to such business, to be timely, must be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the 90th day nor earlier than the opening of business on the 120th day before the anniversary date of the immediately preceding annual meeting of stockholders; provided, however, that in the event that the annual meeting is called for a date that is not within 45 days before or after such anniversary date, or in the case of the first annual meeting which is called following the organization of the Corporation, notice by the stockholder to be timely must be so received not earlier than the opening of business on the 120th day before the meeting and not later than the later of (x) the close of business on the 90th day before the meeting or (y) the close of business on the 10th day following the day on which public announcement of the date of the annual meeting is first made by the Corporation. The public announcement of an adjournment of an annual meeting shall not commence a new time period for the giving of a stockholder's notice as described in this Section 2.7(a).

(ii) To be in proper written form, a stockholder's notice to the Secretary with respect to any business (other than nominations) must set forth as to each such matter such stockholder proposes to bring before the annual meeting (A) a brief description of the business desired to be brought before the annual meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event such business includes a proposal to amend these By Laws, the language of the proposed amendment) and the reasons for conducting such business at the annual meeting, (B) the name and record address of such stockholder and the name and address of the beneficial owner, if any, on whose behalf the proposal is made, (C) the class or series and number of shares of capital stock of the Corporation that are owned beneficially and of record by such stockholder and by the beneficial owner, if any, on whose behalf the proposal is made, (D) a description of all arrangements or understandings between such stockholder and the beneficial owner, if any, on whose behalf the proposal is made and any other person or persons (including their names) in connection with the proposal of such business by such stockholder, (E) any material interest of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made in such business and (F) a representation that such stockholder intends to appear in person or by proxy at the annual meeting to bring such business before the meeting.

(iii) The foregoing notice requirements of this Section 2.7(a) shall be deemed satisfied by a stockholder as to any proposal (other than nominations) if the stockholder has notified the Corporation of such stockholder's intention to present such proposal at an annual meeting in compliance with Rule 14a-8 (or any successor thereof) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and such stockholder has complied with the requirements of such Rule for inclusion of such proposal in a proxy statement prepared by the Corporation to solicit proxies for such annual meeting. No business shall be conducted at the annual meeting of stockholders except business brought before the annual meeting in accordance with the procedures set forth in this Section 2.7(a), provided, however, that once business has been properly brought before the annual meeting in accordance with such procedures, nothing in this Section 2.7(a) shall be deemed to preclude discussion by any stockholder of any such business. If the Board or the chairman of the annual meeting determines that any stockholder proposal was not made in accordance with the provisions of this Section 2.7(a) or that the information provided in a stockholder's notice does not satisfy the information requirements of this Section 2.7(a), such proposal shall not be presented for action at the annual meeting. Notwithstanding the foregoing provisions of this Section 2.7(a), if the stockholder (or a qualified representative of the stockholder) does not appear at the annual meeting of stockholders of the Corporation to present the proposed business, such proposed business shall not be transacted, notwithstanding that proxies in respect of such matter may have been received by the Corporation.

(iv) In addition to the provisions of this Section 2.7(a), a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth herein. Nothing in this Section 2.7(a) shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

(b) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting only pursuant to Section 3.2.

(c) Public Announcement. For purposes of these By Laws, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act.

Section 2.8. Conduct of Meetings. The chairman of each annual and special meeting of stockholders shall be the Chairman of the Board or, in the absence (or inability or refusal to act) of the Chairman of the Board, the Chief Executive Officer (if he or she shall be a director) or, in the absence (or inability or refusal to act) of the Chief Executive Officer or if the Chief Executive Officer is not a director, the President (if he or she shall be a director) or, in the absence (or inability or refusal to act) of the President or if the President is not a director, such other person as shall be appointed by the Board. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the chairman of the meeting. The Board may adopt such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with these By Laws or such rules and regulations as adopted by the Board, the chairman of any meeting of stockholders shall have the right and authority to convene and to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the chairman of the meeting, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting; (b) rules and procedures for maintaining order at the meeting and the safety of those present; (c) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (e) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure. The secretary of each annual and special meeting of stockholders shall be the Secretary or, in the absence (or inability or refusal to act) of the Secretary, an Assistant Secretary so appointed to act by the chairman of the meeting. In the absence (or inability or refusal to act) of the Secretary and all Assistant Secretaries, the chairman of the meeting may appoint any person to act as secretary of the meeting.

### ARTICLE III

#### DIRECTORS

Section 3.1. Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these By Laws required to be exercised or done by the stockholders. Directors need not be stockholders or residents of the State of Delaware.

Section 3.2. Advance Notice for Nomination of Directors.

(a) Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Corporation, except as may be otherwise provided by the terms of one or more series of Preferred Stock with respect to the rights of holders of one or more series of Preferred Stock to elect directors. Nominations of persons for election to the Board at any annual meeting of stockholders, or at any special meeting of stockholders called for the purpose of electing directors as set forth in the Corporation's notice of such special meeting, may be made (i) by or at the direction of the Board or (ii) by any stockholder of the Corporation (x) who is a stockholder of record on the date of the giving of the notice provided for in this Section 3.2 and on the record date for the determination of stockholders entitled to vote at such meeting and (y) who complies with the notice procedures set forth in this Section 3.2.

(b) In addition to any other applicable requirements, for a nomination to be made by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation. To be timely, a stockholder's notice to the Secretary must be received by the Secretary at the principal executive offices of the Corporation (i) in the case of an annual meeting, not later than the close of business on the 90th day nor earlier than the opening of business on the 120th day before the anniversary date of the immediately preceding annual meeting of stockholders; provided, however, that in the event that the annual meeting is called for a date that is not within 45 days before or after such anniversary date, notice by the stockholder to be timely must be so received not earlier than the opening of business on the 120th day before the meeting and not later than the later of (x) the close of business on the 90th day before the meeting or (y) the close of business on the 10th day following the day on which public announcement of the date of the annual meeting was first made by the Corporation; and (ii) in the case of a special meeting of stockholders called for the purpose of electing directors, not later than the close of business on the 10th day following the day on which public announcement of the date of the special meeting is first made by the Corporation. In no event shall the public announcement of an adjournment of an annual meeting or special meeting commence a new time period for the giving of a stockholder's notice as described in this Section 3.2.

(c) Notwithstanding anything in paragraph (b) to the contrary, in the event that the number of directors to be elected to the Board at an annual meeting is greater than the number of directors whose terms expire on the date of the annual meeting and there is no public announcement by the Corporation naming all of the nominees for the additional directors to be elected or specifying the size of the increased Board before the close of business on the 90th day prior to the anniversary date of the immediately preceding annual meeting of stockholders, a stockholder's notice required by this Section 3.2 shall also be considered timely, but only with respect to nominees for the additional directorships created by such increase that are to be filled by election at such annual meeting, if it shall be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the date on which such public announcement was first made by the Corporation.

(d) To be in proper written form, a stockholder's notice to the Secretary must set forth (i) as to each person whom the stockholder proposes to nominate for election as a director (A) the name, age, business address and residence address of the person, (B) the principal occupation or employment of the person, (C) the class or series and number of shares of capital stock of the Corporation that are owned beneficially or of record by the person and (D) any other information relating to the person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder; and (ii) as to the stockholder giving the notice (A) the name and record address of such stockholder and the name and address of the beneficial owner, if any, on whose behalf the nomination is made, (B) the class or series and number of shares of capital stock of the Corporation that are owned beneficially and of record by such stockholder and the beneficial owner, if any, on whose behalf the nomination is made, (C) a description of all arrangements or understandings relating to the nomination to be made by such stockholder among such stockholder, the beneficial owner, if any, on whose behalf the nomination is made, each proposed nominee and any other person or persons (including their names), (D) a representation that such stockholder intends to appear in person or by proxy at the meeting to nominate the persons named in its notice and (E) any other information relating to such stockholder and the beneficial owner, if any, on whose behalf the nomination is made that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder. Such notice must be accompanied by a written consent of each proposed nominee to being named as a nominee and to serve as a director if elected.



(e) If the Board or the chairman of the meeting of stockholders determines that any nomination was not made in accordance with the provisions of this Section 3.2, then such nomination shall not be considered at the meeting in question. Notwithstanding the foregoing provisions of this Section 3.2, if the stockholder (or a qualified representative of the stockholder) does not appear at the meeting of stockholders of the Corporation to present the nomination, such nomination shall be disregarded, notwithstanding that proxies in respect of such nomination may have been received by the Corporation.

(f) In addition to the provisions of this Section 3.2, a stockholder shall also comply with all of the applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth herein. Nothing in this Section 3.2 shall be deemed to affect any rights of the holders of Preferred Stock to elect directors pursuant to the Certificate of Incorporation.

Section 3.3. Compensation. Unless otherwise restricted by the Certificate of Incorporation or these By Laws, the Board shall have the authority to fix the compensation of directors. The directors may be reimbursed their expenses, if any, of attendance at each meeting of the Board and may be paid either a fixed sum for attendance at each meeting of the Board or other compensation as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of committees of the Board may be allowed like compensation and reimbursement of expenses for service on the committee.

## ARTICLE IV

### BOARD MEETINGS

Section 4.1. Annual Meetings. The Board shall meet as soon as practicable after the adjournment of each annual stockholders meeting at the place of the annual stockholders meeting unless the Board shall fix another time and place and give notice thereof in the manner required herein for special meetings of the Board. No notice to the directors shall be necessary to legally convene this meeting, except as provided in this Section 4.1.

Section 4.2. Regular Meetings. Regularly scheduled, periodic meetings of the Board may be held without notice at such times, dates and places as shall from time to time be determined by the Board and publicized by means of reasonable notice given to any director who is not present at the meeting at which such resolution is adopted.

Section 4.3. Special Meetings. Special meetings of the Board (a) may be called by the Chairman of the Board or President and (b) shall be called by the Chairman of the Board, President or Secretary on the written request of at least a majority of directors then in office, or the sole director, as the case may be, and shall be held at such time, date and place as may be determined by the person calling the meeting or, if called upon the request of directors or the sole director, as specified in such written request. Notice of each special meeting of the Board shall be given, as provided in Section 9.3, to each director (i) at least 24 hours before the meeting if such notice is oral notice given personally or by telephone or written notice given by hand delivery or by means of a form of electronic transmission and delivery; (ii) at least two days before the meeting if such notice is sent by a nationally recognized overnight delivery service; and (iii) at least five days before the meeting if such notice is sent through the United States mail. If the Secretary shall fail or refuse to give such notice, then the notice may be given by the officer who called the meeting or the directors who requested the meeting. Any and all business that may be transacted at a regular meeting of the Board may be transacted at a special meeting. Except as may be otherwise expressly provided by applicable law, the Certificate of Incorporation, or these By Laws, neither the business to be transacted at, nor the purpose of, any special meeting need be specified in the notice or waiver of notice of such meeting. A special meeting may be held at any time without notice if all the directors are present or if those not present waive notice of the meeting in accordance with Section 9.4.

Section 4.4. Quorum; Required Vote. A majority of the total number of directors shall constitute a quorum for the transaction of business at any meeting of the Board, and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board, except as may be otherwise specifically provided by applicable law, the Certificate of Incorporation or these By Laws. If a quorum shall not be present at any meeting, a majority of the directors present may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

Section 4.5. Consent In Lieu of Meeting. Unless otherwise restricted by the Certificate of Incorporation or these By Laws, any action required or permitted to be taken at any meeting of the Board or any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions (or paper reproductions thereof) are filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 4.6. Organization. The chairman of each meeting of the Board shall be the Chairman of the Board or, in the absence (or inability or refusal to act) of the Chairman of the Board, the Chief Executive Officer (if he or she shall be a director) or, in the absence (or inability or refusal to act) of the Chief Executive Officer or if the Chief Executive Officer is not a director, the President (if he or she shall be a director) or in the absence (or inability or refusal to act) of the President or if the President is not a director, a chairman elected from the directors present. The Secretary shall act as secretary of all meetings of the Board. In the absence (or inability or refusal to act) of the Secretary, an Assistant Secretary shall perform the duties of the Secretary at such meeting. In the absence (or inability or refusal to act) of the Secretary and all Assistant Secretaries, the chairman of the meeting may appoint any person to act as secretary of the meeting.

## ARTICLE V

### COMMITTEES OF DIRECTORS

Section 5.1. Establishment. The Board may by resolution passed by a majority of the directors then in office designate one or more committees, each committee to consist of one or more of the directors of the Corporation. Each committee shall keep regular minutes of its meetings and report the same to the Board when required. The Board shall have the power at any time to fill vacancies in, to change the membership of, or to dissolve any such committee.

Section 5.2. Available Powers. Any committee established pursuant to Section 5.1 hereof, to the extent permitted by applicable law and by resolution of the Board, shall have and may exercise all of the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers that may require it.

Section 5.3. Alternate Members. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of such committee.

Section 5.4. Procedures. Unless the Board otherwise provides, the time, date, place, if any, and notice of meetings of a committee shall be determined by such committee. At meetings of a committee, a majority of the number of members of the committee (but not including any alternate member, unless such alternate member has replaced any absent or disqualified member at the time of, or in connection with, such meeting) shall constitute a quorum for the transaction of business. The act of a majority of the members present at any meeting at which a quorum is present shall be the act of the committee, except as otherwise specifically provided by applicable law, the Certificate of Incorporation, these By Laws or the Board. If a quorum is not present at a meeting of a committee, the members present may adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum is present. Unless the Board otherwise provides and except as provided in these By Laws, each committee designated by the Board may make, alter, amend and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board is authorized to conduct its business pursuant to Article III and Article IV of these By Laws.

## ARTICLE VI

### OFFICERS

Section 6.1. Officers. The officers of the Corporation elected by the Board may consist of a Chairman of the Board, a Chief Executive Officer, a President, a Chief Financial Officer, a Secretary and such other officers (including without limitation, Vice Presidents, Assistant Secretaries and a Treasurer) as the Board from time to time may determine. Any such Officers elected by the Board shall each have such powers and duties as generally pertain to their respective offices, subject to the specific provisions of this Article VI. Such officers shall also have such powers and duties as from time to time may be conferred by the Board. The Chief Executive Officer or President may also appoint such other officers (including without limitation one or more Vice Presidents and Controllers) as may be necessary or desirable for the conduct of the business of the Corporation. Such other officers shall have such powers and duties and shall hold their offices for such terms as may be provided in these By Laws or as may be prescribed by the Board or, if such officer has been appointed by the Chief Executive Officer or President, as may be prescribed by the appointing officer.

(a) Chairman of the Board. The Chairman of the Board shall preside when present at all meetings of the stockholders and the Board. In the absence (or inability or refusal to act) of the Chairman of the Board, the Chief Executive Officer (if he or she shall be a director) shall preside when present at all meetings of the stockholders and the Board. The powers and duties of the Chairman of the Board shall not include supervision or control of the preparation of the financial statements of the Company (other than through participation as a member of the Board).

(b) Chief Executive Officer. The Chief Executive Officer shall be the chief executive officer of the Corporation, shall have general supervision of the affairs of the Corporation and general control of all of its business subject to the ultimate authority of the Board, and shall be responsible for the execution of the policies of the Board with respect to such matters, except to the extent any such powers and duties have been prescribed to the Chairman of the Board pursuant to Section 6.1(a) above. In the absence (or inability or refusal to act) of the Chairman of the Board, the Chief Executive Officer (if he or she shall be a director) shall preside when present at all meetings of the stockholders and the Board. The position of Chief Executive Officer and President may be held by the same person.

(c) President. The President shall make recommendations to the Chief Executive Officer on all operational matters that would normally be reserved for the final executive responsibility of the Chief Executive Officer. In the absence (or inability or refusal to act) of the Chairman of the Board and Chief Executive Officer, the President (if he or she shall be a director) shall preside when present at all meetings of the stockholders and the Board. The President shall also perform such duties and have such powers as shall be designated by the Board. The position of President and Chief Executive Officer may be held by the same person.

(d) Vice Presidents. In the absence (or inability or refusal to act) of the President, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated by the Board) shall perform the duties and have the powers of the President. Any one or more of the Vice Presidents may be given an additional designation of rank or function.

(e) Secretary.

(i) The Secretary shall attend all meetings of the stockholders, the Board and (as required) committees of the Board and shall record the proceedings of such meetings in books to be kept for that purpose. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board and shall perform such other duties as may be prescribed by the Board, the Chairman of the Board, Chief Executive Officer or President. The Secretary shall have custody of the corporate seal of the Corporation and the Secretary, or any Assistant Secretary, shall have authority to affix the same to any instrument requiring it, and when so affixed, it may be attested by his or her signature or by the signature of such Assistant Secretary. The Board may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing thereof by his or her signature.

(ii) The Secretary shall keep, or cause to be kept, at the principal executive office of the Corporation or at the office of the Corporation's transfer agent or registrar, if one has been appointed, a stock ledger, or duplicate stock ledger, showing the names of the stockholders and their addresses, the number and classes of shares held by each and, with respect to certificated shares, the number and date of certificates issued for the same and the number and date of certificates cancelled.

(f) Assistant Secretaries. The Assistant Secretary or, if there be more than one, the Assistant Secretaries in the order determined by the Board shall, in the absence (or inability or refusal to act) of the Secretary, perform the duties and have the powers of the Secretary.

(g) Chief Financial Officer. The Chief Financial Officer shall perform all duties commonly incident to that office (including, without limitation, the care and custody of the funds and securities of the Corporation, which from time to time may come into the Chief Financial Officer's hands and the deposit of the funds of the Corporation in such banks or trust companies as the Board, the Chief Executive Officer or the President may authorize).

(h) Treasurer. The Treasurer shall, in the absence (or inability or refusal to act) of the Chief Financial Officer, perform the duties and exercise the powers of the Chief Financial Officer.

Section 6.2. Term of Office; Removal; Vacancies. The elected officers of the Corporation shall be appointed by the Board and shall hold office until their successors are duly elected and qualified by the Board or until their earlier death, resignation, retirement, disqualification, or removal from office. Any officer may be removed, with or without cause, at any time by the Board. Any officer appointed by the Chief Executive Officer or President may also be removed, with or without cause, by the Chief Executive Officer or President, as the case may be, unless the Board otherwise provides. Any vacancy occurring in any elected office of the Corporation may be filled by the Board. Any vacancy occurring in any office appointed by the Chief Executive Officer or President may be filled by the Chief Executive Officer, or President, as the case may be, unless the Board then determines that such office shall thereupon be elected by the Board, in which case the Board shall elect such officer.

Section 6.3. Other Officers. The Board may delegate the power to appoint such other officers and agents, and may also remove such officers and agents or delegate the power to remove same, as it shall from time to time deem necessary or desirable.

Section 6.4. Multiple Officeholders; Stockholder and Director Officers. Any number of offices may be held by the same person unless the Certificate of Incorporation or these By Laws otherwise provide. Officers need not be stockholders or residents of the State of Delaware.

## ARTICLE VII

### SHARES

Section 7.1. Certificated and Uncertificated Shares. The shares of the Corporation may be certificated or uncertificated, subject to the sole discretion of the Board.

Section 7.2. Multiple Classes of Stock. If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the Corporation shall (a) cause the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights to be set forth in full or summarized on the face or back of any certificate that the Corporation issues to represent shares of such class or series of stock or (b) in the case of uncertificated shares, within a reasonable time after the issuance or transfer of such shares, send to the registered owner thereof a written notice containing the information required to be set forth on certificates as specified in clause (a) above; provided, however, that, except as otherwise provided by applicable law, in lieu of the foregoing requirements, there may be set forth on the face or back of such certificate or, in the case of uncertificated shares, on such written notice a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights.

Section 7.3. Signatures. Each certificate representing capital stock of the Corporation shall be signed by or in the name of the Corporation by (a) the Chairman of the Board, Chief Executive Officer, the President or a Vice President and (b) the Treasurer, the Secretary or an Assistant Secretary of the Corporation. Any or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar on the date of issue.

Section 7.4. Consideration and Payment for Shares.

(a) Subject to applicable law and the Certificate of Incorporation, shares of stock may be issued for such consideration, having in the case of shares with par value a value not less than the par value thereof, and to such persons, as determined from time to time by the Board. The consideration may consist of any tangible or intangible property or benefit to the Corporation including cash, promissory notes, services performed, contracts for services to be performed or other securities.

(b) Subject to applicable law and the Certificate of Incorporation, shares may not be issued until the full amount of the consideration has been paid, unless upon the face or back of each certificate issued to represent any partly paid shares of capital stock or upon the books and records of the Corporation in the case of partly paid uncertificated shares, there shall have been set forth the total amount of the consideration to be paid therefor and the amount paid thereon up to and including the time said certificate representing certificated shares or said uncertificated shares are issued.

Section 7.5. Lost, Destroyed or Wrongfully Taken Certificates.

(a) If an owner of a certificate representing shares claims that such certificate has been lost, destroyed or wrongfully taken, the Corporation shall issue a new certificate representing such shares or such shares in uncertificated form if the owner: (i) requests such a new certificate before the Corporation has notice that the certificate representing such shares has been acquired by a protected purchaser; (ii) if requested by the Corporation, delivers to the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, wrongful taking or destruction of such certificate or the issuance of such new certificate or uncertificated shares; and (iii) satisfies other reasonable requirements imposed by the Corporation.

(b) If a certificate representing shares has been lost, apparently destroyed or wrongfully taken, and the owner fails to notify the Corporation of that fact within a reasonable time after the owner has notice of such loss, apparent destruction or wrongful taking and the Corporation registers a transfer of such shares before receiving notification, the owner shall be precluded from asserting against the Corporation any claim for registering such transfer or a claim to a new certificate representing such shares or such shares in uncertificated form.

Section 7.6. Transfer of Stock.

(a) If a certificate representing shares of the Corporation is presented to the Corporation with an endorsement requesting the registration of transfer of such shares or an instruction is presented to the Corporation requesting the registration of transfer of uncertificated shares, the Corporation shall register the transfer as requested if:

(i) in the case of certificated shares, the certificate representing such shares has been surrendered;

(ii) (A) with respect to certificated shares, the endorsement is made by the person specified by the certificate as entitled to such shares; (B) with respect to uncertificated shares, an instruction is made by the registered owner of such uncertificated shares; or (C) with respect to certificated shares or uncertificated shares, the endorsement or instruction is made by any other appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;

(iii) the Corporation has received a guarantee of signature of the person signing such endorsement or instruction or such other reasonable assurance that the endorsement or instruction is genuine and authorized as the Corporation may request;

(iv) the transfer does not violate any restriction on transfer imposed by the Corporation that is enforceable in accordance with Section 7.8(a); and

(v) such other conditions for such transfer as shall be provided for under applicable law have been satisfied.

(b) Whenever any transfer of shares shall be made for collateral security and not absolutely, the Corporation shall so record such fact in the entry of transfer if, when the certificate for such shares is presented to the Corporation for transfer or, if such shares are uncertificated, when the instruction for registration of transfer thereof is presented to the Corporation, both the transferor and transferee request the Corporation to do so.

Section 7.7. Registered Stockholders. Before due presentment for registration of transfer of a certificate representing shares of the Corporation or of an instruction requesting registration of transfer of uncertificated shares, the Corporation may treat the registered owner as the person exclusively entitled to inspect for any proper purpose the stock ledger and the other books and records of the Corporation, vote such shares, receive dividends or notifications with respect to such shares and otherwise exercise all the rights and powers of the owner of such shares, except that a person who is the beneficial owner of such shares (if held in a voting trust or by a nominee on behalf of such person) may, upon providing documentary evidence of beneficial ownership of such shares and satisfying such other conditions as are provided under applicable law, may also so inspect the books and records of the Corporation.

Section 7.8. Effect of the Corporation's Restriction on Transfer.

(a) A written restriction on the transfer or registration of transfer of shares of the Corporation or on the amount of shares of the Corporation that may be owned by any person or group of persons, if permitted by the DGCL and noted conspicuously on the certificate representing such shares or, in the case of uncertificated shares, contained in a notice, offering circular or prospectus sent by the Corporation to the registered owner of such shares within a reasonable time prior to or after the issuance or transfer of such shares, may be enforced against the holder of such shares or any successor or transferee of the holder including an executor, administrator, trustee, guardian or other fiduciary entrusted with like responsibility for the person or estate of the holder.

(b) A restriction imposed by the Corporation on the transfer or the registration of shares of the Corporation or on the amount of shares of the Corporation that may be owned by any person or group of persons, even if otherwise lawful, is ineffective against a person without actual knowledge of such restriction unless: (i) the shares are certificated and such restriction is noted conspicuously on the certificate; or (ii) the shares are uncertificated and such restriction was contained in a notice, offering circular or prospectus sent by the Corporation to the registered owner of such shares prior to or within a reasonable time after the issuance or transfer of such shares.

Section 7.9. Regulations. The Board shall have power and authority to make such additional rules and regulations, subject to any applicable requirement of law, as the Board may deem necessary and appropriate with respect to the issue, transfer or registration of transfer of shares of stock or certificates representing shares. The Board may appoint one or more transfer agents or registrars and may require for the validity thereof that certificates representing shares bear the signature of any transfer agent or registrar so appointed.



## ARTICLE VIII

### INDEMNIFICATION

Section 8.1. Right to Indemnification. To the fullest extent permitted by applicable law, as the same exists or may hereafter be amended, the Corporation shall indemnify and hold harmless each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a “proceeding”), by reason of the fact that he or she is or was a director or Officer (as defined below) of the Corporation or, while a director or Officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, other enterprise or nonprofit entity, including service with respect to an employee benefit plan (hereinafter an “Indemnatee”), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent, or in any other capacity while serving as a director, officer, employee or agent, against all liability and loss suffered and expenses (including, without limitation, attorneys’ fees, judgments, fines, ERISA excise taxes and penalties and amounts paid in settlement) reasonably incurred by such Indemnatee in connection with such proceeding; provided, however, that, except as provided in Section 8.3 with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify an Indemnatee in connection with a proceeding (or part thereof) initiated by such Indemnatee only if such proceeding (or part thereof) was authorized by the Board. For purposes of this Article VIII, the term “Officer” means any person who serves or has served as an officer of the Corporation appointed by the Board of Directors of the Corporation.

Section 8.2. Right to Advancement of Expenses. In addition to the right to indemnification conferred in Section 8.1, an Indemnatee shall also have the right to be paid by the Corporation to the fullest extent not prohibited by applicable law the expenses (including, without limitation, attorneys’ fees) incurred in defending or otherwise participating in any such proceeding in advance of its final disposition (hereinafter an “advancement of expenses”); provided, however, that, if the Delaware General Corporation Law (“DGCL”) requires, an advancement of expenses incurred by an Indemnatee in his or her capacity as a director or officer of the Corporation (and not in any other capacity in which service was or is rendered by such Indemnatee, including, without limitation, service to an employee benefit plan) shall be made only upon the Corporation’s receipt of an undertaking (hereinafter an “undertaking”), by or on behalf of such Indemnatee, to repay all amounts so advanced if it shall ultimately be determined that such Indemnatee is not entitled to be indemnified under this Article VIII or otherwise.

Section 8.3. Right of Indemnatee to Bring Suit. If a claim under Section 8.1 or Section 8.2 is not paid in full by the Corporation within 60 days after a written claim therefor has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be 20 days, the Indemnatee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Indemnatee shall also be entitled to be paid the expense of prosecuting or defending such suit. In (a) any suit brought by the Indemnatee to enforce a right to indemnification hereunder (but not in a suit brought by an Indemnatee to enforce a right to an advancement of expenses) it shall be a defense that, and (b) in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final judicial decision from which there is no further right to appeal (hereinafter a “final adjudication”) that, the Indemnatee has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the Indemnatee is proper in the circumstances because the Indemnatee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including a determination by its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) that the Indemnatee has not met such applicable standard of conduct, shall create a presumption that the Indemnatee has not met the applicable standard of conduct or, in the case of such a suit brought by the Indemnatee, shall be a defense to such suit. In any suit brought by the Indemnatee to enforce a right to indemnification or to an advancement of expenses hereunder, or by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the Indemnatee is not entitled to be indemnified, or to such advancement of expenses, under this Article VIII or otherwise shall be on the Corporation.

Section 8.4. Non-Exclusivity of Rights. The rights provided to any Indemnitee pursuant to this Article VIII shall not be exclusive of any other right, which such Indemnitee may have or hereafter acquire under applicable law, the Certificate of Incorporation, these By Laws, an agreement, a vote of stockholders or disinterested directors, or otherwise.

Section 8.5. Insurance. The Corporation may maintain insurance, at its expense, to protect itself and/or any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

Section 8.6. Indemnification of Other Persons. This Article VIII shall not limit the right of the Corporation to the extent and in the manner authorized or permitted by law to indemnify and to advance expenses to persons other than Indemnitees. Without limiting the foregoing, the Corporation may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation and to any other person who is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan, to the fullest extent of the provisions of this Article VIII with respect to the indemnification and advancement of expenses of Indemnitees under this Article VIII.

Section 8.7. Amendments. Any repeal or amendment of this Article VIII by the Board or the stockholders of the Corporation or by changes in applicable law, or the adoption of any other provision of these By Laws inconsistent with this Article VIII, will, to the extent permitted by applicable law, be prospective only (except to the extent such amendment or change in applicable law permits the Corporation to provide broader indemnification rights to Indemnitees on a retroactive basis than permitted prior thereto), and will not in any way diminish or adversely affect any right or protection existing hereunder in respect of any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision.

Section 8.8. Certain Definitions. For purposes of this Article VIII, (a) references to “other enterprise” shall include any employee benefit plan; (b) references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; (c) references to “serving at the request of the Corporation” shall include any service that imposes duties on, or involves services by, a person with respect to any employee benefit plan, its participants, or beneficiaries; and (d) a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interest of the Corporation” for purposes of Section 145 of the DGCL.

Section 8.9. Contract Rights. The rights provided to Indemnitees pursuant to this Article VIII shall be contract rights and such rights shall continue as to an Indemnitee who has ceased to be a director, officer, agent or employee and shall inure to the benefit of the Indemnitee's heirs, executors and administrators.

Section 8.10. Severability. If any provision or provisions of this Article VIII shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Article VIII shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Article VIII (including, without limitation, each such portion of this Article VIII containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

## ARTICLE IX

### MISCELLANEOUS

Section 9.1. Place of Meetings. If the place of any meeting of stockholders, the Board or committee of the Board for which notice is required under these By Laws is not designated in the notice of such meeting, such meeting shall be held at the principal business office of the Corporation; provided, however, if the Board has, in its sole discretion, determined that a meeting shall not be held at any place, but instead shall be held by means of remote communication pursuant to Section 9.5 hereof, then such meeting shall not be held at any place.

#### Section 9.2. Fixing Record Dates.

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the business day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

### Section 9.3. Means of Giving Notice.

(a) Notice to Directors. Whenever under applicable law, the Certificate of Incorporation or these By Laws notice is required to be given to any director, such notice shall be given either (i) in writing and sent by hand delivery, through the United States mail, or by a nationally recognized overnight delivery service for next day delivery, (ii) by means of facsimile telecommunication or other form of electronic transmission, or (iii) by oral notice given personally or by telephone. A notice to a director will be deemed given as follows: (i) if given by hand delivery, orally, or by telephone, when actually received by the director, (ii) if sent through the United States mail, when deposited in the United States mail, with postage and fees thereon prepaid, addressed to the director at the director's address appearing on the records of the Corporation, (iii) if sent for next day delivery by a nationally recognized overnight delivery service, when deposited with such service, with fees thereon prepaid, addressed to the director at the director's address appearing on the records of the Corporation, (iv) if sent by facsimile telecommunication, when sent to the facsimile transmission number for such director appearing on the records of the Corporation, (v) if sent by electronic mail, when sent to the electronic mail address for such director appearing on the records of the Corporation, or (vi) if sent by any other form of electronic transmission, when sent to the address, location or number (as applicable) for such director appearing on the records of the Corporation.

(b) Notice to Stockholders. Whenever under applicable law, the Certificate of Incorporation or these By Laws notice is required to be given to any stockholder, such notice may be given (i) in writing and sent either by hand delivery, through the United States mail, or by a nationally recognized overnight delivery service for next day delivery, or (ii) by means of a form of electronic transmission consented to by the stockholder, to the extent permitted by, and subject to the conditions set forth in Section 232 of the DGCL. A notice to a stockholder shall be deemed given as follows: (i) if given by hand delivery, when actually received by the stockholder, (ii) if sent through the United States mail, when deposited in the United States mail, with postage and fees thereon prepaid, addressed to the stockholder at the stockholder's address appearing on the stock ledger of the Corporation, (iii) if sent for next day delivery by a nationally recognized overnight delivery service, when deposited with such service, with fees thereon prepaid, addressed to the stockholder at the stockholder's address appearing on the stock ledger of the Corporation, and (iv) if given by a form of electronic transmission consented to by the stockholder to whom the notice is given and otherwise meeting the requirements set forth above, (A) if by facsimile transmission, when directed to a number at which the stockholder has consented to receive notice, (B) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice, (C) if by a posting on an electronic network together with separate notice to the stockholder of such specified posting, upon the later of (1) such posting and (2) the giving of such separate notice, and (D) if by any other form of electronic transmission, when directed to the stockholder. A stockholder may revoke such stockholder's consent to receiving notice by means of electronic communication by giving written notice of such revocation to the Corporation. Any such consent shall be deemed revoked if (1) the Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with such consent and (2) such inability becomes known to the Secretary or an Assistant Secretary or to the Corporation's transfer agent, or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(c) Electronic Transmission. “Electronic transmission” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process, including but not limited to transmission by telex, facsimile telecommunication, electronic mail, telegram and cablegram.

(d) Notice to Stockholders Sharing Same Address. Without limiting the manner by which notice otherwise may be given effectively by the Corporation to stockholders, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these By Laws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. A stockholder may revoke such stockholder’s consent by delivering written notice of such revocation to the Corporation. Any stockholder who fails to object in writing to the Corporation within 60 days of having been given written notice by the Corporation of its intention to send such a single written notice shall be deemed to have consented to receiving such single written notice.

(e) Exceptions to Notice Requirements. Whenever notice is required to be given, under the DGCL, the Certificate of Incorporation or these By Laws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting that shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

Whenever notice is required to be given by the Corporation, under any provision of the DGCL, the Certificate of Incorporation or these By Laws, to any stockholder to whom (1) notice of two consecutive annual meetings of stockholders and all notices of stockholder meetings or of the taking of action by written consent of stockholders without a meeting to such stockholder during the period between such two consecutive annual meetings, or (2) all, and at least two payments (if sent by first-class mail) of dividends or interest on securities during a 12-month period, have been mailed addressed to such stockholder at such stockholder’s address as shown on the records of the Corporation and have been returned undeliverable, the giving of such notice to such stockholder shall not be required. Any action or meeting that shall be taken or held without notice to such stockholder shall have the same force and effect as if such notice had been duly given. If any such stockholder shall deliver to the Corporation a written notice setting forth such stockholder’s then current address, the requirement that notice be given to such stockholder shall be reinstated. In the event that the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to Section 230(b) of the DGCL. The exception in subsection (1) of the first sentence of this paragraph to the requirement that notice be given shall not be applicable to any notice returned as undeliverable if the notice was given by electronic transmission.

Section 9.4. Waiver of Notice. Whenever any notice is required to be given under applicable law, the Certificate of Incorporation, or these By Laws, a written waiver of such notice, signed before or after the date of such meeting by the person or persons entitled to said notice, or a waiver by electronic transmission by the person entitled to said notice, shall be deemed equivalent to such required notice. All such waivers shall be kept with the books of the Corporation. Attendance at a meeting shall constitute a waiver of notice of such meeting, except where a person attends for the express purpose of objecting to the transaction of any business on the ground that the meeting was not lawfully called or convened.

Section 9.5. Meeting Attendance via Remote Communication Equipment.

(a) Stockholder Meetings. If authorized by the Board in its sole discretion, and subject to such guidelines and procedures as the Board may adopt, stockholders and proxy holders not physically present at a meeting of stockholders may, by means of remote communication:

(i) participate in a meeting of stockholders; and

(ii) be deemed present in person and vote at a meeting of stockholders, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (A) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxy holder, (B) the Corporation shall implement reasonable measures to provide such stockholders and proxy holders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (C) if any stockholder or proxy holder votes or takes other action at the meeting by means of remote communication, a record of such votes or other action shall be maintained by the Corporation.

(b) Board Meetings. Unless otherwise restricted by applicable law, the Certificate of Incorporation or these By Laws, members of the Board or any committee thereof may participate in a meeting of the Board or any committee thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. Such participation in a meeting shall constitute presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting was not lawfully called or convened.

Section 9.6. Dividends. The Board may from time to time declare, and the Corporation may pay, dividends (payable in cash, property or shares of the Corporation's capital stock) on the Corporation's outstanding shares of capital stock, subject to applicable law and the Certificate of Incorporation.

Section 9.7. Reserves. The Board may set apart out of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

Section 9.8. Contracts and Negotiable Instruments. Except as otherwise provided by applicable law, the Certificate of Incorporation or these By Laws, any contract, bond, deed, lease, mortgage or other instrument may be executed and delivered in the name and on behalf of the Corporation by such officer or officers or other employee or employees of the Corporation as the Board may from time to time authorize. Such authority may be general or confined to specific instances as the Board may determine. The Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer, the Treasurer or any Vice President may execute and deliver any contract, bond, deed, lease, mortgage or other instrument in the name and on behalf of the Corporation. Subject to any restrictions imposed by the Board, the Chairman of the Board Chief Executive Officer, President, the Chief Financial Officer, the Treasurer or any Vice President may delegate powers to execute and deliver any contract, bond, deed, lease, mortgage or other instrument in the name and on behalf of the Corporation to other officers or employees of the Corporation under such person's supervision and authority, it being understood, however, that any such delegation of power shall not relieve such officer of responsibility with respect to the exercise of such delegated power.

Section 9.9. Fiscal Year. The fiscal year of the Corporation shall be fixed by the Board.

Section 9.10. Seal. The Board may adopt a corporate seal, which shall be in such form as the Board determines. The seal may be used by causing it or a facsimile thereof to be impressed, affixed or otherwise reproduced.

Section 9.11. Books and Records. The books and records of the Corporation may be kept within or outside the State of Delaware at such place or places as may from time to time be designated by the Board.

Section 9.12. Resignation. Any director, committee member or officer may resign by giving notice thereof in writing or by electronic transmission to the Chairman of the Board, the Chief Executive Officer, the President or the Secretary. The resignation shall take effect at the time specified therein, or at the time of receipt of such notice if no time is specified or the specified time is earlier than the time of such receipt. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 9.13. Surety Bonds. Such officers, employees and agents of the Corporation (if any) as the Chairman of the Board, Chief Executive Officer, President or the Board may direct, from time to time, shall be bonded for the faithful performance of their duties and for the restoration to the Corporation, in case of their death, resignation, retirement, disqualification or removal from office, of all books, papers, vouchers, money and other property of whatever kind in their possession or under their control belonging to the Corporation, in such amounts and by such surety companies as the Chairman of the Board, Chief Executive Officer, President or the Board may determine. The premiums on such bonds shall be paid by the Corporation and the bonds so furnished shall be in the custody of the Secretary.

Section 9.14. Securities of Other Corporations. Powers of attorney, proxies, waivers of notice of meeting, consents in writing and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the Chairman of the Board, Chief Executive Officer, President or any Vice President. Any such officer, may, in the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities, or to consent in writing, in the name of the Corporation as such holder, to any action by such corporation, and at any such meeting or with respect to any such consent shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed. The Board may from time to time confer like powers upon any other person or persons.

Section 9.15. Amendments. The Board shall have the power to adopt, amend, alter or repeal the By Laws. The affirmative vote of a majority of the directors then in office shall be required to adopt, amend, alter or repeal the By Laws. The By Laws also may be adopted, amended, altered or repealed by the stockholders; provided, however, that in addition to any vote of the holders of any class or series of capital stock of the Corporation required by applicable law or the Certificate of Incorporation, the affirmative vote of the holders of at least a majority of the voting power of all outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required for the stockholders to adopt, amend, alter or repeal the By Laws.



**AMENDED AND RESTATED  
REGISTRATION RIGHTS AGREEMENT**

THIS AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT (this “Agreement”) is made and entered into as of January 31, 2013, by and among Global Eagle Entertainment Inc., a Delaware corporation (the “Company”) and the parties named on the signature pages hereto (collectively referred to hereinafter as the “Holders”).

WHEREAS, the Company and certain of the Holders are parties to that certain Registration Rights Agreement dated May 12, 2011 (the “Prior Agreement”);

WHEREAS, certain of the Holders are acquiring, on or about the date hereof, shares of (a) the common stock, par value \$0.0001 per share, of the Company (the “Common Stock”) and/or (b) the non-voting common stock, par value \$0.0001 per share, of the Company (the “Non-Voting Common Stock” and, together with the Common Stock, the “Company Stock”), pursuant to (i) that certain Agreement and Plan of Merger and Reorganization (the “Merger Agreement”), dated as of November 8, 2012, by and among the Company, EAGL Merger Sub Corp., a Delaware corporation and wholly-owned subsidiary of the Company, Row 44, Inc., a Delaware Corporation, and PAR Investment Partners, L.P. (“PAR”), (ii) that certain Stock Purchase Agreement, dated as of November 8, 2012, by and between the Company and PAR (the “Stock Purchase Agreement”), (iii) that certain Amended and Restated Common Stock Purchase Agreement, dated as of November 8, 2012, by and between the Company and PAR (the “Equity Backstop Agreement”); and (iv) that certain Common Stock Purchase Agreement, dated as of November 8, 2012, by and among the Company, Putnam Capital Spectrum Fund and Putnam Equity Fund (the “Additional Backstop Agreement”); and

WHEREAS, the parties to the Prior Agreement desire to amend and restate the Prior Agreement to provide for the terms and conditions included herein and to include the recipients of Company Stock pursuant to the Merger Agreement, the Stock Purchase Agreement, the Equity Backstop Agreement and the Additional Backstop Agreement.

NOW, THEREFORE, in consideration of the representations, covenants and agreements contained herein, and certain other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. REGISTRATION RIGHTS.

1.1 Certain Definitions. As used in this Agreement, in addition to the terms defined elsewhere in this Agreement, the following terms shall have the following respective meanings:

“Business Day” means any day other than a day on which the SEC or the office of the Delaware Secretary of State is closed.

“Deferral Notice” has the meaning specified in Section 1.5(h).

“Effectiveness Period” means the period during which any Registrable Securities are outstanding.

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“Founder Registrable Securities” means the Registrable Securities issued to Global Eagle Acquisition LLC in the Company’s initial public offering.

“PAR Registrable Securities” means the Registrable Securities issued to PAR and its affiliates pursuant to the Merger Agreement, the Stock Purchase Agreement or the Equity Backstop Agreement.

“Prospectus” means the prospectus included in any Registration Statement (including, without limitation, a prospectus that discloses information previously omitted from a prospectus filed as part of an effective Registration Statement in reliance upon Rule 415 promulgated under the Securities Act), as amended or supplemented by any amendment or prospectus supplement, including post-effective amendments, and all materials incorporated by reference or explicitly deemed to be incorporated by reference in such Prospectus.

“Registrable Securities” means (i) all shares of Common Stock of the Company held by any Holder, (ii) all shares of Common Stock of the Company issued or issuable upon the conversion, exercise or exchange of any other equity security of the Company held by any Holder, including without limitation, (A) any warrants to purchase shares of Common Stock and any shares of Non-Voting Common Stock of the Company and (B) any warrants originally exercisable for shares of capital stock of Row 44, Inc., which warrants, pursuant to the terms of the Merger Agreement, are now, or may be, exercisable for shares Common Stock, (iii) all shares of Common Stock issued to any Holder in connection with any stock split, stock dividend, recapitalization or similar event (including without limitation, any shares of Common Stock issued or issuable upon conversion of any shares of Non-Voting Common Stock issued to any Holder in connection with any stock split, stock dividend, recapitalization or similar event), and (iv) any shares of Common Stock issued or issuable upon the exercise of any equity security of the Company that is issuable upon conversion of any working capital loans in an amount up to \$500,000 made to the Company by any Holder; provided, however, that as to any particular Registrable Securities, such securities shall cease to be Registrable Securities when (a) a Registration Statement with respect to the sale of such securities shall have become effective under the Securities Act and such securities shall have been sold, transferred, disposed of or exchanged in accordance with such Registration Statement; (b) such securities shall have been otherwise transferred, new certificates for such securities not bearing a legend restricting further transfer shall have been delivered by the Company and subsequent public distribution of such securities shall not require registration under the Securities Act; (c) such securities shall have ceased to be outstanding; (d) such securities have been sold to, or through, a broker, dealer or underwriter in a public distribution or other public securities transaction; or (e) such securities (other than with respect to the Founder Registrable Securities or the PAR Registrable Securities) shall be eligible for sale pursuant to Rule 144 (or any similar rule or regulation then in force).

“Registration Expenses” means all expenses incurred by the Company in complying with Sections 1.2 and 1.3 hereof, including, without limitation, all registration and filing fees, printing expenses, fees and disbursements of counsel for the Company, state “blue sky” fees and expenses, and accountants’ expenses but excluding any commissions or other fees of any broker, dealer or underwriter incurred in connection with a sale of Registrable Securities and any taxes applicable to any Holder with respect to any transfer or sale of Registrable Securities.

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“Registration Statement” means any registration statement that covers the Registrable Securities pursuant to the provisions of this Agreement, including the Prospectus included in such registration statement, amendments (including post-effective amendments) and supplements to such registration statement, and all exhibits to and all materials incorporated by reference in such registration statement.

“Resale Shelf Registration Statement” has the meaning specified in Section 1.2(a).

“Rule 144” means Rule 144 promulgated under the Securities Act.

“SEC” means the U.S. Securities and Exchange Commission.

“Securities Act” shall mean the Securities Act of 1933, as amended, and the rules and regulations promulgated by the SEC thereunder.

“Securities Exchange Act” shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated by the SEC thereunder.

“Underwritten Takedown” shall mean an underwritten public offering of Registrable Securities pursuant to the Resale Shelf Registration Statement as amended or supplemented.

## 1.2 Resale Shelf Registration Rights.

( a ) Registration Statement Covering Resale of Registrable Securities. The Company shall prepare and file or cause to be prepared and filed with the SEC, no later than seven (7) Business Days after the date of this Agreement, a Registration Statement for an offering to be made on a continuous basis pursuant to Rule 415 of the Securities Act registering the resale from time to time by Holders of all of the Registrable Securities held by the Holders (the “Resale Shelf Registration Statement”). The Resale Shelf Registration Statement shall be on Form S-3 or another appropriate form permitting registration of such Registrable Securities for resale by such Holders. The Company shall use reasonable best efforts to cause the Resale Shelf Registration Statement to be declared effective under the Securities Act on or prior to February 14, 2013, provided that if the Resale Registration Statement is not declared effective on or prior to February 14, 2013, then the Company shall use its reasonable best efforts to cause the Resale Registration Statement to be declared effective as soon as possible thereafter and in any event within seventy-five (75) days after the date of this Agreement, and to keep the Resale Shelf Registration Statement effective under the Securities Act at all times until the expiration of the Effectiveness Period.

( b ) Notification and Distribution of Materials. The Company shall notify the Holders in writing of the effectiveness of the Resale Shelf Registration Statement and shall furnish to the Holders, without charge, such number of copies of the Resale Shelf Registration Statement (including any amendments, supplements and exhibits), the Prospectus contained therein (including each preliminary prospectus and all related amendments and supplements) and any documents incorporated by reference in the Resale Shelf Registration Statement or such other documents as the Holders may reasonably request in order to facilitate the sale of the Registrable Securities in the manner described in the Resale Shelf Registration Statement.

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(c) Amendments and Supplements. Subject to the provisions of Section 1.2(a) above, the Company shall promptly prepare and file with the SEC from time to time such amendments and supplements to the Resale Shelf Registration Statement and Prospectus used in connection therewith as may be necessary to keep the Resale Shelf Registration Statement effective and to comply with the provisions of the Securities Act with respect to the disposition of all the Registrable Securities during the Effectiveness Period.

(d) Notice of Certain Events. The Company shall promptly notify the Holders in writing of any request by the SEC for any amendment or supplement to, or additional information in connection with, the Resale Shelf Registration Statement required to be prepared and filed hereunder (or Prospectus relating thereto). The Company shall promptly notify each Holder in writing of the filing of the Resale Shelf Registration Statement or any Prospectus, amendment or supplement related thereto or any post-effective amendment to the Resale Shelf Registration Statement and the effectiveness of any post-effective amendment.

(e) Underwritten Takedown. The Company shall only be required to effectuate one Underwritten Takedown within any six-month period, which offering may be requested by either (i) holders of a majority in interest of the Founder Registrable Securities, (ii) holders of a majority in interest of the PAR Registrable Securities or (iii) Holders then holding at least 10,000,000 shares of Registrable Securities (subject to appropriate adjustment in the event of any stock splits, stock dividends, reclassifications or the like); provided that the estimated market value of the Registrable Securities to be so registered is at least \$10,000,000 in the aggregate. In connection with any such Underwritten Takedown:

(i) If the Company shall receive a request from Holders then holding at least 10,000,000 shares of Registrable Securities (subject to appropriate adjustment in the event of any stock splits, stock dividends, reclassifications or the like) (the requesting Holder(s) shall be referred to herein as the “Requesting Holder”) that the Company effect the Underwritten Takedown of all or any portion of the Requesting Holder’s Registrable Securities, and specifying the intended method of disposition thereof, then the Company shall promptly give notice of such requested Underwritten Takedown (each such request shall be referred to herein as a “Demand Takedown”) at least 10 Business Days prior to the anticipated filing date of the prospectus or supplement relating to such Demand Takedown to the other Holders and thereupon shall use its reasonable best efforts to effect, as expeditiously as possible, the offering in such Underwritten Takedown of:

(A) subject to the restrictions set forth in Section 1.2(e)(iii), all Registrable Securities for which the Requesting Holder has requested such offering under Section 1.2(e)(i), and

(B) subject to the restrictions set forth in Section 1.2(e)(iii), all other Registrable Securities that any Holders (all such Holders, together with the Requesting Holder, the “Selling Holders”) have requested the Company to offer by request received by the Company within seven Business Days after such Holders receive the Company’s notice of the Demand Takedown, all to the extent necessary to permit the disposition (in accordance with the intended methods thereof as aforesaid) of the Registrable Securities so to be offered.

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(ii) Promptly after the expiration of the seven-Business Day-period referred to in Section 1.2(e)(i)(B), the Company will notify all Selling Holders of the identities of the other Selling Holders and the number of shares of Registrable Securities requested to be included therein.

(iii) If the managing underwriter in an Underwritten Takedown advises the Company and the Requesting Holder that, in its view, the number of shares of Registrable Securities requested to be included in such underwritten offering exceeds the largest number of shares that can be sold without having an adverse effect on such offering, including the price at which such shares can be sold (the “Maximum Offering Size”), the Company shall include in such underwritten offering, up to the Maximum Offering Size, Registrable Securities requested to be included in such Underwritten Takedown by all Selling Holders and allocated pro rata among such Selling Holders on the basis of the relative number of Registrable Securities held by each such Selling Holder at such time (it being understood that for the purposes of calculating the relative number of Registrable Securities held by any Selling Holder, in the event such Selling Holder owns any security of the Company that may be converted, exercised or exchanged into Registrable Securities, the relative number of Registrable Securities held by such Selling Holder shall be determined as if such Selling Holder exercised such equity security on a cashless exercise basis).

( f ) Selection of Underwriters. Selling Holders holding a majority of the Registrable Securities requested to be sold in an Underwritten Takedown shall have the right to select an underwriter or underwriters in connection with such Underwritten Takedown, which underwriter or underwriters shall be reasonably acceptable to the Company. In connection with an Underwritten Takedown, the Company shall enter into customary agreements (including an underwriting agreement in customary form) and take such other actions as are reasonably required in order to expedite or facilitate the disposition of the Registrable Securities in such Underwritten Takedown, including, if necessary, the engagement of a “qualified independent underwriter” in connection with the qualification of the underwriting arrangements with the Financial Industry Regulatory Authority, Inc.

1.3 Piggyback Rights. If the Company proposes to register any of its shares of Common Stock (other than any registration for the account of the Company of securities issued pursuant to any employee benefit plan or in any acquisition by the Company), the Company will include in such registration all Registrable Securities held by the Holders requested to be so included; provided, however, that if, in the case of an underwritten offering, the managing underwriter informs the Company that the number of shares held by the Holders requested to be included exceeds the amount which can be sold in such offering without adversely affecting the distribution of the shares being offered, the Company shall include, first, all of the shares the Company has proposed to register; second, as many of the Registrable Securities (pro rata based on the number of Registrable Securities that each Holder has requested be included in such underwritten offering and the aggregate number of Registrable Securities that the Holders have requested to be included in such underwritten offering) as can be included without adversely affecting such distribution; and, third, any other shares of Common Stock proposed to be included in such offering; provided, however, that in no event may less than one-third of the total number of shares of Common Stock to be included in such underwritten offering be made available for Registrable Securities.

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1.4 Expenses of Registration. All Registration Expenses incurred in connection with the performance of the Company's obligations under Sections 1.2 and 1.3 shall be borne by the Company.

1.5 Registration Procedures. The Company shall keep each Holder advised in writing as to the initiation of the registrations described in Sections 1.2 and 1.3 and as to the completion thereof. At its expense the Company shall:

(a) upon written request, before filing any Registration Statement or Prospectus or any amendments or supplements thereto with the SEC, furnish to the Holders copies of all such documents proposed to be filed and use reasonable efforts to reflect in each such document when so filed with the SEC such comments as the Holders reasonably shall propose within one Business Day of the delivery of such copies to the Holders;

(b) subject to Section 1.5(h), prepare and file with the SEC such amendments and post-effective amendments to each Registration Statement as may be necessary to keep such Registration Statement continuously effective for the Effectiveness Period; cause the related Prospectus to be supplemented by any required Prospectus supplement, and as so supplemented to be filed pursuant to Rule 424 (or any similar provisions then in force) under the Securities Act; and use reasonable efforts to comply with the provisions of the Securities Act applicable to it;

(c) prior to any public offering of Registrable Securities, use its best efforts to (i) register or qualify the Registrable Securities covered by the Registration Statement under such securities or "blue sky" laws of such jurisdictions in the United States as the Holders of Registrable Securities included in such Registration Statement (in light of their intended plan of distribution) may request and (ii) take such action necessary to cause such Registrable Securities covered by the Registration Statement to be registered with or approved by such other governmental authorities as may be necessary by virtue of the business and operations of the Company and do any and all other acts and things that may be necessary or advisable to enable the Holders of Registrable Securities included in such Registration Statement to consummate the disposition of such Registrable Securities in such jurisdictions; provided, however, that the Company shall not be required to qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify or take any action to which it would be subject to general service of process or taxation in any such jurisdiction where it is not then otherwise so subject;

(d) cause all such Registrable Securities registered pursuant hereto to be listed on each securities exchange or over-the-counter market on which similar securities issued by the Company are then listed or, if no securities are then listed, on the NASDAQ Stock Market Inc.'s Global Market;

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(e) provide a transfer agent and registrar for all such Registrable Securities no later than the effective date of such Registration Statement;

(f) as promptly as reasonably practicable, but within three (3) Business Days in any event, give notice to the Holders (1) when any Prospectus, Prospectus supplement, Registration Statement or post-effective amendment to a Registration Statement has been filed with the SEC and, with respect to a Registration Statement or any post-effective amendment, when the same has been declared effective (provided, however, that the Company shall not be required by this clause (1) to notify the Holders of the filing of a Prospectus supplement that does nothing more substantive than name one or more Holders as selling security holders), and (2) of any request, following the effectiveness of a Registration Statement under the Securities Act, by the SEC or any other federal or state governmental authority for amendments or supplements to such Registration Statement or related Prospectus or for additional information;

(g) give notice to the Holders within one (1) Business Day following notice to the Company (1) of the issuance by the SEC or any other federal or state governmental authority of any stop order or injunction suspending or enjoining the use of any Prospectus or the effectiveness of a Registration Statement or the initiation or threatening of any proceedings for that purpose, (2) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose, and (3) of the happening of any event that makes any statement made in a Registration Statement or the related Prospectus untrue in any material respect or that requires changes in order to make the statements therein not misleading;

(h) prepare and file a post-effective amendment to such Registration Statement or a supplement to the related Prospectus or any document incorporated therein by reference, or file any other required document that would be incorporated by reference into such Registration Statement and Prospectus, so that such Registration Statement does not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and that such Prospectus does not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and, in the case of a post-effective amendment to a Registration Statement, subject to the next sentence, use commercially reasonable efforts to cause it to be declared effective as promptly as is reasonably practicable, and give notice to the Holders listed as selling security holders in such Prospectus that the availability of the Registration Statement is suspended (a “Deferral Notice”) and, upon receipt of any Deferral Notice, each such Holder agrees not to sell any Registrable Securities pursuant to the Registration Statement until such Holder’s receipt of copies of the supplemented or amended Prospectus or until it is advised in writing by the Company that the Prospectus may be used, and has received copies of any additional or supplemental filings that are incorporated or deemed incorporated by reference in such Prospectus. The Company shall use its reasonable best efforts to obtain the withdrawal of any order suspending the effectiveness of the Registration Statement as promptly as possible (and promptly notify in writing each Holder covered by such Registration Statement of the withdrawal of any such order), except that if in the good faith judgment of the Company public disclosure of a material fact or event would be prejudicial to or contrary to the interests of the Company, the Company may, upon giving prompt written notice to the Holders, delay such action for the shortest period of time, but in no event more than thirty (30) days, determined by the Company to be necessary for such purpose;

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(i) in the event of any underwritten public offering of Registrable Securities, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing underwriter(s) of such offering. Each Holder participating in such underwriting shall also enter into and perform its obligations under such an underwriting agreement. The Company shall, if requested by the managing underwriter or underwriters or any holder of Registrable Securities included in such offering, promptly incorporate in a prospectus supplement or post-effective amendment such information as such managing underwriter or underwriters or any holder of Registrable Securities reasonably requests to be included therein, and which is reasonably related to the offering of such Registrable Securities, including, without limitation, with respect to the Registrable Securities being sold by such Holder to such underwriter or underwriters, the purchase price being paid therefor by such underwriter or underwriters and any other terms of an underwritten offering of the Registrable Securities to be sold in such offering, and the Company shall promptly make all required filings of such prospectus supplement or post-effective amendment;

(j) furnish to each holder of Registrable Securities included in any Registration Statement a signed counterpart, addressed to such holder, of (1) any opinion of counsel to the Company delivered to any underwriter dated the effective date of the Registration Statement or, in the event of an underwritten offering, the date of the closing under the applicable underwriting agreement, in customary form, scope, and substance, at a minimum to the effect that the Registration Statement has been declared effective and that no stop order is in effect, which counsel and opinions shall be reasonably satisfactory to a majority of the Holders and underwriter or underwriters, if any, and their respective counsel and (2) any comfort letter from the Company's independent public accountants delivered to any underwriter in customary form and covering such matters of the type customarily covered by comfort letters as the managing underwriter or underwriters reasonably request. In the event no legal opinion is delivered to any underwriter, the Company shall furnish to each holder of Registrable Securities included in such Registration Statement, at any time that such holder elects to use a Prospectus, an opinion of counsel to the Company to the effect that the Registration Statement containing such Prospectus has been declared effective and that no stop order is in effect;

(k) fully cooperate, and cause each of its principal executive officer, principal financial officer, principal accounting officer, and all other officers and members of the management to fully cooperate in any offering of Registrable Securities hereunder, which cooperation shall include, without limitation, the preparation of the Registration Statement with respect to such offering and all other offering materials and related documents, and participation in meetings with underwriters, attorneys, accountants and potential stockholders;

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(l) make available for inspection by the holders of Registrable Securities included in such Registration Statement, any underwriter participating in any disposition pursuant to such Registration Statement and any attorney, accountant, or other professional retained by any holder of Registrable Securities included in such Registration Statement or any underwriter, all financial and other records, pertinent corporate documents and properties of the Company, and cause all of the Company's officers, directors, and employees and the independent public accountants who have certified its financial statements to make themselves available to discuss the business of the Company and to supply all information reasonably requested by any such holder, underwriter, attorney, accountant or agent in connection with such Registration Statement as shall be necessary to enable them to exercise their due diligence responsibility, and cause the Company's officers, directors, and employees to supply all information requested by any of them in connection with such Registration Statement;

(m) cooperate with each holder of Registrable Securities and each underwriter or agent, if any, participating in the disposition of such Registrable Securities and their respective counsel in connection with any filings required to be made with the Financial Industry Regulatory Authority, Inc.;

(n) in the event of any underwritten public offering of Registrable Securities, cause senior executive officers of the Company to participate in customary "road show" presentations that may be reasonably requested by the managing underwriter in any such underwritten offering and otherwise to facilitate, cooperate with, and participate in each proposed offering contemplated herein and customary selling efforts related thereto; and

(o) otherwise, in good faith, cooperate reasonably with, and take such customary actions as may reasonably be requested by the Holders, in connection with such registration.

#### 1.6 Indemnification.

(a) The Company agrees to indemnify and hold harmless each Holder, the partners, members, officers, directors, stockholders, legal counsel and accountants of each Holder and any other person, if any, who controls each Holder within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act against any and all loss, liability, claim, damage and expense whatsoever, as incurred, arising out of any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement (or any amendment thereto), or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading or arising out of any untrue statement or alleged untrue statement of a material fact included in any preliminary prospectus or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that this Section 1.6 shall not apply to any loss, liability, claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with written information about any Holder furnished to the Company by or on behalf of such Holder expressly for use in the Registration Statement (or any amendment thereto), or any preliminary prospectus or the Prospectus (or any amendment or supplement thereto).

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(b) Each Holder agrees to indemnify and hold harmless the Company, and each person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act severally and not jointly against any and all loss, liability, claim, damage and expense described in the indemnity contained in Section 1.6(a), as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendment thereto) or any preliminary prospectus or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with written information about such Holder furnished to the Company by or on behalf of such Holder expressly for use in the Registration Statement (or any amendment thereto) or the Prospectus (or any amendment or supplement thereto).

(c) Each party entitled to indemnification under this Section 1.6 (the “Indemnified Party”) shall give notice to the party required to provide indemnification (the “Indemnifying Party”) promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought and shall permit the Indemnifying Party to assume the defense of any such claim or any litigation resulting therefrom, provided that counsel for the Indemnifying Party, who shall conduct the defense of such claim or any litigation resulting therefrom, shall be approved by the Indemnified Party (whose approval shall not be withheld unreasonably), and the Indemnified Party may participate in such defense at such Indemnified Party’s expense. The failure of any Indemnified Party to give notice as provided herein shall relieve the Indemnifying Party of its obligations under this Section 1.6 only if such failure is materially prejudicial to the ability of the Indemnifying Party to defend such action, and such failure shall in no event relieve the Indemnifying Party of any liability that he or it may have to any Indemnified Party otherwise than under this Section 1.6. No Indemnifying Party, in the defense of any such claim or litigation, shall, except with the consent of each Indemnified Party, consent to entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability with respect to such claim or litigation.

(d) If the indemnification provided under this Section 1.6 hereof from the Indemnifying Party is unavailable or insufficient to hold harmless an Indemnified Party in respect of any loss, liability, claim, damage and expense referred to herein, then the Indemnifying Party, in lieu of indemnifying the Indemnified Party, shall contribute to the amount paid or payable by the Indemnified Party as a result of such loss, liability, claim, damage and expense in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and the Indemnified Party, as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact, was made by, or relates to information supplied by, such Indemnifying Party or Indemnified Party, and the Indemnifying Party’s and Indemnified Party’s relative intent, knowledge, access to information and opportunity to correct or prevent such action; provided, however, that the liability of any Holder under Section 1.6(b) or this Section 1.6(d) shall be limited to the amount of the net proceeds received by such Holder in such offering giving rise to such liability. The amount paid or payable by a party as a result of the losses or other liabilities referred to above shall be deemed to include, subject to the limitations set forth in Sections 1.6(a), 1.6(b) and 1.6(c) above, any legal or other fees, charges or expenses reasonably incurred by such party in connection with any investigation or proceeding. The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 1.6(d) were determined by pro rata allocation or by any other method of allocation, which does not take account of the equitable considerations referred to in this Section 1.6(d). No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution pursuant to this Section 1.6(d) from any person who was not guilty of such fraudulent misrepresentation.

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(e) The indemnification provided for under this Agreement shall remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Party or any officer, director or controlling person of such indemnified party and shall survive the transfer of securities by such Indemnified Party.

1.7 Information by Holders and Other Shareholders. Each Holder shall furnish to the Company such information regarding such Holder and the distribution proposed by such Holder as the Company may reasonably request in writing and as shall be required in connection with any Registration Statement.

1.8 Rule 144 Reporting. With a view to making available the benefits of certain rules and regulations of the SEC that may permit the sale of the Common Stock to the public without registration, the Company shall for so long as Registrable Securities are outstanding:

(a) make and keep public information available as those terms are understood and defined in Rule 144;

(b) file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Securities Exchange Act; and

(c) so long as any Holder owns any securities constituting or representing Registrable Securities, furnish to such Holder upon request a written statement by the Company as to its compliance with the reporting requirements of Rule 144, and of the Securities Act and the Securities Exchange Act.

1.9 Removal of Legends. If requested by a Holder, the Company shall cooperate with such Holder and the Company's transfer agent to facilitate the timely preparation and delivery of certificates (or execution of a book entry transfer) representing Registrable Securities to be delivered to a transferee pursuant to the Registration Statement, which certificates or transfer shall be free, to the extent permitted by applicable law and permissible under the terms of the Merger Agreement, Stock Purchase Agreement, Equity Backstop Agreement or Additional Backstop Agreement, as applicable, of all restrictive legends, and to enable such Registrable Securities to be in such denominations and registered in such names as any such Holders may reasonably request.

## 2. MISCELLANEOUS.

2 . 1 Notices. All notices and other communications provided for or permitted hereunder shall be made in writing by hand delivery, by electronic facsimile transfer or by courier guaranteeing overnight delivery, and shall be deemed given (i) when made, if made by hand delivery, (ii) upon confirmation, if made by electronic facsimile transfer, (iii) one (1) Business Day after being deposited with such courier, if made by overnight courier, to the parties as follows:

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- (a) if to a Holder, at the address for such Holder then appearing in the books of the Company;
- (b) If to the Company, to:

Global Eagle Entertainment Inc.  
10900 Wilshire Blvd., Suite 1500  
Los Angeles, CA 90024  
Facsimile: (310) 209-7225  
Attention: General Counsel

With a copy to:

McDermott Will & Emery LLP  
340 Madison Avenue  
New York, NY 10173  
Facsimile: (212) 547-5444  
Attention: Joel Rubinstein

2.2 Governing Law. This Agreement shall be governed and construed under the laws of the State of Delaware, without regard to conflicts of laws and principles thereof.

2.3 Successors and Assigns; Third Party Beneficiaries; Transfer of Registration Rights. The rights and obligations set forth in this Agreement shall inure to the benefit of and be binding upon (i) the parties hereto and their respective legal representatives, successors and assigns and (ii) the recipients of Common Stock pursuant to the Merger Agreement (other than PAR) as intended third party beneficiaries ("Third Party Beneficiaries") hereof. The rights of a Holder under this Agreement may be transferred by a Holder to a transferee who acquires or holds Registrable Securities equal to at least five percent (5%) of the Registrable Securities held by the Holders on the date hereof; provided, however, that such transferee has executed and delivered to the Company a properly completed agreement to be bound by the terms of this Agreement substantially in the form attached hereto as Exhibit A (an "Addendum Agreement"), and the transferor shall have delivered to the Company, no later than thirty (30) days following the date of the transfer, written notification of such transfer setting forth the name of the transferor, the name and address of the transferee, and the number of Registrable Securities so transferred; and provided, further, however, that PAR may transfer any of its rights and obligations hereunder to any investment fund now or hereafter existing to which PAR transfers any Registrable Securities without regard to the five percent (5%) limitation contained in this Section 2.3 provided that such investment fund is controlled by one or more general partners or managing members of, or shares the same management company with, PAR, and any securities so transferred shall continue to be Registrable Securities hereunder following any such transfer. The execution of an Addendum Agreement shall constitute a permitted amendment of this Agreement.

2.4 Captions. The captions of the several sections and paragraphs of this Agreement are included for reference only and shall not limit or otherwise affect the meaning thereof.

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2.5 Amendments. Upon the written consent of the Company and the Holders of at least fifty-one percent (51%) of the Registrable Securities at the time in question, compliance with any of the provisions, covenants and conditions set forth in this Agreement may be waived, or any of such provisions, covenants or conditions may be amended or modified; provided, however, that notwithstanding the foregoing, any amendment hereto or waiver hereof that adversely affects one Holder, solely in its capacity as a holder of the shares of capital stock of the Company, in a manner that is materially different from the other Holders (in such capacity) shall require the consent of the Holder so affected. No course of dealing between any Holder or the Company and any other party hereto or any failure or delay on the part of a Holder or the Company in exercising any rights or remedies under this Agreement shall operate as a waiver of any rights or remedies of any Holder or the Company. No single or partial exercise of any rights or remedies under this Agreement by a party shall operate as a waiver or preclude the exercise of any other rights or remedies hereunder or thereunder by such party. For the avoidance of doubt and notwithstanding anything to the contrary contained herein, the parties hereto reserve the right to amend or terminate this agreement without the consent of any Third Party Beneficiaries.

2.6 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which taken together shall constitute but one and the same instrument.

2.7 Severability. If any term, provision, covenant or restriction of this Agreement is held to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, and the parties hereto shall use their best efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction, it being intended that all of the rights and privileges of the parties hereto shall be enforceable to the fullest extent permitted by law.

2.8 Entire Agreement. This Agreement is intended by the parties hereto as a final expression of their agreement and is intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein and the registration rights granted by the Company with respect to the Registrable Securities.

2.9 Other Registration Rights. The Company represents and warrants that no person, other than a Holder of Registrable Securities, has any right to require the Company to register any securities of the Company for sale or to include such securities of the Company in any registration filed by the Company for the sale of securities for its own account or for the account of any other person. This Agreement supersedes any other registration rights agreement or similar agreement with any Holder, including, without limitation, the Prior Agreement, and the Prior Agreement is hereby terminated. After the date of this Agreement, the Company shall not enter into any agreement with any holder or prospective holder of any securities of the Company that would grant such holder registration rights on a parity with or senior to those granted to the Holders hereunder without the prior written consent of the Holders of at least fifty-one percent (51%) of the Registrable Securities then outstanding.

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2.10 Further Assurances. At any time or from time to time after the date hereof, the parties hereto agree to cooperate with each other, and at the request of any other party, to execute and deliver any further instruments or documents and to take all such further action as the other party may reasonably request in order to evidence or effect the consummation of the transactions contemplated hereby and to otherwise carry out the intent of the parties hereunder.

**[SIGNATURES APPEAR ON SUCCEEDING PAGES]**

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IN WITNESS WHEREOF, the parties have executed this Amended and Restated Registration Rights Agreement on the date first written above.

**COMPANY:**

GLOBAL EAGLE ENTERTAINMENT INC.

By: /s/ James A. Graf

Name: James A. Graf

Title: Vice President

**HOLDERS:**

GLOBAL EAGLE ACQUISITION LLC

By: /s/ James A. Graf

Name: James A. Graf

Title: Vice President, CFO, Treasurer and  
Secretary

/s/ Harry E. Sloan

Name: Harry E. Sloan

/s/ Jeffrey Sagansky

Name: Jeffrey Sagansky

/s/ James A. Graf

Name: James A. Graf

/s/ James McNamara

Name: James McNamara

/s/ Dennis Miller

Name: Dennis Miller

[Signature Page to Amended and Restated Registration Rights Agreement]

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/s/ Cole A. Sirucek

Name: Cole A. Sirucek

PAR INVESTMENT PARTNERS, L.P.

By: PAR Group, L.P., its general partner

By: PAR Capital Management, Inc., its general partner

By: /s/ Steven M. Smith

Name: Steven M. Smith

Title: Chief Operating Officer and General Counsel

PUTNAM CAPITAL SPECTRUM FUND

PUTNAM EQUITY SPECTRUM FUND

By: Putnam Investment Management, LLC

By: /s/ David Glancy

Name: David Glancy

Title: Portfolio Manager

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Exhibit A

Addendum Agreement

This Addendum Agreement (“Addendum Agreement”) is executed on \_\_\_\_\_, 20\_\_, by the undersigned (the “New Holder”) pursuant to the terms of that certain Amended and Restated Registration Rights Agreement dated as of [\_\_\_\_], 2013 (the “Agreement”), by and among the Company and the Holders identified therein, as such Agreement may be amended, supplemented or otherwise modified from time to time. Capitalized terms used but not defined in this Addendum Agreement shall have the respective meanings ascribed to such terms in the Agreement. By the execution of this Addendum Agreement, the New Holder agrees as follows:

- 1.1 Acknowledgment. New Holder acknowledges that New Holder is acquiring certain shares of the Common Stock of the Company (the “Stock”) [or other equity securities of the Company that are convertible, exercisable or exchangeable for shares of Common Stock of the Company (the “Convertible Securities”)] as a transferee of such Stock [or Convertible Securities] from a party in such party’s capacity as a “Holder” under the Agreement, and after such transfer, New Holder shall be considered a “Holder” for all purposes under the Agreement.
- 1.2 Agreement. New Holder hereby (a) agrees that the Stock [or Convertible Securities] shall be bound by and subject to the terms of the Agreement and (b) adopts the Agreement with the same force and effect as if the New Holder were originally a party thereto.
- 1.3 Notice. Any notice required or permitted by the Agreement shall be given to New Holder at the address or facsimile number listed below New Holder’s signature below.

**NEW HOLDER:**

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

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

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

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

Address: \_\_\_\_\_

\_\_\_\_\_

Facsimile Number: \_\_\_\_\_

**ACCEPTED AND AGREED:**

**GLOBAL EAGLE ENTERTAINMENT INC.**

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

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

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

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**EXECUTIVE EMPLOYMENT AGREEMENT**

This **EXECUTIVE EMPLOYMENT AGREEMENT** (this "Agreement") is made as of January 31, 2013 (the "Effective Date"), by and between Global Eagle Entertainment Inc., a Delaware corporation (the "Company"), and John LaValle (the "Executive"). The Company and the Executive are sometimes hereinafter referred to individually as a "Party" and together as "Parties."

**WHEREAS**, the Executive has substantial business knowledge and expertise and the Company desires to retain the knowledge, expertise and experience of the Executive to assist in the operations and management of the Company;

**WHEREAS**, the Executive acknowledges that the Company expends substantial resources establishing long term relationships with its customers, clients and suppliers and the Executive will from time to time during the course of his employment be exposed to such customers, clients and suppliers and prospective customers, clients and suppliers; and

**WHEREAS**, all of the foregoing recitals are incorporated into the covenants of this Agreement as if set forth herein at length.

**NOW THEREFORE**, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, agree as follows:

1. Employment. The Company will employ the Executive, and the Executive hereby accepts employment with the Company, upon the terms and conditions set forth in this Agreement, on an "at will" basis, which means that either the Company or Executive may terminate the Executive's employment with the Company at any time and for any or no reason. The period commencing with the Effective Date and ending on the effective date of any termination of employment hereunder is referred to herein as the "Employment Period."

2. Position and Duties.

(a) During the Employment Period, the Executive will serve as the Chief Executive Officer of the Company and will have the normal duties, responsibilities and authority of this office, all subject to the overview and authority of the Board (as defined in Section 9 below) to expand such duties, responsibilities and authority, including without limitation appointing the Executive as an officer of one or more Subsidiaries.

(b) During the Employment Period, the Executive will report directly to the Chairman of the Board and will devote his best efforts and his full business time and attention (except for permitted vacation periods and reasonable periods of illness or other incapacity) to the business and affairs of the Company and its Subsidiaries, and to the performance of such duties as may be assigned to him from time to time by the Company. The Executive will act in the best interest of the Company and its Subsidiaries and, except as may be specifically permitted by the Board, will not engage in any other business activity. The Executive will perform his duties, responsibilities and functions on behalf of the Company and its Subsidiaries hereunder to the best of his abilities in a diligent, trustworthy, businesslike and efficient manner.

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3. Compensation.

(a) During the Employment Period, the Executive's base salary will be \$450,000.00 per annum (as adjusted from time to time, the "Base Salary"). The Executive's Base Salary will be paid by the Company in regular installments in accordance with the Company's general payroll practices and may be increased annually in the sole discretion of the Board.

(b) In addition to the Base Salary, during the Employment Period, the Executive shall be entitled, upon achieving individual and Company performance goals to be determined by the Board in its sole discretion, to an annual bonus in an amount determined by the Board in its sole discretion. Executive's target bonus for each year shall equal 50% of the Executive's Base Salary, and will not exceed 100% of the Executive's Base Salary. The Board shall determine the objectives for each fiscal year within the first 30 days of such year. Such bonus, if any, shall be paid to the Executive by March 15th of the year following the year in which the bonus was earned. For the first year of the Executive's employment, the Executive's bonus shall be prorated based on his start date. The Company reserves the right, but is not required, to adopt a bonus plan, pursuant to the terms of which the above bonus is provided, including a bonus plan that is intended to award performance-based compensation that is exempt from the deduction limit under Section 162(m) of the Internal Revenue Code.

(c) Subject to the terms and conditions of an Incentive Stock Option Agreement and a Nonstatutory Stock Option Agreement, each dated as of the date hereof between the Company and the Executive, the Company shall grant to the Executive options, pursuant to the Company's 2013 Equity Incentive Plan (the "Plan"), to purchase an aggregate of 750,000 shares of common stock of the Company, par value \$0.0001 per share. Such options shall vest as follows: (i) 25% on the first anniversary of the date of grant and (ii) 75% ratably over the next three years on a monthly basis until fully vested.

(d) The Company may withhold from all salary, bonus or other benefits payable under this Agreement all federal, state, city or other taxes as shall be required pursuant to any law or governmental regulation or ruling.

4 . Benefits. In addition to the Base Salary and other compensation provided for in Section 3 above, the Executive will be entitled to the following benefits during the Employment Period:

(a) The Executive will be entitled to accrue fifteen (15) days of vacation per year which shall accrue throughout the year. Executive may accrue a maximum cap of two (2) times the annual vacation accrual. Once the accrual cap has been reached, vacation time will no longer accrue until some of the previously accrued vacation is taken. If the Executive resigns or his employment is terminated for any reason, the Executive will be paid for accrued but unused vacation computed at the rate of pay earned upon separation, subject in all instances to the accrual cap set forth above. The Executive will not accrue vacation during unpaid leaves of absences. Vacation accrual will recommence when the Executive returns to work pursuant to the terms of this Agreement.

(b) The Executive will be entitled to participate in the Company's health and welfare benefit programs for which other executive level employees of the Company are generally eligible, subject to any eligibility requirements of such plans and programs.

(c) The Company will reimburse the Executive for all reasonable expenses incurred by him in the course of performing his duties and responsibilities under this Agreement which are consistent with the Company's policies in effect from time to time with respect to travel, entertainment and other business expenses, subject to the Company's requirements with respect to reporting and documentation of such expenses.

5. Termination.

(a) The Executive's employment with the Company and the Employment Period will end on the earlier of (i) the Executive's death or mental or physical disability (considering reasonable accommodation) or incapacity (as determined by a physician selected by the Company in its good faith judgment) for one hundred twenty (120) consecutive days or one hundred eighty (180) days out of any three hundred sixty (360) day period, (ii) the Executive's resignation or (iii) termination by the Company at any time with or without Cause (as defined below). Except as otherwise provided herein, any termination of the Employment Period by the Company or by the Executive will be effective as specified in a written notice from the terminating Party to the other Party.

(b) If, during the Employment Period, the Executive's employment with the Company is terminated pursuant to Section 5(a)(i) above, or is terminated by the Company with Cause, or if the Executive resigns for any reason other than Good Reason (as defined below), then the Executive will only be entitled to receive his Base Salary through the date of termination and will not be entitled to any other salary, bonus, severance, compensation or benefits from the Company or any of its Subsidiaries or affiliates thereafter, other than those expressly required under applicable law (such as the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA")); provided, however, that with respect to termination by the Company for Cause pursuant to clause (viii) of the definition of Cause, if (i) within twenty-one (21) days of his termination the Executive executes a general release in favor of the Company, its Subsidiaries and their affiliates in the form of Exhibit A hereto and such release becomes effective and is not revoked, and (ii) the Executive complies with the terms of this Agreement (other than provision 2(c)), the Executive will be entitled to receive his Base Salary and continuance of health and welfare benefits (in all cases of continuance of health and welfare benefits, via reimbursement of the Company portion of COBRA and related premiums) for a period equal to six (6) months after the date of termination.

(c) If (i) the Executive's employment with the Company is terminated by the Company without Cause or by the Executive with Good Reason, during the Employment Period, and, in either case, (ii) within twenty-one (21) days of his termination the Executive executes a general release in favor of the Company, its Subsidiaries and their affiliates in the form of Exhibit A hereto and such release becomes effective and is not revoked, and (iii) the Executive complies with the terms of this Agreement, the Executive will be entitled to receive his Base Salary and continuation of health and welfare benefits for a period equal to one (1) year after the date of termination. The severance payments payable to the Executive pursuant to this clause (c) of this Section 5 will be paid at the time and in the manner set forth in Section 3 hereof. Notwithstanding the foregoing, for so long as the Company is a "public company" within the meaning of Internal Revenue Code Section 409A, any amounts payable to the Executive during the first six (6) months and one (1) day following the date of termination pursuant to this Section 5(c) will be deferred until the date which is six (6) months and one (1) day following such termination, and if such payments are required to be so deferred the first payment will be in an amount equal to the total amount to which the Executive would otherwise have been entitled during the period following the date of termination of employment if deferral had not been required.

(d) If (i) at any time during the term of this Agreement there is a Change of Control (as defined in the Plan) and within one (1) year of such Change of Control, the Executive elects to terminate this Agreement for Good Reason or the Company elects to terminate this Agreement for any reason other than Cause, (ii) within twenty-one (21) days of his termination the Executive executes a general release in favor of the Company, its Subsidiaries and their affiliates in the form of Exhibit A hereto and such release becomes effective and is not revoked, and (iii) the Executive complies with the terms of this Agreement, the Executive shall be entitled to (x) receive his Base Salary and continuance of health and welfare benefits for a period equal to one (1) year after the date of termination, (y) acceleration of all of the Executive's unvested awards pursuant to any equity incentive plan grant made prior to the Executive's last day of employment with the Company, and (z) a period of six (6) months following the Executive's last day of employment with the Company to exercise all vested equity incentive awards (unless the period provided for under the applicable plan for the particular award would provide for a longer period of exercise following termination of employment in similar circumstances). Notwithstanding Section 5(c) above, if the Executive receives the payments provided for in this Section 5(d), the Executive is not entitled to any payments pursuant to Section 5(c).

(e) Except as otherwise expressly provided herein, all of the Executive's rights to salary, bonuses, fringe benefits, severance and other compensation hereunder or under any policy or program of the Company which accrue or become payable on or after the termination of the Employment Period will cease upon such termination other than those expressly required under applicable law (such as COBRA).

(f) For purposes of this Agreement, "Cause" will mean (i) the commission of a felony or other crime involving moral turpitude or the commission of any other act or omission involving misappropriation, dishonesty, unethical business conduct, disloyalty, fraud or breach of fiduciary duty, (ii) reporting to work under the influence of alcohol, (iii) the use of illegal drugs (whether or not at the workplace) or other conduct, even if not in conjunction with his duties hereunder, which could reasonably be expected to, or which does, cause the Company or any of its Subsidiaries material public disgrace, disrepute or economic harm, (iv) repeated failure to perform duties as reasonably directed by the Chairman of the Board, (v) gross negligence or willful misconduct with respect to the Company or affiliates or in the performance of the Executive's duties hereunder, (vi) obtaining any personal profit not thoroughly disclosed to and approved by the Board in connection with any transaction entered into by, or on behalf of, the Company, its Subsidiaries or any of their affiliates or (vii) materially violating any of the terms of the Company's, its Subsidiaries' or any of their affiliates' rules or policies which, if curable, is not cured to the Board's satisfaction within fifteen (15) days after written notice thereof to the Executive, or any other breach of this Agreement or any other agreement between the Executive and the Company or any of its Subsidiaries which, if curable, is not cured to the Board's satisfaction within fifteen (15) days after written notice thereof to the Executive. For purposes of this Agreement, "Good Reason" shall mean (i) the Executive is assigned duties materially inconsistent with the Executive's position as set forth in Section 2(a) of this Agreement, provided that any such assignment of duties (x) shall only constitute "Good Reason" during the ninety (90) day period following the date of such assignment (after which it shall be deemed waived by the Executive if prior thereto the Executive has not exercised his right to resign for "Good Reason"), (y) shall not constitute "Good Reason" when it is an isolated action not taken in bad faith and that is remedied promptly after written notice thereof by the Executive to the Company, and (z) shall not constitute "Good Reason" if the Executive shall have consented to the performance thereof or (ii) any breach of a material term of this Agreement by the Company, which breach is not cured within thirty (30) days following written notice to the Company of such breach, or (iii) (iii) the Company requiring the Executive, without the Executive's prior consent, to be permanently based at any office located more than forty-five (45) miles from the Company's headquarters, excluding travel reasonably required in the performance of the Executive's duties hereunder and travel consistent with the Executive's activities prior to the Effective Date

6 . Confidentiality, Proprietary Information and Investment Assignment Agreement. Concurrently with or prior to the execution of this Agreement, the Executive shall have signed a Confidentiality, Proprietary Information and Invention Assignment Agreement in the form required to be executed by each employee of the Company.

7 . Return of Corporate Property. The Executive acknowledges and agrees that all notes, records, reports, sketches, plans, unpublished memoranda or other documents, whether in paper, electronic or other form (and all copies thereof), held by the Executive concerning any information relating to the business of the Company or any of its Subsidiaries, whether confidential or not, are the property of the Company. The Executive will deliver to the Company at the termination or expiration of the Employment Period, or at any other time the Company may request, all equipment, files, property, memoranda, notes, plans, records, reports, computer tapes, printouts and software and other documents and data (and all electronic, paper or other copies thereof) belonging to the Company or any of its Subsidiaries which includes, but is not limited to, any materials that contain, embody or relate to the confidential information, work product or the business of the Company or any of its Subsidiaries, which he may then possess or have under his control. The Executive will take any and all actions reasonably deemed necessary or appropriate by the Company from time to time in its sole discretion to ensure the continued confidentiality and protection of the confidential information.

8 . Executive's Representations. The Executive hereby represents and warrants to the Company that (i) he has entered into this Agreement of his own free will for no consideration other than as referred to herein, (ii) the execution, delivery and performance of this Agreement by the Executive does not and will not conflict with, breach, violate or cause a default under any contract, agreement, instrument, order, judgment or decree to which the Executive is a party or by which the Executive is bound, (iii) the Executive is not a party to or bound by any employment, non-competition, confidentiality or other similar agreement with any other Person and (iv) upon the execution and delivery of this Agreement by the Company, this Agreement will be the valid and binding obligation of the Executive, enforceable in accordance with its terms. The Executive hereby acknowledges and represents that the Executive has had the opportunity to consult with independent legal counsel regarding the Executive's rights and obligations under this Agreement and that the Executive fully understands the terms and conditions contained herein.

9. Definitions.

“Board” means the Board of Directors of the Company.

“Person” means any natural person, corporation, general partnership, limited partnership, limited liability company or partnership, proprietorship, other business organization, trust, union, association or governmental or regulatory entities, department, agency or authority.

“Subsidiaries” means any corporation, limited liability company or other entity of which the securities or other ownership interests having the voting power to elect a majority of the board of directors or other governing body are, at the time of determination, owned by the Company or any corporation or other entity of which the Company or one of their Subsidiaries serves as the managing member or in a similar capacity, in each case either directly or through one of more Subsidiaries.

10. Survival. Sections 5 through 23 will survive and continue in full force in accordance with their terms notwithstanding the termination of the Employment Period.

11. Notices. Any notice provided for in this Agreement will be in writing and will be either personally delivered, sent by reputable overnight courier service, sent by facsimile (with hard copy to follow by regular mail) or mailed by first class mail, return receipt requested, to the recipient at the address below indicated:

Notices to the Executive:

John La Valle  
171 Westbend Road  
Westlake Village, CA. 91362

Notices to the Company:

Global Eagle Entertainment Inc.  
c/o Row 44, Inc.  
4353 Park Terrace Drive, Suite 100  
Westlake Village, California 91361  
Attention: Global Eagle/General Counsel  
Fax: (818) 706-9431

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

McDermott Will & Emery LLP  
340 Madison Avenue  
New York, New York 10173  
Attn: Joel L. Rubinstein  
Fax: (646) 390-1209

or such other address or to the attention of such other person as the recipient Party will have specified by prior written notice to the sending Party. Any notice under this Agreement will be deemed to have been given when so delivered, sent or mailed.

12. Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or any action in any other jurisdiction, but this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

13. Complete Agreement. This Agreement, and any agreement entered into between the Executive, on the one hand, and the Company or any of its Subsidiaries, on the other hand on the date hereof with respect to confidentiality and invention assignment, officer and director indemnification and/or equity incentive awards granted to Executive, embodies the complete agreement and understanding among the Parties and supersedes and preempts any prior understandings, agreements or representations by or among the Executive, on the one hand, and the Company or any of its Subsidiaries, on the other hand, written or oral, with respect to Executive's employment with the Company. Upon the Effective Date, the Executive hereby releases and waives any claims or rights he may have under any prior agreement or understanding he may have with the Company or any of its Subsidiaries, affiliates or predecessors, including, but not limited to, any claim for severance or other benefits.

14. Counterparts. This Agreement may be executed in separate counterparts (including by facsimile and electronic signature pages), each of which is deemed to be an original and all of which taken together constitute one and the same agreement.

15. No Strict Construction. The parties hereto jointly participated in the negotiation and drafting of this Agreement. The language used in this Agreement will be deemed to be the language chosen by the parties hereto to express their collective mutual intent, this Agreement will be construed as if drafted jointly by the parties hereto, and no rule of strict construction will be applied against any Person.

16. Successors and Assigns. This Agreement is intended to bind and inure to the benefit of and be enforceable by the Executive, the Company and their respective heirs, successors and assigns. The Executive may not assign his rights or delegate his duties or obligations hereunder without the prior written consent of the Company. The Company may assign its rights and obligations hereunder, without the consent of, or notice to, the Executive, to any of the Company's affiliates or any Subsidiary of the Company or to any Person that acquires the Company or any portion of its business or its assets, in which case all references to the Company will refer to such assignee.

17. Choice of Law. THIS AGREEMENT, AND ALL ISSUES AND QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, ENFORCEMENT AND INTERPRETATION OF THIS AGREEMENT, WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF CALIFORNIA, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICT OF LAW RULES OR PROVISIONS (WHETHER OF THE STATE OF CALIFORNIA OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF CALIFORNIA.



18. Arbitration. Any and all claims or controversies arising out of or relating to the Executive's employment, the termination thereof, or otherwise arising between the Executive and the Company shall, in lieu of a jury or other civil trial, be settled by final and binding arbitration before a single arbitrator in Los Angeles, California, in accordance with then-current rules of the American Arbitration Association applicable to employment disputes. This agreement to arbitrate includes all claims whether arising in tort or contract and whether arising under statute or common law including, but not limited to, any claim of breach of contract, discrimination or harassment of any kind. The obligation to arbitrate such claims shall continue forever, and the arbitrator shall have jurisdiction to determine the arbitrability of any claim. The arbitrator shall have the authority to award any and all damages otherwise recoverable in a court of law. The arbitrator shall not have the authority to add to, subtract from or modify any of the terms of this Agreement. Judgment on any award rendered by the arbitrator may be entered and enforced by any court having jurisdiction thereof. The Executive will pay the then-current Superior Court of California filing fee towards the costs of the arbitration (i.e., filing fees, administration fees, and arbitrator fees), and each party shall be responsible for paying its own other costs for the arbitration, including, but not limited to, attorneys' fees, witness fees, transcript fees, or other litigation expenses. The Executive shall not be required to pay any type or amount of expense if such requirement would invalidate this agreement or would otherwise be contrary to the law as it exists at the time of the arbitration. The prevailing party in any arbitration shall be entitled to recover its reasonable attorney's fees and costs, where authorized by contract or statute. This section does not apply or restrict either the Company or the Executive from seeking equitable relief, including injunctive relief, from any court having competent jurisdiction for violating this Agreement or any applicable law.

19. Business Days. If any time period for giving notice or taking action hereunder expires on a day which is a Saturday, Sunday or legal holiday in the state in which the Company's chief-executive office is located, the time period shall automatically be extended to the business day immediately following such Saturday, Sunday or legal holiday.

20. Withholding; 280G. The Company and its Subsidiaries will be entitled to deduct or withhold from any amounts owing to the Executive any federal, state, local or foreign withholding taxes, excise tax, or employment taxes ("Taxes") imposed with respect to the Executive's compensation or other payments from the Company or any of its Subsidiaries or the Executive's ownership interest in the Company or any of its Subsidiaries or its parent (including, without limitation, wages, bonuses, dividends, the receipt or exercise of equity options and/or the receipt or vesting of restricted equity). In the event the Company or any of its Subsidiaries does not make such deductions or withholdings, the Executive will indemnify and hold harmless the Company and its Subsidiaries for any amounts paid with respect to any such Taxes (but not including any penalties or interest due thereon, all of which shall be the responsibility of the Company). Notwithstanding anything contained in this Agreement to the contrary to the extent that any of the payments and benefits provided for under this Agreement together with any payments or benefits under any other agreement or arrangement between the Company and the Executive (collectively, the "Payments") would constitute a "parachute payment" within the meaning of Section 280G of the Code, the amount of such Payments shall be reduced to the amount that would result in no portion of the Payments being subject to the excise tax imposed pursuant to Section 4999 of the Code.

2 1 . Corporate Opportunities. During the Employment Period, the Executive will submit to the Board all business, commercial and investment opportunities or offers presented to the Executive or of which the Executive becomes aware which relate to the business of the Company or its Subsidiaries as such business of the Company or its Subsidiaries exists at any time during the Employment Period (“Corporate Opportunities”). During the Employment Period, unless previously approved in writing by the Board, the Executive will not accept or pursue, directly or indirectly, any Corporate Opportunities on the Executive’s own behalf.

2 2 . Assistance in Proceedings. During the Employment Period and for one (1) year thereafter, the Executive will cooperate with the Company and its Subsidiaries in any internal investigation or administrative, regulatory or judicial proceeding as reasonably requested by the Company or any Subsidiary (including, without limitation, the Executive being available to the Company and its Subsidiaries upon reasonable notice for interviews and factual investigations, appearing at the Company’s or any Subsidiary’s request to give testimony without requiring service of a subpoena or other legal process, volunteering to the Company and its Subsidiaries all pertinent information and turning over to the Company and its Subsidiaries all relevant documents which are or may come into the Executive’s possession, all at times and on schedules that are reasonably consistent with the Executive’s other permitted activities and commitments).

2 3 . Amendment and Waiver. The provisions of this Agreement may be amended or waived only with the prior written consent of the Company and the Executive, and no course of conduct or course of dealing or failure or delay by any Party hereto in enforcing or exercising any of the provisions of this Agreement will affect the validity, binding effect or enforceability of this Agreement or be deemed to be an implied waiver of any provision of this Agreement.

24. Conflict. In the event of any inconsistency between any of the provisions of this Agreement and any of the provisions of any Company equity incentive plan or other agreement or instrument executed in furtherance hereof, this Agreement shall control.

\* \* \* \* \*

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

**COMPANY:**

**GLOBAL EAGLE ENTERTAINMENT INC.,** *a Delaware corporation*

By: /s/ David M. Davis

Name: David M. Davis

Title: Chief Executive Officer and Treasurer

EXECUTIVE:

/s/ John LaValle

John LaValle

EXHIBIT A

WAIVER OF CLAIMS AND GENERAL RELEASE

This Waiver of Claims and General Release (the "Release") is to confirm that the undersigned's at-will employment with Global Eagle Entertainment Inc. (the "Company") is terminated effective as of \_\_\_\_\_, \_\_\_\_\_ (the "Termination Date"). Effective as of the Termination Date, by execution of this Release, the undersigned ("you") hereby resign from all offices you hold with the Company and any of its subsidiaries.

Please read this Release carefully. To help you understand the Release and your rights as a terminated employee, consult with your attorney.

Consistent with the provisions of that certain Employment Agreement by and between you and the Company dated as of [\_\_\_\_], 2013 (the "Employment Agreement"), the Company will provide you with severance pay pursuant to the terms of the Employment Agreement. In consideration for the severance payments and other good and valuable consideration set forth in the Employment Agreement, you hereby agree as follows:

1. Release of Claims.

(a) You hereby release and forever discharge the Company and each of its past and present officers, directors, employees, agents, advisors, consultants, successors and assigns from any and all claims and liabilities of any nature by you including, but not limited to, all actions, causes of actions, suits, debts, sums of money, attorneys' fees, costs, accounts, covenants, controversies, agreements, promises, damages, claims, grievances, arbitrations, and demands whatsoever, known or unknown, at law or in equity, by contract (express or implied), tort, pursuant to statute, or otherwise, that you now have, ever have had or will ever have based on, by reason of, or arising out of, any event, occurrence, action, inaction, transition or thing of any kind or nature occurring prior to or on the effective date of this Release. Without limiting the generality of the above, you specifically release and discharge any and all claims and causes of action arising, directly or indirectly, from your employment at the Company, arising under the Employee Retirement Income Security Act of 1974 (except as to claims pertaining to vested benefits under employee benefit plan(s) of the Company), Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Equal Pay Act, the Rehabilitation Act, the Americans With Disabilities Act, or any other law, statute, ordinance, rule, regulation, decision or order pertaining to employment or pertaining to discrimination on the basis of age, alienage, race, color, creed, gender, national origin, religion, physical or mental disability, marital status, citizenship, sexual orientation or non-work activities. Payment of any amounts and the provision of any benefits provided for in this Release do not signify any admission of wrongdoing by the Company, its Subsidiaries or any of their affiliates.

(b) You acknowledge that you have been informed by your attorneys of the provisions of Section 1542 of the California Civil Code, which provides as follows:

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“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his settlement with the debtor.”

In that regard, you hereby waive and relinquish all rights and benefits that you have or may have under Section 1542 of the California Civil Code or any similar provision of the statutory or non-statutory law of any other jurisdiction to the full extent that you may lawfully waive all such rights and benefits. In connection with such waiver and relinquishment, you acknowledge that you are aware that you may, on your own behalf or by and through your attorneys, hereafter discover claims or facts in addition to or different from those that you now know or believe to exist with respect to one or more of the parties released hereunder, but that it is your intention to finally settle and release all matters that now exist, may exist or heretofore have existed between you and all parties released hereunder. In furtherance of this intention, the releases herein given shall be and remain in effect as full and complete general releases notwithstanding the discovery or existence of any such additional or different claims or facts by you, your attorneys or any other person.

2 . Older Workers Benefit Protection Act. Pursuant to the Older Workers Benefit Protection Act, the Company hereby advises you that you should consult an attorney before signing this Release, that you are entitled to take up to twenty-one (21) days from the date of your receipt of this Release to consider it and that you may have seven (7) days from the date you sign this Release to revoke it. The revocation must be personally delivered to the Company's Vice President – Human Resources or his/her designee, or mailed to them via certified mail, return receipt requested and postmarked within seven (7) calendar days of your execution of this Release. This Release shall not become effective or enforceable until the revocation period has expired. Nothing herein is intended to, or shall, preclude you from filing a charge with any appropriate federal, state, or local government agency and/or cooperating with said agency in any investigation. You, however, explicitly waive any right to file a personal lawsuit and/or receive monetary damages that the agency may recover against each of the parties released in Paragraph 1 above, without regard as to who brought any said complaint or charge.

3 . Confidentiality of this Release. You agree that you shall keep the terms of this Release strictly confidential and not disclose, directly or indirectly, any information concerning them to any third party, with the exception of your spouse (if you have a spouse), financial or legal advisors, provided that they agree to keep such information confidential as set forth herein and not disclose it to others, and except as may be required by court order or legal process.

4 . Breach. You agree that all of the payments and benefits provided for in the Employment Agreement are subject to termination, reduction or cancellation in the event of your material breach of this Release.

5 . Enforcement. The parties agree that any legal proceeding brought to enforce the provisions of this Release may be brought only in the courts of the State of California or the federal courts located in California and each party hereby consents to the jurisdiction of such courts.

6 . Severability. If any of the terms of this Release shall be held to be invalid and unenforceable and cannot be rewritten or interpreted by the court to be valid, enforceable and to meet the intent of the parties expressed herein, then the remaining terms of this Release are severable and shall not be affected thereby.

7 . Miscellaneous. This Release and the Employment Agreement constitutes the entire agreement between the parties about or relating to your termination of employment with the Company, or the Company's obligations to you with respect to your termination and fully supersedes any and all prior agreements or understandings between the parties.

8 . Representations. You affirm that the only consideration for signing this Release is described in the Employment Agreement as referenced herein and that no other promises or agreements of any kind have been made to or with you by any person or entity whatsoever to cause you to sign this Release, and that you fully understand the meaning and intent of this instrument. You agree that you will not disparage the Company in any way, nor will you make any public comments or communications which tend to cast the Company, its owners, directors, officers or employees in a negative light.

You acknowledge that you have carefully read this Release, voluntarily agree to all of its terms and conditions, understand its contents and the final and binding effect of this Release, and that you have signed the same as your own free act with the full intent of releasing the Company from all claims you may have against it.

EMPLOYEE

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[NAME]

Dated:

GLOBAL EAGLE ENTERTAINMENT INC.

By:

Name:

Title:

Dated:

**EXECUTIVE EMPLOYMENT AGREEMENT**

This **EXECUTIVE EMPLOYMENT AGREEMENT** (this "Agreement") is made as of January 31, 2013 (the "Effective Date"), by and between Global Eagle Entertainment Inc., a Delaware corporation (the "Company"), and David M. Davis (the "Executive"). The Company and the Executive are sometimes hereinafter referred to individually as a "Party" and together as "Parties."

**WHEREAS**, the Executive has substantial business knowledge and expertise and the Company desires to retain the knowledge, expertise and experience of the Executive to assist in the operations and management of the Company;

**WHEREAS**, the Executive acknowledges that the Company expends substantial resources establishing long term relationships with its customers, clients and suppliers and the Executive will from time to time during the course of his employment be exposed to such customers, clients and suppliers and prospective customers, clients and suppliers; and

**WHEREAS**, all of the foregoing recitals are incorporated into the covenants of this Agreement as if set forth herein at length.

**NOW THEREFORE**, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, agree as follows:

1. Employment. The Company will employ the Executive, and the Executive hereby accepts employment with the Company, upon the terms and conditions set forth in this Agreement, on an "at will" basis, which means that either the Company or Executive may terminate the Executive's employment with the Company at any time and for any or no reason. The period commencing with the Effective Date and ending on the effective date of any termination of employment hereunder is referred to herein as the "Employment Period."

2. Position and Duties.

(a) During the Employment Period, the Executive will serve as the Chief Financial Officer and Treasurer of the Company and will have the normal duties, responsibilities and authority of this office, and responsibility for financial management of the subsidiaries of the Company and corporate mergers and acquisition activities, all subject to the power of the Board (as defined in Section 9 below) to expand such duties, responsibilities and authority, including without limitation appointing the Executive as an officer of one or more Subsidiaries.

(b) During the Employment Period, the Executive will report directly to the Chief Executive Officer of the Company and will devote his best efforts and his full business time and attention (except for permitted vacation periods and reasonable periods of illness or other incapacity) to the business and affairs of the Company and its Subsidiaries, and to the performance of such duties as may be assigned to him from time to time by the Company. The Executive will also report indirectly to the Chairman of the Board of Directors of the Company and will work with him from time to time as needed. In the event that the Company does not have an appointed Chief Executive Officer, Executive will report to the principal executive officer of the Company. The Executive will act in the best interest of the Company and its Subsidiaries and, except as may be specifically permitted by the Board, will not engage in any other business activity. The Executive will perform his duties, responsibilities and functions on behalf of the Company and its Subsidiaries hereunder to the best of his abilities in a diligent, trustworthy, businesslike and efficient manner.

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(c) The Executive shall establish a permanent residence in the metropolitan area where the Company is headquartered, which is currently Los Angeles, California, as soon as reasonably practicable but in all circumstances no later than eighteen (18) months of the Effective Date.

(d) The Executive acknowledges and agrees that Section 2(a) of this Agreement does not constitute a contractual restriction on the Board's ability to alter the duties and responsibilities of Executive.

3. Compensation.

(a) During the Employment Period, the Executive's base salary will be \$425,000.00 per annum (as adjusted from time to time, the "Base Salary"); provided, however, that the Executive's Base Salary shall be increased to \$450,000.00 upon the Executive's establishment of a permanent residence in the metropolitan area where the Company is headquartered. The Executive's Base Salary will be paid by the Company in regular installments in accordance with the Company's general payroll practices and may be increased annually in the sole discretion of the Board.

(b) In addition to the Base Salary, during the Employment Period, the Executive shall be entitled, upon achieving individual and Company performance goals to be determined by the Board in its sole discretion, to an annual bonus in an amount determined by the Board in its sole discretion. Executive's target bonus for each year shall equal 50% of the Executive's Base Salary, and will not exceed 100% of the Executive's Base Salary. The Board shall determine the objectives for each fiscal year within the first 30 days of such year. Such bonus, if any, shall be paid to the Executive by March 15th of the year following the year in which the bonus was earned. For the first year of the Executive's employment, the Executive's bonus shall be prorated based on his start date. The Company reserves the right, but is not required, to adopt a bonus plan, pursuant to the terms of which the above bonus is provided, including a bonus plan that is intended to award performance-based compensation that is exempt from the deduction limit under Section 162(m) of the Internal Revenue Code.

(c) Subject to the terms and conditions of an Incentive Stock Option Agreement and a Nonstatutory Stock Option Agreement, each dated as of the date hereof between the Company and the Executive, the Company shall grant to the Executive options, pursuant to the Company's 2013 Equity Incentive Plan (the "Plan"), to purchase an aggregate of 675,000 shares of common stock of the Company, par value \$0.0001 per share. Such options shall vest as follows: (i) 25% on the first anniversary of the date of grant and (ii) 75% ratably over the next three years on a monthly basis until fully vested.

(d) The Company may withhold from all salary, bonus or other benefits payable under this Agreement all federal, state, city or other taxes as shall be required pursuant to any law or governmental regulation or ruling.



4 . Benefits. In addition to the Base Salary and other compensation provided for in Section 3 above, the Executive will be entitled to the following benefits during the Employment Period:

(a) The Executive will be entitled to accrue fifteen (15) days of vacation per year which shall accrue throughout the year. Executive may accrue a maximum cap of two (2) times the annual vacation accrual. Once the accrual cap has been reached, vacation time will no longer accrue until some of the previously accrued vacation is taken. If the Executive resigns or his employment is terminated for any reason, the Executive will be paid for accrued but unused vacation computed at the rate of pay earned upon separation, subject in all instances to the accrual cap set forth above. The Executive will not accrue vacation during unpaid leaves of absences. Vacation accrual will recommence when the Executive returns to work pursuant to the terms of this Agreement.

(b) The Executive will be entitled to participate in the Company's health and welfare benefit programs for which other executive level employees of the Company are generally eligible, subject to any eligibility requirements of such plans and programs.

(c) The Company will reimburse the Executive for all reasonable expenses incurred by him in the course of performing his duties and responsibilities under this Agreement which are consistent with the Company's policies in effect from time to time with respect to travel, entertainment and other business expenses, subject to the Company's requirements with respect to reporting and documentation of such expenses.

(d) The Company will reimburse the Executive for all reasonable commuting and temporary residence/hotel costs until the Executive establishes a permanent residence in the metropolitan area where the Company is headquartered, subject to the Company's requirements with respect to reporting and documentation of such expenses.

(e) In connection with the Executive establishing a permanent residence in the metropolitan area where the Company is headquartered, the Company will reimburse the Executive for all reasonable relocation expenses, including the movement of household goods, in an amount not to exceed \$25,000, subject to the Company's requirements with respect to reporting and documentation of such expenses.

5. Termination.

(a) The Executive's employment with the Company and the Employment Period will end on the earlier of (i) the Executive's death or mental or physical disability (considering reasonable accommodation) or incapacity (as determined by a physician selected by the Company in its good faith judgment) for one hundred twenty (120) consecutive days or one hundred eighty (180) days out of any three hundred sixty (360) day period, (ii) the Executive's resignation or (iii) termination by the Company at any time with or without Cause (as defined below). Except as otherwise provided herein, any termination of the Employment Period by the Company or by the Executive will be effective as specified in a written notice from the terminating Party to the other Party.

(b) If, during the Employment Period, the Executive's employment with the Company is terminated pursuant to Section 5(a)(i) above, or is terminated by the Company with Cause, or if the Executive resigns for any reason other than Good Reason (as defined below), then the Executive will only be entitled to receive his Base Salary through the date of termination and will not be entitled to any other salary, bonus, severance, compensation or benefits from the Company or any of its Subsidiaries or affiliates thereafter, other than those expressly required under applicable law (such as the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA")); provided, however, that with respect to termination by the Company for Cause pursuant to clause (viii) of the definition of Cause, if (i) within twenty-one (21) days of his termination the Executive executes a general release in favor of the Company, its Subsidiaries and their affiliates in the form of Exhibit A hereto and such release becomes effective and is not revoked, and (ii) the Executive complies with the terms of this Agreement (other than provision 2(c)), the Executive will be entitled to receive his Base Salary and continuance of health and welfare benefits (in all cases of continuance of health and welfare benefits, via reimbursement of the Company portion of COBRA and related premiums) for a period equal to six (6) months after the date of termination.

(c) If (i) the Executive's employment with the Company is terminated by the Company without Cause or by the Executive with Good Reason, during the Employment Period, and, in either case, (ii) within twenty-one (21) days of his termination the Executive executes a general release in favor of the Company, its Subsidiaries and their affiliates in the form of Exhibit A hereto and such release becomes effective and is not revoked, and (iii) the Executive complies with the terms of this Agreement, the Executive will be entitled to receive his Base Salary and continuation of health and welfare benefits for a period equal to one (1) year after the date of termination. The severance payments payable to the Executive pursuant to this clause (c) of this Section 5 will be paid at the time and in the manner set forth in Section 3 hereof. Notwithstanding the foregoing, for so long as the Company is a "public company" within the meaning of Internal Revenue Code Section 409A, any amounts payable to the Executive during the first six (6) months and one (1) day following the date of termination pursuant to this Section 5(c) will be deferred until the date which is six (6) months and one (1) day following such termination, and if such payments are required to be so deferred the first payment will be in an amount equal to the total amount to which the Executive would otherwise have been entitled during the period following the date of termination of employment if deferral had not been required.

(d) If (i) at any time during the term of this Agreement there is a Change of Control (as defined in the Plan) and within one (1) year of such Change of Control, the Executive elects to terminate this Agreement for Good Reason or the Company elects to terminate this Agreement for any reason other than Cause, (ii) within twenty-one (21) days of his termination the Executive executes a general release in favor of the Company, its Subsidiaries and their affiliates in the form of Exhibit A hereto and such release becomes effective and is not revoked, and (iii) the Executive complies with the terms of this Agreement, the Executive shall be entitled to (x) receive his Base Salary and continuance of health and welfare benefits for a period equal to one (1) year after the date of termination, (y) acceleration of all of the Executive's unvested awards pursuant to any equity incentive plan grant made prior to the Executive's last day of employment with the Company, and (z) a period of six (6) months following the Executive's last day of employment with the Company to exercise all vested equity incentive awards (unless the period provided for under the applicable plan for the particular award would provide for a longer period of exercise following termination of employment in similar circumstances). Notwithstanding Section 5(c) above, if the Executive receives the payments provided for in this Section 5(d), the Executive is not entitled to any payments pursuant to Section 5(c).

(e) Except as otherwise expressly provided herein, all of the Executive's rights to salary, bonuses, fringe benefits, severance and other compensation hereunder or under any policy or program of the Company which accrue or become payable on or after the termination of the Employment Period will cease upon such termination other than those expressly required under applicable law (such as COBRA).

(f) For purposes of this Agreement, "Cause" will mean (i) the commission of a felony or other crime involving moral turpitude or the commission of any other act or omission involving misappropriation, dishonesty, unethical business conduct, disloyalty, fraud or breach of fiduciary duty, (ii) reporting to work under the influence of alcohol, (iii) the use of illegal drugs (whether or not at the workplace) or other conduct, even if not in conjunction with his duties hereunder, which could reasonably be expected to, or which does, cause the Company or any of its Subsidiaries material public disgrace, disrepute or economic harm, (iv) repeated failure to perform duties as reasonably directed by the Board and/or the Company's principal executive officer, (v) gross negligence or willful misconduct with respect to the Company or affiliates or in the performance of the Executive's duties hereunder, (vi) obtaining any personal profit not thoroughly disclosed to and approved by the Board in connection with any transaction entered into by, or on behalf of, the Company, its Subsidiaries or any of their affiliates, (vii) materially violating any of the terms of the Company's, its Subsidiaries' or any of their affiliates' rules or policies which, if curable, is not cured to the Board's satisfaction within fifteen (15) days after written notice thereof to the Executive, or any other breach of this Agreement or any other agreement between the Executive and the Company or any of its Subsidiaries which, if curable, is not cured to the Board's satisfaction within fifteen (15) days after written notice thereof to the Executive or (viii) failure of the Executive to establish a permanent residence in the metropolitan area where the Company is headquartered within eighteen (18) months of the Effective Date. For purposes of this Agreement, "Good Reason" shall mean (i) the Executive is assigned duties materially inconsistent with the Executive's position as set forth in Section 2(a) of this Agreement, provided that any such assignment of duties (x) shall only constitute "Good Reason" during the ninety (90) day period following the date of such assignment (after which it shall be deemed waived by the Executive if prior thereto the Executive has not exercised his right to resign for "Good Reason"), (y) shall not constitute "Good Reason" when it is an isolated action not taken in bad faith and that is remedied promptly after written notice thereof by the Executive to the Company, and (z) shall not constitute "Good Reason" if the Executive shall have consented to the performance thereof or (ii) any breach of a material term of this Agreement by the Company, which breach is not cured within thirty (30) days following written notice to the Company of such breach, or (iii) following the Executive's relocation to the Los Angeles Area, the Company requiring the Executive, without the Executive's prior consent, to be permanently based at any office located more than forty-five (45) miles from the Company's headquarters, excluding travel reasonably required in the performance of the Executive's duties hereunder and travel consistent with the Executive's activities prior to the Effective Date..

6 . Confidentiality, Proprietary Information and Investment Assignment Agreement. Concurrently with or prior to the execution of this Agreement, the Executive shall have signed a Confidentiality, Proprietary Information and Invention Assignment Agreement in the form required to be executed by each employee of the Company.

7 . Return of Corporate Property. The Executive acknowledges and agrees that all notes, records, reports, sketches, plans, unpublished memoranda or other documents, whether in paper, electronic or other form (and all copies thereof), held by the Executive concerning any information relating to the business of the Company or any of its Subsidiaries, whether confidential or not, are the property of the Company. The Executive will deliver to the Company at the termination or expiration of the Employment Period, or at any other time the Company may request, all equipment, files, property, memoranda, notes, plans, records, reports, computer tapes, printouts and software and other documents and data (and all electronic, paper or other copies thereof) belonging to the Company or any of its Subsidiaries which includes, but is not limited to, any materials that contain, embody or relate to the confidential information, work product or the business of the Company or any of its Subsidiaries, which he may then possess or have under his control. The Executive will take any and all actions reasonably deemed necessary or appropriate by the Company from time to time in its sole discretion to ensure the continued confidentiality and protection of the confidential information.

8 . Executive's Representations. The Executive hereby represents and warrants to the Company that (i) he has entered into this Agreement of his own free will for no consideration other than as referred to herein, (ii) the execution, delivery and performance of this Agreement by the Executive does not and will not conflict with, breach, violate or cause a default under any contract, agreement, instrument, order, judgment or decree to which the Executive is a party or by which the Executive is bound, (iii) the Executive is not a party to or bound by any employment, non-competition, confidentiality or other similar agreement with any other Person and (iv) upon the execution and delivery of this Agreement by the Company, this Agreement will be the valid and binding obligation of the Executive, enforceable in accordance with its terms. The Executive hereby acknowledges and represents that the Executive has had the opportunity to consult with independent legal counsel regarding the Executive's rights and obligations under this Agreement and that the Executive fully understands the terms and conditions contained herein.

9. Definitions.

"Board" means the Board of Directors of the Company.

"Person" means any natural person, corporation, general partnership, limited partnership, limited liability company or partnership, proprietorship, other business organization, trust, union, association or governmental or regulatory entities, department, agency or authority.

"Subsidiaries" means any corporation, limited liability company or other entity of which the securities or other ownership interests having the voting power to elect a majority of the board of directors or other governing body are, at the time of determination, owned by the Company or any corporation or other entity of which the Company or one of their Subsidiaries serves as the managing member or in a similar capacity, in each case either directly or through one of more Subsidiaries.

10 . Survival. Sections 5 through 23 will survive and continue in full force in accordance with their terms notwithstanding the termination of the Employment Period.

11. Notices. Any notice provided for in this Agreement will be in writing and will be either personally delivered, sent by reputable overnight courier service, sent by facsimile (with hard copy to follow by regular mail) or mailed by first class mail, return receipt requested, to the recipient at the address below indicated:

Notices to the Executive:

David M. Davis  
18815 Bearpath Trail  
Eden Prairie, MN 55347

Notices to the Company:

Global Eagle Entertainment Inc.  
c/o Row 44, Inc.  
4353 Park Terrace Drive, Suite 100  
Westlake Village, California 91361  
Attention: Global Eagle/Chief Operating Officer  
Fax: (818) 706-9431

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

McDermott Will & Emery LLP  
340 Madison Avenue  
New York, New York 10173  
Attn: Joel L. Rubinstein  
Fax: (646) 390-1209

or such other address or to the attention of such other person as the recipient Party will have specified by prior written notice to the sending Party. Any notice under this Agreement will be deemed to have been given when so delivered, sent or mailed.

12. Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or any action in any other jurisdiction, but this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

13. Complete Agreement. This Agreement, and any agreement entered into between the Executive, on the one hand, and the Company or any of its Subsidiaries, on the other hand on the date hereof with respect to confidentiality and invention assignment, officer and director indemnification and/or equity incentive awards granted to Executive, embodies the complete agreement and understanding among the Parties and supersedes and preempts any prior understandings, agreements or representations by or among the Executive, on the one hand, and the Company or any of its Subsidiaries, on the other hand, written or oral, with respect to Executive's employment with the Company. Upon the Effective Date, the Executive hereby releases and waives any claims or rights he may have under any prior agreement or understanding he may have with the Company or any of its Subsidiaries, affiliates or predecessors, including, but not limited to, any claim for severance or other benefits.

14. Counterparts. This Agreement may be executed in separate counterparts (including by facsimile and electronic signature pages), each of which is deemed to be an original and all of which taken together constitute one and the same agreement.

15. No Strict Construction. The parties hereto jointly participated in the negotiation and drafting of this Agreement. The language used in this Agreement will be deemed to be the language chosen by the parties hereto to express their collective mutual intent, this Agreement will be construed as if drafted jointly by the parties hereto, and no rule of strict construction will be applied against any Person.

16. Successors and Assigns. This Agreement is intended to bind and inure to the benefit of and be enforceable by the Executive, the Company and their respective heirs, successors and assigns. The Executive may not assign his rights or delegate his duties or obligations hereunder without the prior written consent of the Company. The Company may assign its rights and obligations hereunder, without the consent of, or notice to, the Executive, to any of the Company's affiliates or any Subsidiary of the Company or to any Person that acquires the Company or any portion of its business or its assets, in which case all references to the Company will refer to such assignee.

17. Choice of Law. THIS AGREEMENT, AND ALL ISSUES AND QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, ENFORCEMENT AND INTERPRETATION OF THIS AGREEMENT, WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF CALIFORNIA, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICT OF LAW RULES OR PROVISIONS (WHETHER OF THE STATE OF CALIFORNIA OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF CALIFORNIA.

18. Arbitration. Any and all claims or controversies arising out of or relating to the Executive's employment, the termination thereof, or otherwise arising between the Executive and the Company shall, in lieu of a jury or other civil trial, be settled by final and binding arbitration before a single arbitrator in Los Angeles, California, in accordance with then-current rules of the American Arbitration Association applicable to employment disputes. This agreement to arbitrate includes all claims whether arising in tort or contract and whether arising under statute or common law including, but not limited to, any claim of breach of contract, discrimination or harassment of any kind. The obligation to arbitrate such claims shall continue forever, and the arbitrator shall have jurisdiction to determine the arbitrability of any claim. The arbitrator shall have the authority to award any and all damages otherwise recoverable in a court of law. The arbitrator shall not have the authority to add to, subtract from or modify any of the terms of this Agreement. Judgment on any award rendered by the arbitrator may be entered and enforced by any court having jurisdiction thereof. The Executive will pay the then-current Superior Court of California filing fee towards the costs of the arbitration (i.e., filing fees, administration fees, and arbitrator fees), and each party shall be responsible for paying its own other costs for the arbitration, including, but not limited to, attorneys' fees, witness fees, transcript fees, or other litigation expenses. The Executive shall not be required to pay any type or amount of expense if such requirement would invalidate this agreement or would otherwise be contrary to the law as it exists at the time of the arbitration. The prevailing party in any arbitration shall be entitled to recover its reasonable attorney's fees and costs, where authorized by contract or statute. This section does not apply or restrict either the Company or the Executive from seeking equitable relief, including injunctive relief, from any court having competent jurisdiction for violating this Agreement or any applicable law.

19. Business Days. If any time period for giving notice or taking action hereunder expires on a day which is a Saturday, Sunday or legal holiday in the state in which the Company's chief-executive office is located, the time period shall automatically be extended to the business day immediately following such Saturday, Sunday or legal holiday.

20. Withholding: 280G. The Company and its Subsidiaries will be entitled to deduct or withhold from any amounts owing to the Executive any federal, state, local or foreign withholding taxes, excise tax, or employment taxes ("Taxes") imposed with respect to the Executive's compensation or other payments from the Company or any of its Subsidiaries or the Executive's ownership interest in the Company or any of its Subsidiaries or its parent (including, without limitation, wages, bonuses, dividends, the receipt or exercise of equity options and/or the receipt or vesting of restricted equity). In the event the Company or any of its Subsidiaries does not make such deductions or withholdings, the Executive will indemnify and hold harmless the Company and its Subsidiaries for any amounts paid with respect to any such Taxes (but not including any penalties or interest due thereon, all of which shall be the responsibility of the Company). Notwithstanding anything contained in this Agreement to the contrary to the extent that any of the payments and benefits provided for under this Agreement together with any payments or benefits under any other agreement or arrangement between the Company and the Executive (collectively, the "Payments") would constitute a "parachute payment" within the meaning of Section 280G of the Code, the amount of such Payments shall be reduced to the amount that would result in no portion of the Payments being subject to the excise tax imposed pursuant to Section 4999 of the Code.

21. Corporate Opportunities. During the Employment Period, the Executive will submit to the Board all business, commercial and investment opportunities or offers presented to the Executive or of which the Executive becomes aware which relate to the business of the Company or its Subsidiaries as such business of the Company or its Subsidiaries exists at any time during the Employment Period ("Corporate Opportunities"). During the Employment Period, unless previously approved in writing by the Board, the Executive will not accept or pursue, directly or indirectly, any Corporate Opportunities on the Executive's own behalf.

22. Assistance in Proceedings. During the Employment Period and for one (1) year thereafter, the Executive will cooperate with the Company and its Subsidiaries in any internal investigation or administrative, regulatory or judicial proceeding as reasonably requested by the Company or any Subsidiary (including, without limitation, the Executive being available to the Company and its Subsidiaries upon reasonable notice for interviews and factual investigations, appearing at the Company's or any Subsidiary's request to give testimony without requiring service of a subpoena or other legal process, volunteering to the Company and its Subsidiaries all pertinent information and turning over to the Company and its Subsidiaries all relevant documents which are or may come into the Executive's possession, all at times and on schedules that are reasonably consistent with the Executive's other permitted activities and commitments).

23. Amendment and Waiver. The provisions of this Agreement may be amended or waived only with the prior written consent of the Company and the Executive, and no course of conduct or course of dealing or failure or delay by any Party hereto in enforcing or exercising any of the provisions of this Agreement will affect the validity, binding effect or enforceability of this Agreement or be deemed to be an implied waiver of any provision of this Agreement.

24. Conflict. In the event of any inconsistency between any of the provisions of this Agreement and any of the provisions of any Company equity incentive plan or other agreement or instrument executed in furtherance hereof, this Agreement shall control.

\* \* \* \* \*



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

**COMPANY:**

**GLOBAL EAGLE ENTERTAINMENT  
INC., a Delaware corporation**

By: /s/ John LaValle

Name: John LaValle

Title: Chief Executive Officer

/s/ David M. Davis

David M. Davis

EXHIBIT A

WAIVER OF CLAIMS AND GENERAL RELEASE

This Waiver of Claims and General Release (the "Release") is to confirm that the undersigned's at-will employment with Global Eagle Entertainment Inc. (the "Company") is terminated effective as of \_\_\_\_\_, \_\_\_\_\_ (the "Termination Date"). Effective as of the Termination Date, by execution of this Release, the undersigned ("you") hereby resign from all offices you hold with the Company and any of its subsidiaries.

Please read this Release carefully. To help you understand the Release and your rights as a terminated employee, consult with your attorney.

Consistent with the provisions of that certain Employment Agreement by and between you and the Company dated as of [\_\_\_\_], 2013 (the "Employment Agreement"), the Company will provide you with severance pay pursuant to the terms of the Employment Agreement. In consideration for the severance payments and other good and valuable consideration set forth in the Employment Agreement, you hereby agree as follows:

1. Release of Claims.

(a) You hereby release and forever discharge the Company and each of its past and present officers, directors, employees, agents, advisors, consultants, successors and assigns from any and all claims and liabilities of any nature by you including, but not limited to, all actions, causes of actions, suits, debts, sums of money, attorneys' fees, costs, accounts, covenants, controversies, agreements, promises, damages, claims, grievances, arbitrations, and demands whatsoever, known or unknown, at law or in equity, by contract (express or implied), tort, pursuant to statute, or otherwise, that you now have, ever have had or will ever have based on, by reason of, or arising out of, any event, occurrence, action, inaction, transition or thing of any kind or nature occurring prior to or on the effective date of this Release. Without limiting the generality of the above, you specifically release and discharge any and all claims and causes of action arising, directly or indirectly, from your employment at the Company, arising under the Employee Retirement Income Security Act of 1974 (except as to claims pertaining to vested benefits under employee benefit plan(s) of the Company), Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Equal Pay Act, the Rehabilitation Act, the Americans With Disabilities Act, or any other law, statute, ordinance, rule, regulation, decision or order pertaining to employment or pertaining to discrimination on the basis of age, alienage, race, color, creed, gender, national origin, religion, physical or mental disability, marital status, citizenship, sexual orientation or non-work activities. Payment of any amounts and the provision of any benefits provided for in this Release do not signify any admission of wrongdoing by the Company, its Subsidiaries or any of their affiliates.

(b) You acknowledge that you have been informed by your attorneys of the provisions of Section 1542 of the California Civil Code, which provides as follows:

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“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his settlement with the debtor.”

In that regard, you hereby waive and relinquish all rights and benefits that you have or may have under Section 1542 of the California Civil Code or any similar provision of the statutory or non-statutory law of any other jurisdiction to the full extent that you may lawfully waive all such rights and benefits. In connection with such waiver and relinquishment, you acknowledge that you are aware that you may, on your own behalf or by and through your attorneys, hereafter discover claims or facts in addition to or different from those that you now know or believe to exist with respect to one or more of the parties released hereunder, but that it is your intention to finally settle and release all matters that now exist, may exist or heretofore have existed between you and all parties released hereunder. In furtherance of this intention, the releases herein given shall be and remain in effect as full and complete general releases notwithstanding the discovery or existence of any such additional or different claims or facts by you, your attorneys or any other person.

2. Older Workers Benefit Protection Act Pursuant to the Older Workers Benefit Protection Act, the Company hereby advises you that you should consult an attorney before signing this Release, that you are entitled to take up to twenty-one (21) days from the date of your receipt of this Release to consider it and that you may have seven (7) days from the date you sign this Release to revoke it. The revocation must be personally delivered to the Company's Vice President – Human Resources or his/her designee, or mailed to them via certified mail, return receipt requested and postmarked within seven (7) calendar days of your execution of this Release. This Release shall not become effective or enforceable until the revocation period has expired. Nothing herein is intended to, or shall, preclude you from filing a charge with any appropriate federal, state, or local government agency and/or cooperating with said agency in any investigation. You, however, explicitly waive any right to file a personal lawsuit and/or receive monetary damages that the agency may recover against each of the parties released in Paragraph 1 above, without regard as to who brought any said complaint or charge.

3. Confidentiality of this Release. You agree that you shall keep the terms of this Release strictly confidential and not disclose, directly or indirectly, any information concerning them to any third party, with the exception of your spouse (if you have a spouse), financial or legal advisors, provided that they agree to keep such information confidential as set forth herein and not disclose it to others, and except as may be required by court order or legal process.

4. Breach. You agree that all of the payments and benefits provided for in the Employment Agreement are subject to termination, reduction or cancellation in the event of your material breach of this Release.

5. Enforcement. The parties agree that any legal proceeding brought to enforce the provisions of this Release may be brought only in the courts of the State of California or the federal courts located in California and each party hereby consents to the jurisdiction of such courts.

6 . Severability. If any of the terms of this Release shall be held to be invalid and unenforceable and cannot be rewritten or interpreted by the court to be valid, enforceable and to meet the intent of the parties expressed herein, then the remaining terms of this Release are severable and shall not be affected thereby.

7 . Miscellaneous. This Release and the Employment Agreement constitutes the entire agreement between the parties about or relating to your termination of employment with the Company, or the Company's obligations to you with respect to your termination and fully supersedes any and all prior agreements or understandings between the parties.

8 . Representations. You affirm that the only consideration for signing this Release is described in the Employment Agreement as referenced herein and that no other promises or agreements of any kind have been made to or with you by any person or entity whatsoever to cause you to sign this Release, and that you fully understand the meaning and intent of this instrument. You agree that you will not disparage the Company in any way, nor will you make any public comments or communications which tend to cast the Company, its owners, directors, officers or employees in a negative light.

You acknowledge that you have carefully read this Release, voluntarily agree to all of its terms and conditions, understand its contents and the final and binding effect of this Release, and that you have signed the same as your own free act with the full intent of releasing the Company from all claims you may have against it.

EMPLOYEE

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[NAME]

Dated:

GLOBAL EAGLE ENTERTAINMENT INC.

By:

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

Dated:

CONFIDENTIAL TREATMENT REQUESTED FOR PORTIONS OF THIS DOCUMENT. PORTIONS FOR WHICH CONFIDENTIAL TREATMENT IS REQUESTED HAVE BEEN MARKED WITH THREE ASTERISKS [\*\*\*] AND A FOOTNOTE INDICATING “CONFIDENTIAL TREATMENT REQUESTED”. MATERIAL OMITTED HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

**SYSTEM AND SERVICES AGREEMENT**

**by and between**

**NORWEGIAN AIR SHUTTLE**

**and**

**ROW 44, INC.**

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**THIS SYSTEM AND SERVICES AGREEMENT** (this “*Agreement*”) is made and effective as of this \_\_\_\_ day of January, 2011 (the “*Effective Date*”) by and between Row 44, Inc., a Delaware corporation (“*Row 44*”), and Norwegian Air Shuttle, a company incorporated under the laws of Norway (“*Customer*”). Row 44 and Customer are sometimes referred to herein individually as a “Party” and collectively as the “Parties.” Terms used herein and not otherwise defined shall have meaning for such terms as set forth in the glossary attached hereto as Appendix A.

## RECITALS

WHEREAS, Row 44 and its Third Party Partners have developed a proprietary system for providing satellite-based in-flight broadband data communication to certain commercial passenger airliners (the “*Product*”);

WHEREAS, the Product consists of the production-level equipment set forth on Schedule A attached hereto, including, as applicable, the related documentation and specifications for such equipment (the “*Product Kit*”), and the related satellite and backhaul data communication services, all having the features described herein and as ordered by Customer (collectively, the “*Service*”); and

WHEREAS, Customer desires to obtain the Product by purchasing Product Kits and subscribing to the Service, all pursuant to the terms hereof.

NOW, THEREFORE, in consideration of the foregoing, and for such other consideration and mutual covenants as described herein, the Parties agree as follows:

### 1. PRODUCT KITS

1.1. Initial Fleet Order; Additional Orders. Customer hereby commits to the installation of \*\*\* Product Kits from Row 44 for installation on Customer’s 737-800 series aircraft and initial spare parts provisioning. With respect to these \*\*\* Product Kits, Customer will (i) issue a purchase order to Row 44 for the first \*\*\* of such Product Kits within five (5) business days of the Effective Date (which, when added to the previous \*\*\* Product Kits ordered prior to the Effective Date includes Product Kits targeted for \*\*\* installation on Customer’s fleet); (ii) issue the purchase order(s) for the remaining \*\*\* Product Kits in alignment with the agreed installation schedule and product kit lead times and (iii) issue purchase orders for such remaining Product Kits by end of Q2 2012 and respecting the applicable lead time for shipment of Product Kits per Section 1.2 below (collectively, the order sequence above is referred to herein as the “*Initial Fleet Order*”). Following the Initial Fleet Order, Customer may order additional Product Kits for use by Customer by delivering to Row 44 a firm order, on Row 44’s standard form purchase order, for additional Product Kits as specified by Customer on such purchaser order. No purchase order shall be valid until accepted in writing by Row 44. Accepted orders issued pursuant to this Agreement may not be cancelled or adjusted by Customer without the express written consent of Row 44. . Customer shall meet and confer with Row 44 immediately following the Effective Date to set an installation plan and will commence regular installations of the Product Kits on its fleet upon receipt by Row 44 of the STC, all subject to Customer’s reasonable discretion regarding aircraft availability and Row 44’s ability to deliver Product Kits within the applicable lead time.

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1.2. Lead Time. The lead time for orders for Product Kits and Spare Parts shall be as provided by Row 44 from time to time during the Term. As of the Effective Date hereof, the lead time for first delivery of a Product Kit is \*\*\* from order to shipment; provided, that, such lead time shall not apply for Product Kits subject to the Initial Fleet Order (as each order in connection therewith is accepted by Row 44 per Section 1.1) and scheduled for delivery within such lead time.

1.3. Shipment and Delivery. All Product Kits shall be shipped FOB shipping point; provided that, Row 44 shall retain a security interest in any such items not fully paid for by Customer prior to shipment. Row 44 or its applicable Third Party Partner will pack the Product Kits according to the specifications for such items and will ship such items to the location designated by Customer. Row 44 may ship components of a Product Kit in different containers and from different shipping points. Except as provided above with respect to Row 44's security interest, title to and risk of loss will pass to Customer upon shipment. The satellite antenna assembly component of the Product Kits may be shipped to Customer in a re-usable ATA-300 Category 1 container, which container shall at all times remain the property of Row 44 and shall be returned to Row 44, at Row 44's expense, in order to be used for later shipments of satellite antenna assemblies to customer of Row 44, including Customer.

1.4. Installation.

1.4.1. Cooperation. Customer acknowledges and agrees Row 44 is not responsible for the installation of the Product Kits on Customer's aircraft. For the fees set forth on Schedule F, Row 44 shall provide onsite installation training and support to Customer until the installation target time of \*\*\* for the Product Kit is met. With respect to such installation support, Customer agrees to provide Row 44 with all reasonably requested data regarding the configuration of Customer's aircraft to enable Row 44 and its applicable Third Party Partners to create installation manuals and related items to be utilized by Customer in installing the Product Kit. Notwithstanding the foregoing, the installation training and support provided by Row 44 shall not include the costs of any third party engineering or "DER" support if required with respect to an installation, the costs of which shall be paid for by Customer or Customer's installation vendor.

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1.4.2. *FAA and EASA Approval*. Row 44 shall be responsible for obtaining Federal Aviation Administration (“*FAA*”) and European Aviation Safety Agency (“*EASA*”) approval for installation of the Product Kits on Customer’s 737-800 aircraft. Customer shall pay Row 44 the amount for such services as set forth on Schedule F. Subsequent to obtaining the foregoing EASA approval, Row 44 will file an FAA Supplemental Type Certificate (“*STC*”) amendment with respect to placarding aircraft equipped with Honeywell Phase III Cockpit Display Units without further cost to Customer.

1.4.3. *Commissioning*. As part of the installation of a Product Kit, Customer and/or its applicable installer will be required to complete a commissioning procedure provided by Row 44, including, registering the Product Kit components installed on such aircraft and other related aircraft specific information with the Service and conducting ground tests of the Service. Commissioning of an aircraft shall not be deemed completed until Row 44 receives all confirmations and consents from the installer and Customer, including a final Customer Acceptance in accordance with Row 44’s commissioning procedures that Row 44 reasonably requests in order to verify installation was successful and the Service is functioning properly. Each aircraft of Customer that passes the commissioning procedures shall be referred to as a “*Commissioned Aircraft*” herein.

1.5. *Maintenance*. Customer shall be responsible for all regular maintenance of the Product Kits, including, as applicable, removal and replacement of spare parts for Customer replaceable components and regular maintenance on the Product Kits or in connection with the Service; provided, that, in connection with the Service, Row 44 will remotely monitor the health and performance of the Product Kits and provide regular updates regarding the status of any hardware component of the Product Kits.

1.6. *Warranty – Product Kit*. Row 44 warrants each Product Kit sold and delivered under this Agreement to be free from defects in material, workmanship and construction, and that when used in accordance with its intended use will perform to applicable specifications for a period of \*\*\* after shipment or \*\*\* from installation, whichever occurs first. For an additional fee of \*\*\* of the purchase price per Product Kit (payable at the same time and on the same terms as payment for the Product Kit), Row 44 will extend the foregoing warranty periods by \*\*\*. If examination by Row 44 discloses that the product has been defective, then Row 44’s obligation is limited to repair or replacement, at Row 44’s option, of the defective unit or its components. Subject to applicable EASA and FAA rules regarding tagging of repaired components and direct shipment of repaired goods from Row 44’s Third Party Partners, Row 44 shall act as single point of contact with respect to all warranty issues for all component parts related to a Product Kit and spares ordering unless otherwise advised by Customer.

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1.7. Aircraft Directives. In the event the FAA or EASA issues an airworthiness or similar directive that directly applies to a Row 44 Product Kit, Row 44 shall promptly coordinate with Customer and Row 44's Third Party Partners to implement such directive. In the event the FAA or EASA issues a directive that does not directly apply to a Row 44 Product Kit, but Customer believes there is an impact to its aircraft due to the Row 44 Product Kit, Row 44 will assist Customer in the evaluation of the impact of such directive, including allocating Row 44 engineering resources to such evaluation by Customer.

1.8. Row 44 System Directives. In the event the Row 44 Product Kit is ruled by an applicable regulatory body to constitute an "unsafe condition" because of its design pursuant to applicable FAA regulations (CFR Title 14, Part 21, Subpart H, Section 21.181) or EASA equivalent or is otherwise required to be re-certified the responsibility to correct and provide the amended FAA/EASA certification to Customer will be entirely Row 44's. Row 44 shall pay the reasonable costs of any aircraft downtime as a result of such a regulatory action, including lease costs for replacement aircrafts if required.

1.9. AOG Support. Row 44 shall provide telecommunications based Customer aircraft on ground ("**AOG**") engineering support 7 days a week, 24 hours a day, including contact with Row 44 (or a third party service provider) engineering resources in support of such service. Row 44 will provide Customer its European AOG contact information prior to first production install on Customer's aircraft. Row 44 will provide this service free of charge.

1.10. \*\*\*

1.11. Improvements and Customer Requested Changes. Customer and Row 44 acknowledge and agree that it is the intent of Row 44 to work with its Third Party Partners to improve the Product Kit during the Term. In that regard, Row 44 may cause design modifications, engineering changes and/or improvements to be implemented and correspondingly may make changes to the Product Kit design during the Term. Any such changes that affect the form, fit, function of any component of the Product Kit shall require Customer's consent, such consent not to be unreasonably withheld or delayed. Customer may also request design changes to the Product Kit. Row 44 will thereafter promptly advise Customer whether such change is technically and operationally feasible, and, if so, the effect on unit price, delivery schedule, component interchangeability or expected technical performance. If Row 44 agrees to implement such Customer proposed design change, the terms of such agreement shall be as the Parties mutually agree following good faith negotiations. \*\*\*

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## 2. SUBSCRIPTION TO THE SERVICE

2.1. Subscription to the Service. Customer hereby subscribes to and agrees to pay for access to the Service upon the terms set forth herein. The Service shall include the features and restrictions (in addition to the restrictions set forth herein) set forth on Schedule D.  
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2.2. Network Operations and Service Maintenance. During the Term, Row 44 shall maintain a network operations center with the responsibility of monitoring the functionality and performance of the Service on Commissioned Aircraft. Row 44 shall also maintain a 24/7 technical support phone number/e-mail for technical support inquiries from Customer regarding operation of the Service.

2.3. Training. In connection with the operation of the Service, Row 44 will provide training in the operation and functionality of the Service to Customer's employees who will operate the Service on board Commissioned Aircraft, such training to be provided on a "train the trainer" basis and for the fees set forth on Schedule F. Row 44 will also provide a computer based training (CBT) aid to facilitate training dissemination. In support of the foregoing, Row 44 shall provide Customer the following training materials: Aircraft Maintenance Manuals (Antenna Provision and System Activation), Airplane Flight Manual Supplement, Instructions for Continued Airworthiness, On Aircraft Test Plan, Radome/Ring Structural Repair Manual, Component Maintenance Manuals, Instruction Sheet for Activating System and Understanding Basic Operations (For Cabin Crew Use).

2.4. Reports. Row 44 shall provide Customer regular reports and/or access to a reporting web service with respect to such reports and information as Row 44 generally collects and makes available to its Customers regarding the performance of the Service on Customer's aircraft. Upon request, with respect to Customer's use of Product Kits and the Service, Customer shall have access to all reasonably requested data or information controlled by Row 44 relating to the Product Kit. Access will be web accessible and user privilege controlled.

2.5. Legal Process Compliance. During the Term and solely as the same related to providing the Service, Row 44 shall be responsible for technical compliance associated with the Communications Assistance for Law Enforcement Act, the European Council Resolution regarding Lawful Interception of Telecommunications and such similar laws, rules, regulations or agreements binding on Row 44 and/or which Row 44 has agreed to perform. Where permitted under applicable law, Row 44 shall keep Customer informed of all compliance actions taken by Row 44 in support of such technical compliance, and, upon request from Row 44, Customer shall provide reasonably requested cooperation to Row 44 to support such compliance.

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\*\*\* Confidential treatment requested.

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2.6. Service Limitations. Customer acknowledges and agrees that receipt of the Service is subject to certain limitations due to the nature of satellite based internet access, including, without limitation, atmospheric or space-based signal interference leading to degraded signal or loss of signal and governmental requirements applicable to satellite providers. Row 44 shall not be held liable for any interference in accessing the Service due to network conditions generally affecting satellite transponder access and/or coverage or due to the actions of an applicable governmental authority reducing or eliminating the availability of normal satellite network access. Row 44 agrees to meet the quoted SLA terms and will provide commensurate compensation, as set forth herein, when applicable targets set in the SLA are not achieved.

2.7. Terms of Service; Privacy Policy. Customer shall provide the Service to its customers subject to terms of service and a privacy policy reasonably acceptable to Row 44, and, in any event, at least including the minimum terms of service set forth on Schedule E attached hereto and such additional requirements under applicable law or customer industry practice for internet service providers as the same may change during the Term. Customer shall use Row 44's standard landing page or develop and maintain a landing page (the "**Landing Page**") as the first accessible web page when a Customer accesses the Service. The Landing Page will require each customer of Customer accept the terms of service described above before continuing to use the Service and disclose Customer's privacy policy.

2.8. Network Security; Prohibited Actions. Customer acknowledges and agrees protection of the Row 44's network systems is of critical importance, and, therefore, Customer shall not engage in, or knowingly permit customers of Customer to engage in, any of the following activities: (i) any course of action that compromises the performance, security or integrity of the servers, computer systems, satellites or any other devices or software connected directly or indirectly to the network comprising the Service; (ii) any material increase in traffic levels for malicious or illegal purposes or with the result that such traffic level causes a substantial degradation of performance to Row 44 or other customers of Row 44; (iii) tampering, hacking or other intrusion or unauthorized access to any system controlled by Row 44 or through which Row 44 network access is dependent; or (iv) the infringement of the legal rights of other network users (including other users of the Service or the internet), service providers and content providers. In the event Customer, or any customer of Customer, undertakes any of the above activities, Customer acknowledges and agrees Row 44 is authorized to disable access to the Service (including for a particular customer of Customer) until such activity ceases. Notwithstanding the foregoing, Row 44 shall be under no obligation to monitor the content Customer or customers of Customer transmit using the Service, except as may be required by applicable law (including, without limitation, lawful intercept requirements). Customer may not resell or redistribute (whether for a fee or otherwise) the Services provided by Row 44, or any portion thereof, except for the sale of access to the Service from Customer to Customer's customers on board Customer's aircraft.

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2.9. Content Filtering and Web Analytics. Customer acknowledges and agrees Row 44 may be providing unfiltered internet access via the Service and Row 44 neither controls nor assumes any responsibility for any internet content accessed, acquired or transmitted by Customer or customers of Customer using the Service. Customer further acknowledges that except for access to Row 44's standard web portal regarding use and performance of the system, Row 44 does provide any customer usage analytics. Upon written request from Customer, Row 44 will provide a then-current quote to implement content filtering and web analytics and the fees associated therewith.

2.10. OOOI data. For the purposes of Service performance tracking, Out, On, Off, In (OOOI) data will be provided to Row 44 in a format and on a schedule to be agreed to in good faith by the Parties.

### **3. REPRESENTATIONS AND WARRANTIES**

3.1. General Representations. Each Party represents and warrants to the other Party that: (i) it is duly organized and validly existing under the laws of its jurisdiction or incorporation or formation; and has full corporate power and authority to enter into this Agreement and to carry out the provisions hereof; (ii) it is duly authorized to execute and deliver this Agreement and to perform its obligations hereunder, and the person or persons executing this Agreement on its behalf has been duly authorized to do so by all requisite organizational action; (iii) this Agreement is legally binding upon it, enforceable in accordance with its terms, except as limited by bankruptcy or other general principals of equity; and (iv) the execution, delivery and performance of this Agreement by it does not conflict with any agreement, instrument or understanding, whether oral or written, to which it is a party or by which it may be bound, nor violate any law or regulation of any court, governmental body or administrative or other agency having jurisdiction over it.

3.2. Third Party Consents. Customer represents and warrants that it has obtained all third party authorization and consent to install the Product Kits on Customer's aircraft, including, without limitation, authorization from any leasing or financing company with respect to such aircraft, and excluding any governmental authorizations that Row 44 or its Third Party Partners are required to obtain in order to provide the Product Kits and Service.

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#### 4. ADDITIONAL TERMS AND CONDITIONS

##### 4.1. Confidential Information.

4.1.1. *Definition.* For purposes of this Agreement, “Confidential Information” means any information disclosed by either Party to the other Party, either directly or indirectly, in writing, orally, by inspection of tangible objects, or by operation of the services provided by the Parties hereunder, which is confidential, trade secret or proprietary to the disclosing party or any third party that has furnished such information to the disclosing party. Without limiting the generality of the foregoing, Confidential Information of Row 44 shall include all information related to the intellectual property comprising the Product Kit, the Service and the business models and methodologies associated therewith. Notwithstanding the foregoing, Confidential Information shall not include any information to the extent it: (i) was publicly known or generally available in the public domain prior to disclosure or becomes publicly known or generally available in the public domain through not act or omission of the receiving party; (ii) was rightly known by the receiving party, without restriction, prior to the time of first disclosure by disclosing party; (iii) was independently developed by the receiving party without the use of the Confidential Information of the disclosing party; or (iv) was rightfully obtained by receiving party without restriction from a third party who has the right to make such disclosure and without breach of any duty of confidentiality to the disclosing party.

4.1.2. *Restrictions on Use and Disclosure of Confidential Information.* The Parties agree that during the Term and so long as Confidential Information of the disclosing Party remains in the receiving Party’s possession: (i) to hold the Confidential Information of the disclosing party in trust and strictest confidence; (ii) to use the Confidential Information of the disclosing party only for the benefit of the disclosing party; (iii) not to use the Confidential Information of the disclosing party in any manner or for any purpose not expressly set forth in this Agreement; (iv) to reproduce the Confidential Information of the disclosing party only to the extent reasonably required to fulfill the receiving party’s obligations hereunder; (v) to keep the Confidential Information of the disclosing party in a secure facility when not in use; and (vi) not to disclose, deliver, provide, disseminate or otherwise make available, directly or indirectly, any Confidential Information of the disclosing party to any third party without first obtaining the disclosing party’s express written consent on a case-by-case basis. A Party may disclose the other Party’s Confidential Information to its employees and representatives who have a need to know such Confidential Information, and, in connection with a potential transaction or as a reporting obligation pursuant thereto, to fundraising sources and their respective advisors. Each Party shall take at least the same degree of care that it uses to protect its own most highly confidential and proprietary information of similar nature and importance (but in no event less than reasonable care) to protect the confidentiality and avoid the unauthorized use, disclosure, publication or dissemination of the Confidential Information of the disclosing party. Notwithstanding the foregoing, a Party may disclose the Confidential Information of the other Party to the extent specifically required by applicable law; provided, that, such Party shall first give reasonable advance notice of such compelled disclosure to disclosing party, and shall cooperate with the disclosing party in connection with any efforts to prevent or limit the scope of such disclosure and/or use of the applicable Confidential Information.

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4.2. Indemnification.

4.2.1. *Indemnification by Row 44.* Row 44 indemnifies and holds Customer harmless from and against any and all third party claims, actions, damages, liabilities, or expenses, including reasonable attorneys' fees and costs, to the extent arising out of Row 44's gross negligence or willful misconduct and resulting in injury to or death to any person or material loss or damage to any property.

4.2.2. *Indemnification by Customer.* Customer indemnifies and holds Row 44 harmless from and against any and all third party claims, actions, damages, liabilities, or expenses, including reasonable attorneys' fees and costs, to the extent arising out of Customer's gross negligence or willful misconduct and resulting in injury to or death to any person or material loss or damage to any property.

4.2.3. *Indemnification Generally.* Each Party's indemnification obligations shall be conditioned on the other Party providing prompt notice to such indemnifying Part of any claim or threatened claim for which indemnification may be applicable, and permitting the indemnifying Part to control the defense of such claim or threatened claim. For purposes of the indemnification obligations herein, Customer and Row 44 shall be deemed to include each of their respective officers, directors, agents and employees.

4.3. Intellectual Property Ownership. Customer acknowledges and agrees that the sale of Product Kits and provision of the Service by Row 44 pursuant to this Agreement does not in any way sell, transfer, license or assign any intellectual property rights associated with such Product Kits or Service (except for the implied limited license to use the intellectual property incorporated into Product Kits or the Service solely in connection with the use of such items pursuant to the terms hereof), and that all such intellectual property rights are retained by Row 44 and its Third Party Partners, as applicable.

4.4. Insurance. Row 44 will maintain comprehensive general liability insurance, including aircraft products and completed operations liability, with a combined single limit for bodily injury and property damage in an amount of not less than \*\*\* per occurrence. Customer will maintain comprehensive general liability insurance, with a combined single limit for bodily injury and property damage in an amount of not less than \*\*\* per occurrence.

4.5. Additional Work. Any additional services provided by Row 44 and not specifically set forth herein as included with the fees set forth herein shall be provided pursuant to a written, mutually agreeable statement of work and purchase order covering, without limitation, the scope of work, respective responsibilities and estimated fees associated therewith.

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\*\*\* Confidential treatment requested.

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## 5. PAYMENT TERMS

5.1. Pricing and Payment for Product Kits and Spare Parts. The price for each Product Kit for the Initial Fleet Order and for Product Kit shall be as set forth on Schedule F; provided, that, following the initial \*\*\* term of this Agreement, Row 44 may amend Schedule F with prices for any Renewal Term of this Agreement in an amount not to exceed the year over year percentage changes from the Effective Date in accordance with the formula set forth on Schedule F-1; provided, that, the amount of such increase shall not be more than \*\*\* per year since that most recent adjustment. In addition, the prices for any improved version of the Product Kit or features and services not set forth in this Agreement shall be as Row 44 provides Customer from time to time; provided, that Row 44 will have a feature/performance equivalent version of the current Product Kit available for purchase by Customer at the price set forth herein during the Term. Row 44 shall be paid by Customer for each Product Kit or Spare Part Customer orders according to the following schedule: (i) on the date of the specific purchase orders, \*\*\* of the total price for the Product Kits or Spare Parts ordered will be invoiced as per standard terms (30 days); and (ii) on defect free receipt (pursuant to an identified inspection procedure provided to Row 44) and 2 weeks after delivery of each Product Kit or Spare Part, \*\*\* of the total price of such Product Kit or Spare Part will be invoiced as per standard terms (30 days).

5.2. Pricing and Payment for Service. Pricing for the Service shall be as set forth on Schedule F. \*\*\*

5.3. \*\*\*

5.4. General Payment Terms.

5.4.1. *Account.* All payments made by Customer to Row 44 hereunder shall be made by electronic funds transfer to an account and account beneficiary as designated by Row 44 from time to time. All payments shall be in United States Dollars.

5.4.2. *Interest.* In addition to any other remedies, in the event any payment due from Customer hereunder has not been received by Row 44 on the applicable due date, such payment shall accrue interest at the lesser of (i) 1.00% per month for each month, pro-rated for the actual number of days between the due date and the date payment is received or (ii) the maximum rate allowed under applicable law.

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5.4.3. *Audit Rights.* Row 44 (or its designated representative) shall have the right to audit Customer's books and records, including retaining copies thereof, to verify the correct payment of all fees due Row 44 hereunder. In the event such audit determines that Row 44 was underpaid by Customer, Customer shall reimburse Row 44 the amount of such underpayment and the reasonable costs of the audit, provided that reimbursement of audit costs shall never exceed the amount of the underpayment. All records and information obtained by Row 44 in connection with such audit shall be deemed Confidential Information; provided, that, Row 44 may use such information in a claim or other dispute resolution proceeding regarding amounts due and payable to Row 44.

5.4.4. *Fees, Surcharges and Taxes.* Customer acknowledges that the prices set forth in this Agreement are exclusive of all applicable fees, import duties, surcharges and taxes with respect to items purchased and the services provided hereunder, except for taxes based solely on the net income of Row 44.

## 6. TERM AND TERMINATION

6.1. *Initial Term; Extensions.* Unless earlier terminated, the initial term of this Agreement shall commence on the Effective Date and shall continue for a period of \*\*\* (the "**Initial Term**"), and shall thereafter renew for an additional \*\*\* term (each a "**Renewal Term**" and, collectively with the Initial Term, the "**Term**"), unless either Party gives the other Party \*\*\* days prior written notice of its intent not to renew this Agreement. If either Party provides the other Party a notice of such Party's intent not to renew this Agreement, the Parties agree to meet and confer in good faith regarding terms under which the Agreement could be renewed for an additional Renewal Term, unless the Parties agree on the terms for a Renewal Term the Agreement will lapse at the end of the relevant Term.

### 6.2. Termination; Suspension of Service.

6.2.1. *Termination for Breach.* This Agreement may be terminated by either Party hereto if the other Party materially breaches the terms hereof, and such other Party has failed to cure such breach within \*\*\* days of notice from the non-breaching Party; provided, that, the cure period with respect to failure to make any payment due to Row 44 hereunder shall be \*\*\* days.

6.2.2. *Termination for Insolvency.* Either Party may terminate this Agreement immediately upon delivery of notice to the other Party, without opportunity to cure, if the other Party (i) is liquidated, dissolved, ceases to do business or otherwise terminates its business operations; (ii) becomes insolvent; (iii) makes a general assignment for the benefit of creditors; or (iv) institutes or has instituted against it any proceedings under any law relating to bankruptcy or insolvency or a receiver or trustee is appointed for all or a substantial portion of its assets, and such proceeding or appointment is not dismissed or discharged within 90 days.

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6.2.3. *Effect of Breach and Termination.* Return of Confidential Information. Following the termination or expiration of this Agreement, within 20 days of receipt of a request from either Party, both Parties shall return any and all Confidential Information of the other Party to such Party and an officer of each Party shall certify in writing to the other Party compliance with this provision.

6.2.4. *Suspension of Service.* In addition to any other rights and remedies Row 44 may have under the terms of this Agreement, Row 44 may suspend Customer's access to the Service, cease delivery of Product Kits, or suspend any other services provided by Row 44 or its vendors to Customer hereunder during any period in which Customer is in breach of the terms of this Agreement.

6.2.5. *Suspension due to legislative directive or authority request.* Customer may suspend service if legislative directives and/or authority request require, as determined by Customer in its reasonable discretion, the service to cease.

6.2.6. *Termination due to an extended period of suspension.* If a suspension of service extends for more than 6 months, each Party may terminate this Agreement forthwith by providing the other Party with a written notice of termination.

## **7. GENERAL TERMS**

7.1. *Counterparts.* This Agreement may be executed in counterparts and if so executed in counterparts will be enforceable and effective upon the exchange of executed counterparts or exchange of facsimile transmissions of executed counterparts.

7.2. *Rules of Construction and Interpretation.* References to articles, sections, schedules and parties are to the Articles, Sections and Schedules of and parties to this Agreement. Headings are included for convenience only and shall not affect the construction of this Agreement. The words "hereof", "herein", "hereunder", and similar terms when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The Parties acknowledge that this Agreement has been prepared and drafted through the efforts of both Parties and agree that in the interpretation, construction and enforcement of the terms and conditions of this Agreement, there shall not be applied against either Party the normal rule of construction that vague or ambiguous terms are to be construed against the drafting party.

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7.3. Press Releases. Neither Party hereto will issue any material press releases or other publicity regarding this Agreement or its subject matter without the consent of the other Party.

7.4. Disclaimers and Liability Limitations. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH HEREIN, ROW 44 SPECIFICALLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE PRODUCT, INCLUDING THE PRODUCT KITS AND THE SERVICE, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY KIND OR NATURE (INCLUDING LOST PROFITS AND LOST REVENUES) ARISING OUT OF OR RELATING TO THIS AGREEMENT, EXCLUDING SUCH LIABILITIES WHICH MAY ARISE AS A RESULT OF GROSS NEGLIGENCE OR WILFUL MISCONDUCT OF A PARTY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOSSES OR DAMAGES OF ANY KIND OR NATURE ARISING OUT OF OR RELATING TO THIS AGREEMENT IN EXCESS OF THE TOTAL AMOUNT ACTUALLY PAID TO AND RECEIVED BY ROW 44 BY CUSTOMER IN THE PRIOR YEAR, WHICH AMOUNT WILL BE THE MAXIMUM AGGREGATE LIABILITY OF EITHER PARTY TO THE OTHER PARTY HEREUNDER, UNLESS A PARTY HAS ACTED WITH GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. NOTWITHSTANDING THE FOREGOING, THE MAXIMUM AGGREGATE LIABILITY AMOUNT ABOVE SHALL NOT APPLY WITH RESPECT TO AMOUNTS TO BE PAID TO ROW 44 FOR ORDERS FOR PRODUCT KITS AND SPARE PARTS PLACED BY CUSTOMER.

7.5. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the United States of America and the State of Delaware, excluding its law of conflict of laws.

7.6. Notices. All notices required or permitted under this Agreement shall be in writing and deemed given with personally delivered, sent by electronic transmission (with confirmation of receipt for fax or no notice of non-delivery for e-mail, or upon confirmation of delivery by a recognized commercial overnight carrier, to the address for such Party as set forth on the signature page hereto, or such alternative address as a Party may provide the other Party via this notice provision.

7.7. Compliance with Law. Each Party will comply with all applicable laws and regulations applicable to the performance by the Parties of their respective obligations hereunder, including, without limitation, in the case of Customer, all laws, policies and regulations applicable to the marketing, sale and use of the Service. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

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7.8. Export Controls. Each of the Party's agrees that this Agreement and the equipment and services delivered hereunder are subject to all applicable export controls of the United States, and each Party hereto agrees to comply with the terms of such export controls as administered and/or imposed by the applicable governmental body. Each Party agrees to reasonably assist the other Party in such compliance, including assistance in obtaining any applicable approval or license.

7.9. Waiver. No failure or delay on the part of Customer or Row 44 in exercising any power, right or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or remedy preclude any other or further exercise thereof or the exercise of any other power, right or remedy. The remedies of either Party provided for herein shall be cumulative and not exclusive.

7.10. Amendments. This Agreement may be amended from time to time only by a written amendment duly executed and delivered by Customer and Row 44.

7.11. No Joint Venture. Nothing contained herein shall constitute the Parties as joint venturers, partners or agents of one another and neither Party shall have the right or power to bind or obligate the other.

7.12. Force Majeure. Except for the exercise of due care, neither Party shall be liable for the failure or delay in performance of any obligation under this Agreement by reason of any event beyond such Party's reasonable control, including, without limitation, acts of God, fire, flood, earthquake or other natural forces, war, civil unrest, actions or decrees of governmental bodies or freight embargos.

7.13. Severability. If, for any reason, any part of this Agreement is adjudicated invalid, unenforceable or illegal by a court of competent jurisdiction, such adjudication shall not affect or impair, in whole or in part, the validity, enforceability, or legality of any remaining portions of this Agreement.

7.14. Survival. The Parties agree that any provisions hereof which by their nature survive the termination or expiration of this Agreement, shall survive such termination or expiration of this Agreement.

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7.15. Assignment. Neither Party shall have the right to, and each Party covenants that it will not, assign or delegate this Agreement or any of its rights, duties or obligations hereunder without the prior written consent of the other Party. This Agreement may not be involuntarily assigned or assigned by operation of law. With the consent of the other Party, not to be unreasonably withheld or delayed, each Party shall have the right to assign (i) this Agreement to any parent or subsidiary, to any entity which results from a merger, de-merger or consolidation with the relevant Party or any person or entity that acquires all or substantially all the assets of the relevant Party related to this Agreement and/or (ii) its rights to receive payment hereunder in connection with a financing transaction. Any assignment, delegation or transfer, or attempt at the same, in violation of the foregoing shall be void and without effect.

7.16. Further Assurances. Each Party to this Agreement shall, at its own expense, furnish, execute and deliver all documents and take all actions as may be reasonably be required to effect the terms and purposes of this Agreement.

7.17. Attorneys Fees. In the event of any litigation or other proceeding is brought by either Party arising out of relating to this Agreement, the prevailing Party in such litigation or other proceeding shall be entitled to recover from the other Party all reasonable costs, attorneys fees, professional fees and other expenses incurred by such prevailing Party in such litigation or proceeding.

7.18. Entire Agreement. This Agreement, including all schedules and exhibits hereto, and any other agreements referenced herein constitute the entire agreement between the Parties, and supersedes any prior written or oral agreement or understanding with respect to the subject matter hereof.

7.19. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their permitted successors and assigns.

7.20. Dispute Resolution. In the event any dispute or controversy arising out of or relating to this Agreement, whether based on law, equity or any other legal theory (a “*Dispute*”), the Parties agree to exercise their best efforts to resolve the Dispute as soon as possible through good faith negotiations. If good faith negotiations do not resolve the Dispute, either Party may submit the Dispute to arbitration in Luxembourg or such other neutral location as Row 44 and Customer may agree. The arbitration proceedings shall be governed by and otherwise carried out in accordance with the rules of the London Court of International Arbitration. The language of the arbitration proceedings shall be English.

7.21. \*\*\*

7.22. Designated personnel. Row 44 will fully support Customer with one (1) dedicated person for Technical installation and one (1) dedicated person for Commercial.

*(Signature Page Follows)*

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\*\*\* Confidential treatment requested.

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**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the Effective Date.

**CUSTOMER**

Norwegian Air Shuttle

By: /s/ Illegible

Name: Illegible

Title: CIO

Address: Norwegian Air Shuttle AS  
Postboks 115, N 1330 Fomebu

Attn: \_\_\_\_\_

Fax: \_\_\_\_\_

**ROW 44**

Row 44, Inc.

By: /s/ John Guidon

Name: John Guidon

Title: CEO

Address: 4353 Park Terrace Drive, Suite 100  
Westlake Village, CA 91361

Attn: CEO/COO

Fax: 818-706-9431

*(Signature Page to Systems and Services Agreement)*

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## Appendix A

### Glossary

“*AAA*” shall have the meaning set forth in Section 7.20.

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

“*AOG*” shall have the meaning set forth in Section 1.9.

“*Commissioned Aircraft*” shall have the meaning set forth in Section 1.4.3.

“*Confidential Information*” shall have the meaning set forth in Section 4.1.1.

“*Customer*” shall have the meaning set forth in the preamble.

“*Dispute*” shall have the meaning set forth in Section 7.20.

“*EASA*” shall have the meaning set forth in Section 1.4.2.

“*Effective Date*” shall have the meaning set forth in the preamble.

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“*FAA*” shall have the meaning set forth in Section 1.4.2.

“*Initial Fleet Order*” shall have the meaning set forth in Section 1.1.

“*Initial Term*” shall have the meaning set forth in Section 6.1.

“*Landing Page*” shall have the meaning set forth in Section 2.4.

\*\*\*

“*Operational Data*” shall mean the use of the Service by Customer directly instead of customers of Customer and for the transmission by Customer of data related to the operations of Customer, including its aircraft.

“*Party*” or “*Parties*” shall have the meaning set forth in the preamble.

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“*Product*” shall have the meaning set forth in the recitals.

“*Product Kit*” shall have the meaning set forth in the recitals.

“*Renewal Term*” shall have the meaning set forth in Section 6.1.

“*Row 44*” shall have the meaning set forth in the preamble.

“*Service*” shall have the meaning set forth in the recitals.

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\*\*\* Confidential treatment requested.

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“*Spare Parts*” shall mean the Customer replaceable sub-components of the Product Kit.

“*Term*” shall have the meaning set forth in Section 6.1.

“*Third Party Partners*” shall mean Row 44’s authorized component vendors or service providers.

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**Schedule A**  
**Equipment Comprising Product Kit**

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**Row 44 to confirm that part numbers will be provided once the STC is obtained.**

**Row 44 to provide detailed assembly and sub-assembly descriptions to enable quality assurance on receipt of equipment by the customer.**

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\*\*\* Confidential treatment requested.

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**Schedule C**  
**Equipment lead time**

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**Row 44 agrees to act as the single point of contact for ordering spares unless Customer advises otherwise.**

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\*\*\* Confidential treatment requested.

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**Schedule D**  
**Service Features and Restrictions**

**Service Features/Performance:**

The Service shall deliver broadband Internet access, including ground-based backhaul Internet connectivity, satellite-based data connectivity to each aircraft for (i) Wi-Fi-based Internet access availability to customer's of Customer within the cabin and (ii) electronic Operational data services provided by Customer, all with the bandwidth performance target of \*\*\* on board Customer's operational Commissioned Aircraft.

Row 44 shall provide Customer access to its web-based status page service which shall report the operational and disruptive status of each Commissioned Aircraft and the performance of the system on such aircraft.

**Service Availability:**

Normal Operations shall mean periods in which:

The applicable Customer aircraft is in a proper position to receive the Service, as follows:

- a. For Customers customer the aircraft is operating above \*\*\* feet (AGL);
- b. For Customer Operational Data whenever the system is switched on (subject to applicable law and regulations) and there is a clear line of sight to satellite.
- b. The applicable System Unit component has not been disabled or miss-configured by Customer;
- c. \*\*\*

Normal Operations shall not include:

1. Periods of general disruptions to data or Internet networks or satellite communications outside of Row 44's network and/or control, including, without limitation, general atmospheric disruption of satellite communications or failure of a domain name server or related critical internet function.
2. Periods in which the Service is specifically disrupted due to adjacent satellite interference outside of Row 44's control.
3. Periods of flight over locations where governmental restrictions on satellite communications are in effect.
4. Periods in which the Service is unavailable due to general satellite communication preemption by a governmental authority.

Definition of a 'disrupted flight':

Any flight that has a total continuous outage that is greater than \*\*\* during Normal Operations will be classed as 'DISRUPTED' – Fees will be payable according to this table for a disrupted flight:

\*\*\*

**Coverage Area:**

See attached Schedules D-1 and D-2 for satellite coverage map and current European coverage area authorizations, respectively.

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\*\*\* Confidential treatment requested.

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Notwithstanding the foregoing, Row 44 and Customer acknowledge that the outer-edge of the above coverage areas and/or the outer-edge of an applicable satellite coverage region may be areas in which the throughput requirements above may not be available for the entire period the Service is available. In addition, the coverage area above is based on commonly used airline passenger flight routes and not coverage throughout the entirety of a region.

\*\*\*

#### **Restrictions**

Use of the Service shall be subject to all rules and regulations established by applicable governmental authorities, including the FAA, EASA, the FCC, including Row 44's FCC license, and the requirements any governmental authority or license binding on the Service as a result of its use in the coverage area.

The Service may not be used to provide a data link from avionics maintenance monitoring equipment or a component that collects avionics information while the applicable aircraft is on the ground.

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\*\*\* Confidential treatment requested.

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**Schedule D-1**  
**Satellite Coverage Map**

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\*\*\* Confidential treatment requested.

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**Schedule D-2**  
**Country Authorizations**

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\*\*\* Confidential treatment requested.

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**Schedule D-2**  
**Country Authorizations**  
**Part 2**

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\*\*\* Confidential treatment requested.

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**Schedule E**  
**Minimum Terms of Service**

**PROHIBITED CONDUCT**

You agree not to use the Service as follows: (a) for any unlawful, improper or criminal purpose or activity; (b) to post or transmit information or communications that, whether explicitly stated, implied, or suggested through use of symbols, are libelous, defamatory, invasive of another person's privacy, sadistic, cruel, or racist in content; or which espouses, promotes or incites bigotry, hatred or racism; or which might be legally actionable for any reason; (c) hurts minors in any way; (d) forge headers or otherwise manipulate identifiers in order to disguise the origin of any content transmitted through the Service; (e) intentionally or unintentionally violate any applicable local, provincial, state, national or international law, including, but not limited to, rules, orders and regulations having the force of law; (f) to attempt to access or access the accounts of others, to spoof or attempt to spoof the URL or DNS address, or to attempt to penetrate or penetrate our security measures or other entities' systems ("hacking") whether or not the intrusion results in corruption or loss of data; (g) to bombard individuals or newsgroups with uninvited communications, data or information, or other similar activities, including but not limited to "spamming", "flaming" or denial or distributed denial of service attacks; (h) to transmit unsolicited voluminous emails (for example, spamming) or to intercept, interfere with or redirect email intended for third parties using the Service; (i) to introduce viruses, worms, harmful code and/or Trojan horses on the Internet; (j) to post information on newsgroups which is not in the topic area of the newsgroup; (k) to interfere with another person's usage or enjoyment of the Internet or this Service; (l) to post or transmit information or communications that are defamatory, fraudulent, obscene or deceptive, including but not limited to scams such as "make-money-fast" schemes or "pyramid/chain" letters; (m) to damage the name or reputation of Service Provider or its subcontractors, or any of their respective parents, affiliates and subsidiaries, or any third parties; (n) to transmit confidential or proprietary information, except solely at your own risk; (o) to violate our or any third party's copyright, trademark, proprietary or other intellectual property rights, including trade secret rights; (p) to generate excessive amounts (as determined in our sole discretion) of Internet traffic, or to disrupt net user groups or email use by others; (q) to engage in activities designed to or having the effect of degrading or denying Service to other users or others (including activities that compromise a server, router, circuit or software; (r) to use any name or mark of Service Provider Hughes Network Systems, or their respective parents, affiliates or subsidiaries, as a hypertext link to any Web site or in any advertising publicity or other commercial manner; (t) to use the Service or the Internet in a manner intended to threaten, harass, or intimidate others; (u) to cause the screen to "scroll" faster than other subscribers or users are able to type to it, or any action that has a similar disruptive effect, on or through the Service; (v) to use the Service to disrupt the normal flow of online dialogue, (w) to use the Service to violate any operating rule, policy or guideline of any other online services provider or interactive service; (x) to attempt to subvert or to aid third parties to subvert, the security of any computer facility or system connected to the Internet; (y) to impersonate any person or using a false name while using the Service; (z) to install "auto-responders," "cancel-bots" or similar automated or manual routines which generate excessive amounts of net traffic, or disrupt net user groups or email use by others; (aa) to make false or unverified complaints against any subscriber, or otherwise abusing any of our complaint response procedures; (bb) to export software or any information in violation of US export laws; or (cc) to use the Service in contravention of the limitations of the pricing plan you have chosen.

**ILLEGAL PURPOSES**

You agree not to use the Service nor any of its elements or related facilities or capabilities to conduct any business or activity, or solicit the performance of any activity, which is prohibited by or would violate any applicable law, rule, regulation or legal obligation.

**OTHER OBLIGATIONS RELATING TO CONTENT**

You agree we do not, and we shall not without cause, pre-screen content transmitted by you over the Service, but we shall have the right (but not the obligation) in our sole discretion to refuse or move any such content that is available via the Service, including without limitation any content that violates the terms of this Agreement or is otherwise objectionable. You agree to evaluate, and bear all risks associated with, the use of any content, including any reliance on the accuracy, completeness, or usefulness of such content, and acknowledge that you may not rely on any content created by, or submitted to, ourselves.

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You agree we may preserve and disclose content if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce the terms of this Agreement; (c) respond to claims that any content violates the rights of third-parties; or (d) protect the rights, property, or personal safety of Service Provider, its users and the public.

#### RESERVATION OF RIGHTS

We reserve all copyrights and other rights in and to any content available through the Service which is identified as, claimed by us as, or known by you to be, proprietary to us (or our licensors). The content on the Service is protected under applicable copyright law, including as a collective work. All copying, modification, distribution, publication or other use by you, or by any user of your account, of any such content or other works is prohibited, except as expressly permitted by ourselves.

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#### INTERNET

YOU ACKNOWLEDGE THAT INTERNET SITES, AND USE OF THE INTERNET, MIGHT CONSIST OF, INCLUDE AND/OR PROVIDE ACCESS TO IMAGES, SOUND, MESSAGES, TEXT, SERVICES OR OTHER CONTENT AND MATERIAL THAT MAY BE UNSUITABLE FOR MINORS AND THAT MAY BE OBJECTIONABLE TO MANY ADULTS. YOU ACKNOWLEDGE THAT WE ARE NOT RESPONSIBLE FOR ANY SUCH CONTENT OR MATERIAL AND AGREES THAT ACCESS TO SAME THROUGH USE OF THE SERVICE IS AT YOUR SOLE RISK. The reliability, availability, legality, performance and other aspects of resources accessed through the Internet are beyond our reasonable control and are not in any way warranted or supported by ourselves or our third party contractors. You acknowledge that safeguards relative to copyright, ownership, appropriateness, reliability, legality and integrity of content may be entirely lacking with respect to the Internet and content accessible through it. You confirm that you assume all risk and liability of any use of the Internet through your account, including your continuous compliance with the Subscriber Agreement.

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YOU EXPRESSLY AGREE THAT USE OF THE SERVICE IS AT YOUR SOLE RISK. NEITHER WE NOR ANY OF OUR INFORMATION OR CONTENT PROVIDERS, SERVICE PROVIDERS, LICENSORS, EMPLOYEES OR AGENTS WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE; NOR DO WE OR ANY OF OUR INFORMATION OR CONTENT PROVIDERS, SERVICE PROVIDERS, LICENSORS, EMPLOYEES OR AGENTS MAKE ANY WARRANTY AS TO THE RESULTS TO BE OBTAINED FROM USE OF THE SERVICE, INCLUDING ANY MINIMUM UPLOAD OR DOWNLOAD SPEEDS. THE SERVICE IS DISTRIBUTED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE, EXCEPT FOR THOSE WARRANTIES, IF ANY, WHICH ARE IMPLIED BY, AND INCAPABLE OF EXCLUSION, RESTRICTION OR MODIFICATION UNDER, THE LAWS APPLICABLE TO THIS SUBSCRIBER AGREEMENT. WE EXPRESSLY DISCLAIM ANY REPRESENTATION OR WARRANTY THAT THE SERVICE WILL BE ERROR FREE, SECURE OR UNINTERRUPTED OR OPERATE AT ANY MINIMUM SPEED. NO ORAL ADVICE OR WRITTEN INFORMATION GIVEN BY OURSELVES, OUR EMPLOYEES, DEALERS, AND LICENSORS OR THE LIKE SHALL CREATE A WARRANTY; NOR SHALL YOU RELY ON ANY SUCH INFORMATION OR ADVICE. IN ADDITION, WE FURTHER DISCLAIM ANY LIABILITY OR RESPONSIBILITY FOR THE TIMELINESS, DELETION, MIS-DELIVERY, NON-DELIVERY OR FAILURE TO STORE OR ACCURATELY STORE, ANY E-MAIL OR OTHER COMMUNICATIONS, ADDRESSES OR PERSONALIZATION SETTINGS.

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IN PARTICULAR, BECAUSE WE MAY PROVIDE ITS SUBSCRIBERS WITH ELECTRONIC ACCESS TO THE CONTENT AVAILABLE ON THE SERVICE, WHICH CONTENT MAY BE ORIGINATED BY INDEPENDENT PUBLISHERS AND/OR PROVIDERS AND WHICH CONTENT IS NOT AUGMENTED BY OURSELVES, WE CANNOT AND DO NOT WARRANT THE ACCURACY OF ANY OF THE INFORMATION AS ORIGINATED BY SAID INDEPENDENT PUBLISHERS AND/OR PROVIDERS, AND WE SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER FOR ANY ERRORS, OMISSIONS, OR INACCURACIES RELATING THERETO. IF DEFECTIVE, YOU - NOT OURSELVES, OUR DEALERS, DISTRIBUTORS, AGENTS, EMPLOYEES OR ANY THIRD-PARTY CONTENT PROVIDER - ASSUME THE CONSEQUENCES RESULTING THEREFROM.

NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY OURSELVES, OUR DEALERS, DISTRIBUTORS, AGENTS, EMPLOYEES OR ANY THIRD-PARTY CONTENT PROVIDER, SHALL CREATE ANY WARRANTY IN OR TO THE SERVICE OR THE CONTENT, AND YOU MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS. YOU MAY HAVE OTHER RIGHTS, WHICH VARY FROM STATE TO STATE.

#### LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER WE NOR ANY OF OUR INFORMATION OR CONTENT PROVIDERS, SERVICE PROVIDERS, LICENSORS, EMPLOYEES OR AGENTS SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF USE OF THE SERVICE OR INABILITY TO USE THE SERVICE OR OUT OF ANY BREACH OF ANY REPRESENTATION OR WARRANTY. WITHOUT IN ANY WAY LIMITING THE FOREGOING, IF FOR ANY REASON, BY OPERATION OF LAW OR OTHERWISE, ANY PORTION OF THE FOREGOING LIMITATION OF LIABILITY SHALL BE VOIDED, THEN IN SUCH EVENT OUR MAXIMUM, SOLE, AND EXCLUSIVE LIABILITY, OUR DEALERS, DISTRIBUTORS, AGENTS, EMPLOYEES OR THIRD PARTY CONTENT PROVIDER, IF ANY, SHALL BE LIMITED TO GENERAL MONEY DAMAGES IN AN AMOUNT NOT TO EXCEED THE TOTAL AMOUNT ACTUALLY PAID TO OURSELVES BY YOU FOR SERVICES FURNISHED UNDER THIS SUBSCRIBER AGREEMENT DURING AND FOR A PERIOD OF TIME COMMENCING UPON THE OCCURRENCE OF SUCH ERROR, DEFECT OR FAILURE AND CEASING UPON THE DISCOVERY OF SUCH, IN WHOLE OR IN PART; PROVIDED, HOWEVER, THAT IN NO EVENT SHALL SUCH PERIOD OF TIME EXCEED THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE WHICH SUCH ERROR, DEFECT OR FAILURE IS FIRST DISCOVERED IN WHOLE OR IN PART.

#### INDEMNITY

You agree to indemnify Service Provider, Hughes Network Systems, and each of their respective subcontractors against all claims, liability, damages, costs and expenses, including but not limited to reasonable attorneys fees, arising out of or related to any and all use of your account, including any content transmitted over the Service, your use of the Service, your violation of this Agreement, and your violation of any rights of any other person. This includes, without limitation, responsibility for all such consequences of your (or that of any user of your account) violation of this Subscriber Agreement or placement on or over, or retrieval from or through, the Service of any software, file, information, communication or other content.

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**Schedule F**  
**Prices**

**Product Kit Price**

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**Initial Spare Part Pricing**

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**FAA/EASA Approval**

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**AOG Support**

Row 44 will provide telecommunications based 24/7 AOG support free of charge. This will be an appropriately qualified person who can support and provide corrective support for inoperable aircraft.

**Installation Support**

\*\*\*

**Service Fee Pricing**

\*\*\*

**Monthly Data Usage Allowance**

\*\*\*

The Operational Data Service will provide Customer with an allowance of \*\*\* per operational aircraft per \*\*\*. The applicable charge for operational data usage above \*\*\* of the Service per operational aircraft per \*\*\* shall be \*\*\* for usage during periods the Service is available to customers of Customers and \*\*\* for usage during periods the Service is not available to customers of Customers.

Service availability at airports is subject to regulatory clearance for each airport and that severe weather may impair service on the ground. Service to passengers below \*\*\* feet is not allowed by FAA or EASA as per the standard personal electronic device policies implemented by most airlines. The Operational Data Service will be subject to sensible provisions designed to minimize impact of this data to the network and the customer experience.

**Sponsored Activities Revenue Share**

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\*\*\* Confidential treatment requested.

**Schedule F-1**  
**Price Adjustment Formula**

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\*\*\* Confidential treatment requested.

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**Schedule G**  
**Service Fee Calculation**

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\*\*\* Confidential treatment requested.

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CONFIDENTIAL TREATMENT REQUESTED FOR PORTIONS OF THIS DOCUMENT. PORTIONS FOR WHICH CONFIDENTIAL TREATMENT IS REQUESTED HAVE BEEN MARKED WITH THREE ASTERISKS [\*\*\*] AND A FOOTNOTE INDICATING "CONFIDENTIAL TREATMENT REQUESTED". MATERIAL OMITTED HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

OEM PURCHASE AND DEVELOPMENT AGREEMENT  
BETWEEN

TECOM Industries, Inc.

And

Row 44, Inc.

THIS OEM PURCHASE AND DEVELOPMENT AGREEMENT (this "*Agreement*") is entered into and effective as of October 12, 2009 ("*Effective Date*") between TECOM Industries, Inc. ("*TECOM*" or "*Seller*"), a California corporation located at 375 Conejo Ridge Avenue, Thousand Oaks, California 91361, and Row 44, Inc. ("*Row 44*" or "*Buyer*"), a Delaware corporation located at 31280 Oak Crest Drive, Westlake Village, California 91361, (hereinafter, each a "*Party*" and collectively, the "*Parties*").

RECITALS

WHEREAS, Buyer operates a broadband data service for the aviation industry (the "*Row 44 Service*");

WHEREAS, Seller designs and builds custom antennas and antenna systems for the defense, commercial wireless and satellite communications markets;

WHEREAS, Seller has developed certain proprietary airborne satellite antenna assembly subsystems technologies and products as more fully described herein;

WHEREAS, Seller desires to develop and sell Buyer an airborne satellite antenna subsystem that has obtained Black Label approval for use with the Row 44 Service (the "*Product Antenna System*" or "*Product*"); and

WHEREAS, following development of the Product Antenna System, Buyer desires to purchase a number of the Product Antenna Systems, all on the terms set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises contained herein the Parties agree as follows:

1. DEFINITIONS

"*Agreement*" has the meaning set forth in the preamble.

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**“Black Label Approval”** means all the regulatory approvals set forth on Exhibit C hereto and any other similar approvals required by the FAA to supply and distribute the Product Antenna System.

**“Buyer”** has the meaning set forth in the preamble.

**“Claim”** has the meaning set forth in Section 11.1.

**“Effective Date”** has the meaning set forth in the preamble.

**“FAA”** means the Federal Aviation Administration.

**“Improvements”** means any improvements, discoveries, developments, modifications or derivative works, whether or not patentable.

**“Indemnified Party”** has the meaning set forth in Section 11.2.

**“Indemnifying Party”** has the meaning set forth in Section 11.2.

**“Intellectual Property Rights”** means all current and future trade secrets, copyrights, patents and other patent rights, trademark rights, service mark rights, mask work rights and any and all other intellectual property or proprietary rights now known or hereafter recognized in any jurisdiction.

**“Initial Term”** has the meaning set forth in Section 13.1.

**“Marks”** has the meaning set forth in Section 9.4.

**“Minimum Order Quantity”** shall mean \*\*\* Product Antenna Units.

**“Party”** or **“Parties”** has the meaning set forth in the preamble.

**“Product Antenna System”** or **“Product”** has the meaning set forth in the recitals.

**“Product Software”** means all software developed for auto tracking algorithms, antenna control unit firmware and systems integration.

**“Related Products”** has the meaning set forth in Section 5.5.

**“Renewal Term”** has the meaning set forth in Section 13.1.

**“Row 44”** has the meaning set forth in the preamble.

**“Row 44 Service”** has the meaning set forth in the recitals.

**“Seller”** has the meaning set forth in the preamble.

**“Seller Know-how”** means the proprietary techniques, inventions, practices, methods, knowledge, designs, skill and experience relating to the development of the Product or Seller's proprietary subsystems Seller discloses to Buyer under this Agreement.

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\*\*\* Confidential treatment requested.

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"**Seller Patents**" means patents issued as of the Effective Date related to the subject matter of this Agreement and the patents to issue after the Effective Date on patent applications entitled to a filing date on or before the Effective Date related to the subject matter of this Agreement, including without limitation all foreign counterparts, all substitutions, extensions, reissues, renewals, divisions, continuations and continuations in part relating to such patents and their foreign counterparts, and which are owned or controlled by Seller (where "controlled" means licensed by Seller with a royalty-free right to grant sublicenses).

"**Seller Technology**" means (i) the inventions, designs, discoveries and processes claimed in the Seller Patents and (ii) the Seller Know-How.

"**Specifications**" means, with respect to the minimum performance of the Product, the \*\*\*, attached hereto as Exhibit A-1, and, with respect to the final Product, the specifications for such Product to be agreed upon by the Parties and to be attached hereto as Exhibit A-2.

"**Statement of Work**" or "**SOW**" means the Airborne Satellite RF Subsystem Statement of Work, Document Number \*\*\*, attached hereto as Exhibit B and setting forth the development scope of work.

"**TECOM**" has the meaning set forth in the preamble.

"**Term**" has the meaning set forth in Section 13.1.

"**Threshold Number**" has the meaning set forth in Section 10.6.

## 2. COMPLETION OF DEVELOPMENT

2.1. Generally. Seller either has or shortly will complete development of the Product Antenna System for general commercial release pending regulatory approvals. In the event Seller has not obtained Black Label Approval for the Product Antenna System by January 31, 2010, then Buyer shall have the right to terminate this Agreement without any liability upon written notice to Seller within thirty (30) days of such date. Subject to the foregoing right of Buyer, upon completion of development, Seller will undertake and diligently pursue obtaining regulatory approval for the Product Antenna System at all times until such approval has been obtained, Buyer exercises its right of termination set forth in this Section 2.1, or approval is denied with prejudice.

2.2. Further Assurances. Each Party agrees to provide the other Party such reasonably requested assistance and data to complete the development, qualification and licensing of the Product Antenna System and the other requirements of the Parties set forth in the Statement of Work. With respect to items in the Statement of Work which by their nature require further clarification, the Parties agree to negotiate the work scope and responsibilities with respect to such items in good faith and with the understanding that expenses related to non-recurring engineering costs are the sole responsibility of Seller.

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\*\*\* Confidential treatment requested.

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2.3. Development Prototypes. In order to assist Buyer's integration of the Product Antenna System into the Row 44 Service, to test compliance of the Product Antenna System and to assist in development of the Product Antenna System, \*\*\*, Seller shall fabricate \*\*\* prototype "red label" Product Antenna Systems, including, \*\*\*. In addition, Seller will provide Buyer a \*\*\* for purposes of Buyer's \*\*\*. Upon Black Label Approval, Seller agrees to upgrade and/or retrofit \*\*\* provided to Buyer for use on its flight test aircraft, unless such upgrade and/or retrofit is not reasonably practical given the changes made to the antenna design since the date of delivery.

### 3. PURCHASE OF PRODUCTS

Acceptance of Orders. Seller agrees to sell the Product to Buyer and to accept purchase orders for the Product from Buyer issued pursuant to the terms and conditions of this Agreement. Purchases shall be initiated by Buyer's written or electronically dispatched purchase orders referencing the quantity, the Product, applicable price, shipping instructions and expected delivery schedule. All purchase orders for Products placed by Buyer hereunder shall be governed by the terms and conditions of this Agreement which shall be incorporated by reference into each purchase order. In the event of a conflict between the provisions of this Agreement and the terms and conditions of Buyer's purchase order or Seller's acknowledgment or other written communications, the provisions of this Agreement shall prevail and any such conflicting terms or conditions are hereby rejected. Buyer represents and warrants that its standard form of contracts with Buyer's end user customer requires that payment will be made to the Buyer within \*\*\* days after Buyer's delivery of Products to the end use customer. Buyer will use its best efforts to enforce compliance with this provision by the end use customers. Upon reasonable request, and with the knowledge and permission of the end use customer, Buyer will provide Seller a copy of the purchase order, relevant portions of the underlying master sales or other contract, as well as other reasonable confirmation of the termination or cancellation provisions of the applicable order from Buyer's end user customer.

Seller agrees to deliver Product directly to a carrier selected by Buyer for shipment directly to Buyer, Buyer's end use customer or to a third party installation party(s) at a location(s) as instructed by Buyer. The Buyer represents and warrants that its standard form of contract with Buyer's end use customer(s) provides that the final acceptance of the Product will be completed upon delivery to the designated location and no testing of the Product will be a condition to acceptance which will commence the \*\*\* day time period for payment to Buyer by the end use customer(s).

3.1. Lead time. Product Antenna Systems ordered by Buyer from Seller shall be subject to a \*\*\* calendar day lead time; provided, that, Seller agrees, subject to Section 5.1, (i) to accept any order issued within the lead time if Seller has the ability to meet such order, (ii) the lead time shall decrease to \*\*\* calendar days for orders placed after the initial delivery of Product Antenna Systems hereunder and (iii) Seller agrees to make a good faith, commercially reasonable effort to reduce the lead time during the term of this Agreement. Seller will notify Buyer immediately upon any change in circumstance affecting the ability of Seller to deliver orders. Notwithstanding the foregoing, Seller acknowledges that after the initial \*\*\* days of production Buyer has agreed to have available, during any period in which the Product Antenna System is in continuous production, up to \*\*\* units of the Product Antenna System in any \*\*\* month period upon \*\*\* days prior notice (a "Snap Order"). If Buyer receives a Snap Order, Seller will use best efforts to deliver the units requested within the \*\*\* day lead time.

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3.2. Acknowledgment of Orders. Seller shall notify Buyer of any purchase order Seller reasonably believes is not in conformance with the terms of this Agreement by telephone or facsimile (and promptly confirm in writing) within \*\*\* business days after receipt of Buyer's purchase order. Failure of Seller to confirm or respond to Buyer's purchase order within \*\*\* business days shall constitute acceptance.

3.3. Minimum Orders. Except as set forth herein and with respect to the failure to meet the Development Deadline, Buyer hereby agrees that it will order the Minimum Order Quantity of Product Antenna Systems within \*\*\* months of the date by which Seller obtains Black Label Approval; provided, that, the Minimum Order Quantity shall be reduced on a \*\*\* basis for any month in which Seller is unable to deliver the ordered quantity of Product Antenna Systems in such month. For example, if in month one (1) Seller is able to deliver only \*\*\* of the \*\*\* ordered systems, the Minimum Order Quantity shall decrease by \*\*\*. For purposes of the Minimum Order Quantity orders, delivery of such units shall be made within \*\*\* months of the date of the applicable order except as the Parties otherwise mutually agree.

3.4. Cancellation. Buyer may cancel without any liability for such purchase order notwithstanding any obligations that otherwise remain in effect pursuant to this Agreement, any purchase order upon written notice to Seller within \*\*\* days from the date such purchase order was accepted by Seller. Subject to the terms hereof, Buyer may cancel any other purchase order issued hereunder at any time; provided, however, if Seller incurs liability (as determined by Seller in its reasonable, good faith judgment) as a result of such cancellation because of the materials and work in process costs incurred by Seller (which work in process costs shall include any purchased materials that are dedicated to the cancelled Products to the extent they cannot be returned/restocked at full cost, labor efforts expended to date at Seller's standard hourly commercial rates, and reasonable termination costs and charges contractually imposed by Seller's subcontractors) to meet such purchase order(s), and Seller and Buyer cannot reasonably use such materials and work in process within a reasonable time frame, the Parties agree to discuss in good faith a mutually acceptable plan to limit such liability in the future and to compensate Seller for the materials and work in process costs it has incurred as a result of such cancellation or cancellations; provided, that, orders cancelled with respect to the Minimum Order Quantity shall be subject to the payment terms set forth in Section 13.3 hereof.

3.5. Forecasts. Buyer shall provide Seller with a \*\*\* month non-binding, forward-looking rolling forecast and update such forecast on a monthly basis. Seller shall use such forecast for internal material planning requirements only. Such forecast does not represent any commitment by Buyer to purchase Products. Further, Seller shall view all forecasts as Confidential Information in accordance with the terms hereof.

3.6. Capacity Constraints. If orders for the Product exceed Seller's capacity, Seller shall allocate available capacity on a basis Seller, in its reasonable discretion, deems equitable; provided, that, Buyer shall be treated on the same basis as Seller's most favored, similarly situated customer (whether commercial or governmental), based on pending dollar volume of orders. In addition, the Parties shall discuss in good faith a mutually acceptable course of action to rectify such capacity constraint as soon as possible.

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\*\*\* Confidential treatment requested.

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#### 4. DELIVERY TERMS

4.1. Delivery Point. All shipments shall be F.O.B. origin (Seller's U.S. shipping dock), and Buyer shall be responsible for all shipping costs (Buyer shall select the applicable carrier). Title and risk of loss shall pass to Buyer upon Seller's tender of delivery to the common carrier or Buyer's designee. In order to secure payment of all amounts owing to Seller under this Agreement, Seller will have, and Buyer hereby grants to Seller, a purchase money security interest in the Products, any other materials that Seller furnishes, and all proceeds of the foregoing. \*\*\*

4.2. Shipping. Seller shall not deliver any Products prior to the scheduled delivery date without Buyer's written consent, and Buyer may return early or excess shipments to Seller at Seller's sole risk and expense. Seller may ship partial orders provided Seller notifies Buyer and Buyer agrees prior to shipment. Buyer's purchase order shall specify the carrier or means of transportation or routing, and Seller will comply with Buyer's instructions. Except as otherwise set forth herein, expedited shipping shall be billed to and paid by Buyer. If Buyer fails to provide shipping instructions, Seller shall select the best available carrier, on a commercially reasonable basis. Seller shall accommodate a request to expedite the ship date, if reasonably able to do so.

4.3. Packing Instructions. All Products shall be packaged and prepared for shipment in a manner which (i) follows Buyer's packaging and routing guidelines, a copy of which will be provided to Seller, and includes a certificate of conformity and acceptance test results for each unit, (ii) follows good commercial practice, and (iii) is acceptable to common carriers for shipment. Seller shall mark the outside of each shrink wrapped pallet with the applicable Buyer part numbers and any necessary lifting and handling information. Each shipment shall be accompanied by a packing slip which will include Buyer's part numbers, purchase order number, Seller's part number and the quantity shipped.

4.4. Delivery Schedule. Delivery shall be pursuant to the schedule set forth in Buyer's purchase order or as otherwise agreed upon by the Parties, including the terms of Section 4.5 below, but not to exceed \*\*\* months from the order date unless Seller is unable to deliver the quantity of antennas ordered during such period. Seller shall immediately notify Buyer in writing of any anticipated delay in meeting the delivery schedule, stating the reasons for the delay. If Seller's delivery fails to meet the committed delivery schedule, then Seller shall expedite the routing at Seller's expense; however, if Seller's delivery fails to meet the schedule in excess of \*\*\* days, then Buyer, at its sole option and without penalty or any additional expense, may (i) require Seller to expedite the routing by the fastest available commercial carrier; (ii) reschedule the delivery; or (iii) cancel the delivery in whole or in part.

4.5. Rescheduling. Buyer and Seller acknowledge and agree that certain orders issued pursuant to this Agreement will be large up-front orders for installation according to a schedule to be determined by Buyer and its customers, which schedule will be subject to change between the date of the order and the date of installation. Except with respect to the \*\*\*-month limit in Section 4.4, Buyer shall be entitled to reschedule delivery of Products or quantities of Product scheduled for a particular delivery at any time for a particular purchase order; provided, however, that Buyer may not reschedule delivery of Products beyond \*\*\* days from the original delivery date in the applicable purchase order. Buyer and Seller agree to work in good faith to establish order and delivery schedules that maximize the ability to obtain bulk component discounts, match production schedules with delivery schedules, and minimize storage of completed Products due to delay. Following initial production ramp up, Buyer and Seller agree to discuss in good faith modification of this Section 4.5 to establish a "Firm Zone", "Trade-off Zone" and "Remaining Horizon" forecast, order and delivery model based on the ongoing production needs of Buyer and Seller's improvements to the lead time for orders.

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\*\*\* Confidential treatment requested.

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## 5. PRICING; PAYMENTS; TAXES

Prices. Subject to the terms hereof, the prices for the Product Antenna System and related components during the Term shall be as set forth in Exhibit D on a per purchase order basis. \*\*\* Finally, Buyer agrees to place its first order of Product Antenna Systems by October 14, 2009; *provided that* Buyer and Seller agree, however, that such initial purchase order shall be expressly conditioned upon Seller obtaining Black Label Approval on or before January 31, 2010. Only if Seller (i) meets the deadline or (ii) misses such deadline and Buyer subsequently chooses not to terminate the Agreement in accordance with its rights set forth in Section 2.1 would the purchase order become effective and be binding on the parties. Notwithstanding anything contrary to this elsewhere in the Agreement, once the first order becomes binding and effective as described in this Section it shall not be subject to cancellation for any reason and delivery may not be extended more than \*\*\* days in good faith based upon mutual delivery and installation adjustment between Buyer and its customer(s).

5.1. Invoices. Subject to acceptance of Products as provided in this Agreement, invoices shall be due and payable \*\*\* days after the date of actual receipt of the Products by Buyer or Seller's invoice, whichever is later.

5.2. Late Payment. Any payment not made within \*\*\* days after it is due shall bear interest at a rate equal to \*\*\* percent (\*\*\*) per month or the highest rate permitted by applicable law, whichever is less, on the unpaid amounts from time to time outstanding from the date on which portions of such amounts became due and owing until payment thereof in full. This clause shall be a non-exclusive remedy for Seller.

5.3 Taxes and Duties. The prices for the Products are exclusive of all applicable sales or use taxes based on laws of the United States and/or the applicable states. Such taxes, when applicable, will appear as separate items on Seller's invoice. All import duties, customs fees or other taxes based on import of materials, components, or other goods into the United States that are used in the manufacture of the Products shall be payable by Seller and shall not impact the pricing set forth in this Agreement unless expressly set forth in this Agreement or on a purchase order.

### 5.4 \*\*\*

5.5 Price Adjustments. Except with respect to the Minimum Order Quantity and contemporaneously ordered Spare Parts for which prices shall be fixed according to this Agreement, \*\*\*

## 6. ACCEPTANCE; QUALITY ASSURANCE

6.1. Buyer Testing. Seller acknowledges that Buyer will conduct periodic testing of Product deliveries, likely by testing sample units within a lot delivery. Should such sample testing reveal a likelihood of more than a minimal number of failures of the Products delivered to comply with the limited warranty set forth in Section 10, Buyer may return the entire Product lot delivered to Buyer pursuant to the warranty return procedures set forth in this Agreement for further testing by Seller. For purposes hereof, a minimum number of failures shall mean one failure in any lot of under \*\*\* units and two failures in any lot equal to or greater than \*\*\* units, and the units in a lot shall be all units delivered in any \*\*\* day period (except where a unit lot is reasonably identifiable and extends beyond a \*\*\* day period).

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6.2. Inspection Rights. Buyer and its end customers shall have the right to perform vendor qualifications and/or on-site source inspections at Seller's manufacturing facilities and Seller shall reasonably cooperate with Buyer in that regard. If an inspection or test is made on Seller's premises, Seller shall provide Buyer's inspectors with reasonable facilities and assistance at no additional charge. Buyer may conduct such inspections as required. Buyer must provide advance written notice of a desire to conduct an inspection of at least \*\*\* days prior to the beginning of such inspection. Such inspection shall be conducted only during normal business hours and in compliance with Seller's reasonable safety and security requirements.

6.3. ISO 9001 Compliant Supplier. Seller represents that it is currently ISO 9001 compliant. Should Seller lose the ISO 9001 registration thereafter, Seller will notify Buyer immediately. Seller will then use commercially reasonable measures to obtain re-registration within \*\*\* days. The Parties acknowledge that Seller may subcontract manufacture of Products to a subcontractor.

## 7. REGULATORY COMPLIANCE

7.1. Requirements. All Products delivered hereunder, shall comply with the regulatory agency requirements to be set forth in the Specifications. The responsibilities for obtaining applicable licensing and qualification shall be as set forth in the Statement of Work, and, notwithstanding the foregoing, the Parties agree to provide any assistance reasonably requested by the other Party in completing the licensing and qualification of the Product Antenna System (separately and in coordination with the other components of the Row 44 Service) with applicable governmental authorities. Notwithstanding the foregoing, Seller shall be responsible for maintaining the appropriate FAA repair certification (i.e. CFR 145 Repair Station Certification) such that Seller can repair the Product pursuant to the warranty terms set forth in this Agreement.

7.2. Responsibility for Export and Import Documentation. Seller shall furnish Buyer or Buyer's designee with the information necessary for Buyer to timely obtain all required export and import documentation, and shall provide reasonably requested assistance to Buyer in completing the same.

7.3. Country of Manufacture. Seller represents and warrants that final assembly of the Product shall be in the United States. Seller shall promptly advise Buyer at least \*\*\* days prior to a change in or addition to any manufacturing locations for the key components of the Product.

7.4. Commodity Classification. Seller shall provide Buyer with a copy of the Commodity Classification for the Products or, if this is not available, Seller shall provide Buyer with the ECCN that was used by Seller. In addition, Seller shall advise Buyer as to the License Exception, if applicable, pursuant to which the Product may be exported.

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7.5. Export Controls Neither Party will export or re-export, directly or indirectly, the Products or technical data acquired under this Agreement or the software programs or such technical data to any country for which the United States Government or any agency thereof, at the time of export, requires an export license or other governmental approval, without first obtaining such license or approval. Both Parties will cooperate, to effect compliance with all applicable import and/or export regulations. In addition, the Parties agree to comply with all applicable local country import and/or export laws or regulations in the country(ies) of procurement, production and/or end destination of the Product. Both Parties understand that the foregoing obligations are legal requirements and agree that they shall survive any term or termination of this Agreement.

## 8. PRODUCT CHANGES

8.1. Updates and Product Enhancements. The Parties acknowledge that they intend that the Product will require no updates or product enhancements. Nonetheless, should such bug fixes or similar product updates become available (i.e. Seller creates an update on its own or in connection with a warranty repair), Seller shall offer them to Buyer pursuant to the procedures set forth herein. All software updates made to the Product Software, and applicable to previously purchased Products (i.e. bug fixes and reliability enhancements) shall be provided to Buyer for distribution to its customers. All software/firmware updates generally applicable to all Products shall be provided in a machine-readable format capable of being remotely applied to the Product Antenna Systems of Buyer and its customers.

8.2. Requested Engineering Change. In the event that Buyer finds or becomes aware of a situation which in its opinion necessitates or would benefit from an engineering change in the Product, Buyer shall suggest such proposed engineering change to Seller and Seller and Buyer agree to work with each other in good faith to determine whether such change will be made and if so will work with each other on the implementation of such change. Seller agrees to work with Buyer in good faith to upgrade or alter the Product to changing market requirements. Except as set forth in Section 8.6 below, Seller shall not be required to undertake any engineering change proposed after Black Label Approval unless Seller and Buyer agree on an appropriate allocation of the NRE related to such change.

8.3. Engineering Change Orders. Should Seller materially change, improve, or add any enhancements or updates to the Products at any time, Seller shall provide reasonable prior written notice to Buyer of any such material change, improvement, enhancement or update that affects the form, fit or function of any Product or related product or any changes to Seller's part number for the Product prior to its implementation. Buyer shall respond to the requested changes within \*\*\* days or the change will be deemed accepted. Buyer's response time may be reduced by mutual agreement if the change improves safety or reliability.

8.4. Rejection of Change Orders. Buyer shall not unreasonably withhold acceptance of a proposed change; it may however reject a proposed change for good cause, including any requirement to re-qualify or re-license the Product Antenna System with any regulatory body. If Buyer does reject a proposed change, the Parties will discuss in good faith alternatives to such rejection. Upon rejection of any proposed change, Buyer shall be entitled to (i) terminate in whole or in part, any affected Product remaining undelivered under accepted Releases or require delivery by Seller of some or all of such unchanged Product and (ii) place a last-time purchase for the unchanged Product for delivery in amounts requested by Buyer over a \*\*\*-month period following such implementation.

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8.5. Unauthorized Changes. If a Seller-engineering change order is implemented without the written approval of Buyer, Seller shall be liable for repair and/or rework of all Product affected, including, but not limited to, product in transit, product in finished goods inventory, and any product located with a reseller or at an end user location.

8.6. Required Changes; Safety Issues. Seller shall concurrently notify Buyer if Seller issues an FAA safety bulletin or similar notice regarding the Product Antenna System. Upon such occurrence, Seller and Buyer agree to work in good faith and devote their most senior engineering and support resources to diagnose and remedy the safety risk. In the event any applicable governmental body requires, pursuant to applicable law, a change to the Product Antenna System to maintain compliance with the safety or similar rules and regulations of such body, Seller (at its expense) will promptly devote the appropriate engineering and support resources to implement the necessary engineering changes to the Product Antenna System to maintain compliance with such governmental authority.

## 9. LICENSE GRANTS; OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS

9.1. Intellectual Property Rights Ownership. As between Buyer and Seller, Seller shall be the exclusive owner of all inventions, technology, designs, works of authorship, mask works, technical information, computer software, and other information conceived, developed or otherwise generated in the performance of this Agreement by Seller. For the avoidance of doubt, Seller shall have no claim to the intellectual property contained in the RF Subsystem Specification of Buyer, which shall remain exclusively owned by Buyer as between Buyer and Seller. Subject to the terms and conditions of this Agreement, Seller grants to Buyer a license to offer to sell and sell the Product directly to its end-use customers.

9.2. Product Software License. Subject to the terms and conditions of this Agreement, Seller grants to Buyer during the term of this Agreement a nonexclusive, nontransferable, royalty-free license to distribute through Buyer's sales channels any Product Software incorporated or embedded in the Products solely as incorporated in firmware format therein, and to permit end users of the Products to use the Product Software solely as incorporated in the Products, subject in each instance to an enforceable end user license with terms and conditions no less protective of Seller's proprietary interests in such Product Software as set forth in this Agreement. To the extent permissible by applicable law, Buyer shall not reverse compile, reverse engineer or otherwise disassemble the Product Software; provided, that Seller will provide a machine readable copy of the object code and source code of such Product for use in Buyer's integration activities and for maintenance of the Product Antenna System as part of Buyer's Service. To the extent permissible by applicable law, no rights to copy, prepare derivative works or to publicly perform or display any Product Software are granted to Buyer or end users hereunder. Any rights to or under Seller's Intellectual Property Rights, Seller Technology or Seller Software not expressly granted in this Agreement are expressly reserved. Seller agrees to submit to a mutually agreeable escrow company a complete copy of the source code for all Product Software, which escrow shall be subject to mutually agreeable terms of release based on the requirements of customers of Buyer to have access to such software code in the event Buyer ceases operations and Seller is unwilling or unable to provide support for the Product Antenna System.

9.3. Intellectual Property Markings. Buyer and Seller shall work in good faith on reasonable (i) marking of the Product and accompanying packaging and documentation with a notice reflecting Seller's ownership of the Seller Technology and (ii) provision for Buyer's own part number label information on each Product.

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9.4. Trademarks. Subject to the terms and conditions set forth in the Agreement and solely for the purposes hereof, Buyer will have a non-transferable, non-exclusive license, without right of sublicense, to place the Seller trademarks and logos ("**Marks**") on documentation and packaging as required. Such Marks shall be prominent and the placement and sizing shall be subject to mutual agreement of the Parties. In no event may Buyer alter or remove any Marks unless such removal is approved in advance in writing by Seller. Except for the right to use the Marks as set forth herein, nothing contained in this Agreement shall be construed to grant Buyer any right, title or interest in or to the Marks. Buyer acknowledges Seller's exclusive ownership of the Marks. Buyer agrees not to take any action inconsistent with such ownership and further agrees to take, at Seller's reasonable expense, any action which Seller reasonably requests to establish and preserve Seller's exclusive rights in and to its Marks. Buyer shall not adopt, use or attempt to register any trademarks or trade names that are confusingly similar to the Marks or in such a way as to create combination marks with the Marks. Buyer shall promptly provide Seller with samples of all materials that use the Marks for Seller's quality control purposes. If, in Seller's reasonable discretion Buyer's use of the Marks does not meet Seller's then-current trademark usage policy, Seller may, at its option, require Buyer to revise such material and re-submit it under this Section prior to shipment, display, or release of further Products or materials bearing or containing such Mark. If requested by Buyer, Seller agrees to display Buyer's trademarks and logo on the product packaging for the Product Antenna System, and Buyer grants seller a non-transferable, non-exclusive license, without right to sublicense, to place such Buyer trademarks and logos on such packaging.

9.5. Documentation License. Subject to the terms and conditions of this Agreement, Seller hereby grants Buyer, a nonexclusive, nontransferable, worldwide, fully-paid and royalty-free license to use, reproduce, modify, create derivative works based on, support, demonstrate and distribute through single or multiple tiers of distribution all end user documentation, including all subsequent updates or enhancements thereto or replacements therefore, delivered as part of or together with the Products or otherwise provided under this Agreement. Any modifications or derivative works are subject to Seller's technical approval prior to demonstration or distribution.

## 10. WARRANTY

10.1. Limited Warranty. Seller warrants that all Products (including associated firmware) sold by Seller under the terms of this Agreement, for a period of \*\*\* from delivery will be (a) free from defects in workmanship and materials and (b) conform to the Specifications under normal use and service. If any Product or part thereof contains a material defect in materials or workmanship, or otherwise fails to conform to the Specifications, during the warranty period, Seller shall at its expense correct any such defect by repairing such defective Product or part or, at Seller's option, by delivering to Buyer an equivalent Product or part replacing such defective Product or part. Seller shall process warranty claims made pursuant to this Agreement according to the following schedule, commencing from receipt of the applicable component by Seller, (i) deliver a report regarding the warranty claim in a form mutually agreed upon by Buyer and Seller within \*\*\* days, (ii) repair the applicable component within \*\*\* days, and (iii) if necessary, refurbish the applicable component within \*\*\* days. Seller shall waive any expedite charges to Buyer in order to effect earliest reasonable replacement of such defective Products. Seller acknowledges and agrees that the above warranty shall be transferable to customers of Buyer. Seller, in the exercise of its reasonable discretion, shall determine whether a Product has failed to conform to the above warranty, unless such determination is disputed by Buyer. In such case, Buyer and Seller agree to meet and confer in good faith to discuss the appropriate evaluation of such Product, and, if the parties are unable to agree following such meeting, agree to appoint a third party to make the determination as to the cause of the alleged defect. Warranty return shipments shall be the same as the process for shipments of new Products, as set forth elsewhere in this Agreement.

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10.2. Return of Products. Buyer will promptly notify Seller in writing of any nonconforming Product or line replaceable component thereof. Such notification shall include the applicable serial numbers for the Product and/or component thereof and reason for nonconformance. Seller acknowledges and agrees that with respect to Products sold by Buyer to its customers, Seller agrees to accept returns from such customer of Buyer, and, if requested by such customer, cooperate with Buyer or such customer in establishing reasonable protocols for repair and return of the Product in accordance with such customer's reasonable practices. \*\*\*

10.3. Disclaimer. EXCEPT AS EXPRESSLY STATED HEREIN, SELLER MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND WITH RESPECT TO THE PRODUCTS. SELLER DISCLAIMS AND DOES NOT OFFER ANY REPRESENTATION OR WARRANTY THAT PERFORMANCE OR USE OF THE PRODUCTS WILL NOT BE AFFECTED BY OTHER SYSTEMS, EQUIPMENT OR DEVICES OF THAT THE PRODUCTS WILL NOT INTERFERE WITH THE USE OR PERFORMANCE OF OTHER SYSTEMS, EQUIPMENT OR DEVICES. THE FOREGOING WARRANTIES, TERMS OR CONDITIONS ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, TERMS OR CONDITIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OF OTHERWISE, INCLUDING WARRANTIES, TERMS OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. BUYER EXPRESSLY ACKNOWLEDGES THAT SELLER HAS DESIGNED THE PRODUCTS SOLELY TO MEET THE SPECIFICATIONS AND THAT BUYER OR ITS CUSTOMERS SHALL BE RESPONSIBLE FOR TESTING THE PRODUCTS IN ORDER TO DETERMINE THAT THE PRODUCTS WILL NOT RECEIVE INTERFERENCE FROM OTHER SYSTEMS, EQUIPMENT OR DEVICES OR CAUSE INTERFERENCE WITH OTHER SYSTEMS, EQUIPMENT OR DEVICES. THE PRODUCTS ARE NOT WARRANTED AGAINST, AND BUYER SHALL NOT BE LIABLE FOR, INJURIES, DAMAGES OR LOSSES OF ANY KIND SUSTAINED AS A RESULT OF USES FOR WHICH THIS PRODUCT WAS NOT DESIGNED, INTENDED OR TESTED BY BUYER OR THE FAILURE TO USE THE PRODUCTS IN ACCORDANCE WITH ALL INSTRUCTIONS, AND ALL APPLICABLE SAFETY, REGULATORY AND INDUSTRY SAFETY STANDARDS OR THEIR EQUIVALENT.

10.4. Warranty Exclusions. SELLER SHALL NOT BE LIABLE UNDER ANY WARRANTY OR OTHER OBLIGATION IF THE ALLEGED DEFECT IN THE PRODUCT DOES NOT EXIST OR THE DEFECT OR DEFECTIVE PERFORMANCE WAS CAUSED IN WHOLE OR IN PART BY BUYER'S OR ITS CUSTOMERS (OR ANY THIRD PARTY'S) MISUSE, NEGLIGENCE, IMPROPER INSTALLATION OR TESTING, UNAUTHORIZED ATTEMPTS TO REPAIR, OR BY ACCIDENT, FIRE, LIGHTNING OR OTHER HAZARD OUTSIDE SELLER'S CONTROL.

10.5. Warranty Reports. During the Term, upon Buyer's request, Seller will provide Buyer a report of all warranty claims received by Seller from Buyer and customers of Buyer during the period since the last such report, which report will reasonably identify the applicable Product Antenna System, describe the nature of the failure (or claimed failure) and the corrective action take by Seller to resolve such claim.

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10.6. Latent Defects. In the event more than the Threshold Number (as defined below) of Product Antenna Systems fail under the warranty terms hereof due a common cause or reasonably related causes (or Seller, in its reasonable discretion, determines a failure in less than the Threshold Number of Product Antenna Systems is generally applicable to other Product Antenna Systems), Seller will (i) assign a senior engineering and management team to determine the root cause of such failure (if not previously determined), (ii) work in good faith with Buyer (and, as requested by Buyer, customers of Buyer) to establish a procedure to remedy all affected Product Antenna Systems and (iii), notwithstanding the normal warranty procedures set forth herein, use commercially reasonable efforts to expedite implementation of such remedy on all affected Product Antenna Systems in service and shipped within the previous \*\*\* years. As used herein, “**Threshold Number**” shall mean \*\*\* Product Antenna Systems with respect to the Minimum Order Quantity, and thereafter \*\*\* percent of the purchased Products inclusive of the Minimum Order Quantity (i.e., the Threshold Number would be \*\*\* for the first \*\*\* Products purchased pursuant to this Agreement).

10.7. Part Identification. In order to allow warranty coverage for line replaceable components of the Product Antenna System, Seller agrees to establish a part identification and tracking system for such line replaceable units such that Buyer or a customer of Buyer may submit such line replaceable unit for warranty repair without the remainder of the Product Antenna System.

10.8. Spare Part Provisioning. Seller and Buyer agree to work in good faith to establish, as soon as possible after the Effective Date, spare part provisioning recommendations for the Product Antenna Systems (and the line replaceable unit components thereof), and, as necessary, update such recommendations during the Term of this Agreement based on the warranty reports set forth above.

10.9. End of Life. Buyer reserves the right to discontinue manufacturing and providing support for the Products in this Agreement at any time beginning no earlier than \*\*\* years after the termination or expiration of the Agreement.

## 11. INDEMNIFICATION; INSURANCE; LIMITS ON LIABILITY

11.1. Seller's IP Infringement Indemnity. Seller shall indemnify, defend and hold Buyer and Buyer's customers that purchase the Product Antenna System (together, the “IP Indemnitee” or “IP Indemnitees” as applicable) harmless from and against any and all liabilities, losses, damages, fees, costs and expenses, including without limitation reasonable attorneys' fees, incurred by the IP Indemnitee resulting from a third Party claim, suit, action or proceeding (a “**Claim**”) alleging that the Product infringes a third Party U.S. patent or copyright or misappropriates any third Party's trade secrets; provided that IP Indemnitee (i) promptly notifies Seller in writing of such Claim; (ii) provides Seller sole control of the defense or settlement of such Claim; and (iii) provides Seller assistance at Seller's request and reasonable expense. Buyer (but no other IP Indemnitee) may participate in the defense or settlement of the Claim at its own expense. If a final injunction is obtained against an IP Indemnitee for sale or use of the Product, or if Seller reasonably believes that such injunction is likely, Seller will, at its option and its expense, either (i) procure for IP Indemnitee the right to continue selling and/or using such Product as is applicable, or the infringing portions of the Seller Technology, or (ii) modify the Product so that it becomes non-infringing. If in Seller's reasonable discretion either of the above is not commercially reasonable, Buyer shall promptly cease selling Products, and Buyer agrees to include in its contracts with its customers a corresponding provision requiring such customers to stop using the Products, as applicable, and Seller shall refund to Buyer an amount equal to the amount paid by Buyer for the infringing Product units (Buyer will transfer the appropriate, corresponding amounts, through to its customer). Seller will have no liability or obligation to indemnify for any claim arising from (i) the combination of the Product with Buyer or third Party materials or intellectual property, unless, and only to the extent that, it is determined by a court of competent jurisdiction that the Product is the infringing element of such Claim; (ii) the modification or translation of the Product or any portion of the Seller Technology; or (iii) any Improvements created by a Party other than Seller.

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\*\*\* Confidential treatment requested.

## 11.2 General Indemnities.

(a) Buyer shall indemnify, defend and hold Seller harmless from and against any and all liabilities, losses damages, fees, costs and expenses, including without limitation reasonable attorneys' fees, incurred by Seller resulting from Buyer's or Buyer's customers' (including any third party end-users of such customers) normal use and service of the Products up to a maximum aggregate amount of twenty million dollars (\$20,000,000); provided, however, that Buyer shall not be responsible for indemnifying Seller from and against Claims that the Products contained defects in workmanship and materials, Claims that the Products did not conform to the Specifications under normal use and service, or Claims covered by 11.2(b).

(b) Seller shall indemnify, defend and hold Buyer harmless from and against any and all liabilities, losses, damages, fees, costs and expenses, including without limitation reasonable attorneys' fees, incurred by Buyer resulting from any personal injury or property damages Claims brought against Buyer in connection with Buyer's or Buyer's customers normal use and service of the Products up to a maximum aggregate amount of twenty million dollars (\$20,000,000).

## 11.3 Intentionally omitted.

11.4 Entire Liability. This Section 11 states the entire liability and obligations of each Party and the exclusive remedy of each Party with respect to any alleged Intellectual Property Rights infringement or misappropriation by the Product, or any other breach of this Agreement.

11.5 Limitation of Liability. EXCEPT FOR EACH PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER AND LIABILITY ARISING FROM DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE, IN NO EVENT, WHETHER BASED IN CONTRACT OR TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE), SHALL EITHER PARTY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES OF ANY KIND OR FOR LOSS OF PROFITS OR REVENUE OR LOSS OF BUSINESS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE BREACH THEREOF, WHETHER OR NOT THE PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

IN ADDITION, IN NO EVENT SHALL EITHER PARTY'S LIABILITY TO THE OTHER HEREUNDER EXCEED THE AMOUNTS PAID (WITH RESPECT TO SELLER'S LIABILITY) AND OWED (WITH RESPECT TO BUYER'S LIABILITY) FOR THE PRODUCTS IN QUESTION.

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A CAUSE OF ACTION FOR RECOVERY FOR AN ALLEGED BREACH UNDER THIS AGREEMENT MUST BE MADE WITHIN TWELVE (12) MONTHS AFTER DISCOVERY OF THE BASIS OF THE ALLEGED BREACH. Each Party acknowledges and agrees that the foregoing limitations on liability are essential elements of the basis of the bargain between the Parties and that in the absence of such limitations the material and economic terms of this Agreement would be substantially different.

## 12. CONFIDENTIALITY

12.1. Confidential Information. Information that is transmitted by one Party to the other in connection with the performance or implementation of this Agreement and, if in written form, is marked "confidential" or with a similar legend by the disclosing Party before being furnished to the other, or if disclosed orally or visually is identified as such prior to disclosure and summarized, in writing, by the disclosing Party to the receiving Party within \*\*\* days thereof shall be deemed to be confidential information of the disclosing Party. Each Party agrees that it shall use the same degree of care and means that it utilizes to protect its own information of a similar nature, but in any event not less than reasonable care and means, to prevent the unauthorized use or the disclosure of such confidential information to third parties. The confidential information may be disclosed only to employees, contractors or representatives of a recipient with a "need to know" who are instructed and agree not to disclose the confidential information and not to use the confidential information for any purpose, except as set forth herein. Recipient shall have appropriate written agreements (or obligations under law) with any such employees, contractors or representatives sufficient to allow the recipient to comply with the provisions of this Agreement. Each of the Parties further agrees to make no use of such confidential information except as expressly permitted by this Agreement. Notwithstanding the foregoing, the Parties acknowledge and agree that certain confidential information of each Party will be required to be disclosed to applicable governmental agencies in order to obtain the right and license to use the Product for its intended use. Each Party acknowledges and agrees that such submissions of a Party's confidential information are permitted hereunder; provided, that, (i) the disclosing Party must reasonably believe the applicable information is required to be disclosed pursuant to the requirements of such governmental organization, and, (ii) if available, the disclosing Party will request from such governmental organization that such information remain confidential for the maximum period of time available under the rules and regulations of such governmental organization.

12.2. Exceptions. The confidential information of a Party shall not include and the foregoing obligation shall not apply to data or information which: (i) was in the public domain at the time it was disclosed or falls within the public domain, except through the fault of the receiving Party; (ii) was known to the receiving Party at the time of disclosure without an obligation of confidentiality; (iii) was disclosed after written approval of the disclosing Party; (iv) becomes known to the receiving Party from a third party source unrelated to the disclosing Party without any obligation of confidentiality; (v) is furnished to a third Party by the disclosing Party without an obligation of confidentiality; or (vi) was independently developed by the receiving Party without the benefit of confidential information received from the disclosing Party. Nothing in this Agreement shall prevent the receiving Party from disclosing confidential information to the extent the receiving Party is legally compelled to do so by any governmental investigative or judicial agency pursuant to proceedings over which such agency has jurisdiction; provided, however, that prior to any such disclosure, the receiving Party shall (a) assert the confidential nature of the confidential information to the agency; (b) immediately notify the disclosing Party in writing of the agency's order or request to disclose; and (c) cooperate fully with the disclosing Party in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of the compelled disclosure and protecting its confidentiality.

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\*\*\* Confidential treatment requested.

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12.3. Return of Documentation and Confidential Information. Upon any termination of this Agreement, each Party shall immediately return to the other Party all documentation, confidential information and any other tangible items in its possession or under its control evidencing the know-how of the other Party.

### 13. TERM AND TERMINATION

13.1. Term. This Agreement shall commence on the Effective Date and shall continue for ten (10) years thereafter (the “**Initial Term**”), unless (i) otherwise specified herein, (ii) unless there have been no orders for Products pursuant to this Agreement for a period of twelve (12) months after the end of the Exclusivity Period, or (iii) unless terminated sooner under the provisions set forth herein. Thereafter, this Agreement shall automatically be renewed for successive \*\*\* terms (each a “**Renewal Term**” and collectively with the Initial Term, the “**Term**”), unless one Party requests in writing at least \*\*\* days prior to the expiration of the then current term that this Agreement not be so renewed.

13.2. Termination For Cause. Either Party shall have the right to terminate this Agreement for cause as a result of:

13.2.1. The failure of the other Party to perform any material term or condition of this Agreement and to remedy such failure within \*\*\* days after written notice of such failure given by the non-defaulting Party; or

13.2.2. The filing by or against the other Party of a petition for liquidation under the U.S. Bankruptcy Code or corresponding laws or procedures of any applicable jurisdiction; or

13.2.3. The filing by or against the other Party of any other proceeding concerning bankruptcy, insolvency, dissolution, cessation of operations, or the like by the other Party. If such proceeding is involuntary and is contested in good faith, this Agreement shall terminate only after the passage of one hundred twenty (120) days without the dismissal of such proceedings; or

13.2.4. The voluntary or involuntary execution upon; the assignment or conveyance to a liquidating agent, trustee, mortgages or assignee of whatever description; or the making of any judicial levy against a substantial percentage of the other Party's assets, for the benefit of its creditors; or

13.2.5. The appointment of a receiver, keeper, liquidator or custodian of whatever sort of description, for all or a substantial portion of the other Party's assets; or

13.2.6. The termination, dissolution, insolvency or failure in business of the other Party, the distribution of a substantial portion of its assets, or its cessation to continue all or substantially all of its business affairs related to the activities under this Agreement.

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\*\*\* Confidential treatment requested.

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13.3. Payment. The termination or expiration of this Agreement shall in no way relieve either Party from its obligations to pay the other any sums accrued hereunder prior to such termination or expiration. In addition, in the event Buyer terminates this Agreement without cause or Seller terminates this Agreement for cause, Buyer shall pay Seller (i) all outstanding and undisputed invoices for Products already delivered and accepted by Buyer, (ii) an amount equal to the purchase price per Product Antenna System for the number of Product Antenna Systems constituting the Minimum Order Quantity minus the number of Product Antenna Systems ordered and paid for by Buyer prior to the date of termination and (iii), to the extent not included in (i) or (ii) above, the costs for items in the process of manufacture, inspection, or test based on the state of completion of such items by Seller and according to the cancellation procedures set forth in Section 3.5.

13.4. Survival. Sections 5, 7, 8, 9, 10, 11, 12, and 14 shall survive any termination or expiration of the Agreement.

#### 14. GENERAL

14.1. Federal Acquisition Regulations. In furnishing the Products hereunder, Seller agrees to comply with all applicable Federal Acquisition Regulations and related laws, rules, regulations and executive orders in connection with its activities under this Agreement, including, without limitation, the following FAR clauses: 52.222-26 - Equal Opportunity, 52.222-35 - Affirmative Action for Special Disabled and Vietnam Era Veterans and 52.222-36 - Affirmative Action for Handicapped Workers. The Product is a "commercial item," as that term is defined at 48 C.F.R. 2.101 (Oct 1995), as such terms are used in 48 C.F.R. 12.212 (Sep 1995) and will be provided to the U.S. Government only as a commercial end item. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (Jun 1995), all U.S. Government end users acquire the Product Software incorporated in the Product with only those rights set forth herein.

14.2. Insurance. Seller represents and warrants that during the Term and for a period of \*\*\* months after the last purchase by a customer of Products from Seller, it (or its parent company Smiths Group plc) will obtain and maintain, at its expense, product liability and aircraft grounding insurance covering Products to the extent any damages that are caused by normal operation and use of such Products. The insurance will be in an amount not less than \*\*\* per occurrence and not less than \*\*\* in the annual aggregate, will have no deductibles, will have a waiver of subrogation provision, and will contain such exclusions and be issued by such insurers as Buyer shall approve in writing, such approval not to be unreasonably withheld. The insurance will be occurrence-based (as opposed to claims made), will include Buyer as a named insured without liability for premiums, and will provide for at least \*\*\* days' prior written notice to Buyer of cancellation or non-renewal and of any material change in the coverage. On execution of this Agreement and on each anniversary of the date of this Agreement (including the \*\*\*-month period following termination of the license), and at any time on request by Buyer, Seller will furnish Buyer with certificates issued by the insurer or by a licensed insurance broker confirming that insurance coverage required by this Agreement is maintained and in full force and effect.

14.3. Publicity. Neither party shall disclose to the general public, advertise, or publish the existence or the terms or conditions of this Agreement, financial or otherwise, without the prior written consent of the other.

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\*\*\* Confidential treatment requested.

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14.4. Relationship of The Parties. Each of the Parties shall at all times during the term of this Agreement act as, and shall represent itself to be, an independent contractor, and not an agent or employee of the other.

14.5. Entire Agreement. This Agreement and Exhibits hereto are intended as the complete, final and exclusive statement of the terms of the agreement between the Parties regarding the subject matter hereof and supersedes any and all other prior or contemporaneous agreements or understandings, whether written or oral, between them relating to the subject matter hereof. This Agreement may not be modified except in writing executed by both Parties. The terms and conditions of this Agreement shall prevail notwithstanding any conflict with the terms and conditions of any purchase order, acknowledgment or other instrument submitted by Buyer or Seller.

14.6. Force Majeure. Neither Party shall be liable to the other for any alleged loss or damages resulting from failure to perform due to acts of God, natural disasters, acts of civil or military authority, government priorities, fire, floods, epidemics, quarantine, energy crises, war or riots. Each Party shall promptly notify the other Party of such event. If Seller is unable to deliver in accordance with agreed delivery schedule, Buyer may either (i) extend the time of performance and, with Seller's consent, make an equitable adjustment to the price to reflect the diminished value of the Products to Buyer (including taking into account penalties from customers of Buyer for failure to deliver units on schedule), or (ii) if (i) is not reasonably available, cancel the uncompleted portion of the purchase order at no cost to Buyer.

14.7. Notices. Except for purchase orders and acknowledgments which may be sent by normal carrier, all notices and communications hereunder are required to be sent to the address or facsimile number stated below (or such other address or facsimile number as subsequently notified in writing to the other Party): (i) by facsimile with confirmation of transmission, (ii) personal same or next day delivery or (iii) sent by commercial overnight courier with written verification of delivery. All notices so given shall be deemed given upon the earlier of receipt or three (3) days after dispatch. Any notices sent to Buyer and/or Seller hereunder should be sent to:

Row 44 Inc.  
31280 Oak Crest Drive  
Westlake Village, CA 91361

TECOM Industries, Inc.  
375 Conejo Ridge Ave.  
Thousand Oaks, CA 91361

Attn: \*\*\*  
Telephone No. \*\*\*  
Facsimile No. \*\*\*

Attn: \*\*\*  
Telephone No. \*\*\*  
Facsimile No. \*\*\*

14.8. Waiver. A waiver of any default hereunder or of any of the terms and conditions of this Agreement shall not be deemed to be a continuing waiver or a waiver of any other default or of any other term or condition, but shall apply solely to the instance to which such waiver is directed. The exercise of any right or remedy provided in this Agreement shall be without prejudice to the right to exercise any other right or remedy provided by law or equity, except as expressly limited by this Agreement.

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\*\*\* Confidential treatment requested.

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14.9. Severability. In the event any provision of this Agreement is found to be invalid, illegal or unenforceable, the validity, legality and enforceability of any of the remaining provisions shall not in any way be affected or impaired.

14.10. Press Release. Neither Party shall issue any press release announcing this transaction without the consent of the other Party.

14.11. Assignment. Neither Party may assign or transfer this Agreement, whether in whole or part, or any of its rights or obligations under this Agreement without the prior written consent of the other, except that either Party may transfer all its rights and obligations to a successor in interest upon a merger, reorganization, change of control, acquisition or sale of all or substantially all its assets. Any attempted assignment without such written consent shall be null and void.

14.12. Photocopy Of Original. Neither Party shall object to the use of a photocopy of the original of this Agreement for the purpose of making any required or allowed public filings.

14.13. Disclaimer of Third Party Beneficiaries. Other than with respect to (a) the transferable Product warranties for commercial airline customers of Buyer and (b) indemnification that runs expressly to customers of the Buyer, this Agreement is for the benefit of the parties to the Agreement and is not for the benefit of any third party.

14.14. Governing Law. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND ALL DISPUTES HEREUNDER SHALL BE GOVERNED BY, THE LAWS OF THE STATE OF CALIFORNIA, EXCEPT ITS CONFLICT OF LAW RULES. THE PARTIES HEREBY AGREE THAT THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR LOS ANGELES COUNTY AND/OR THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA SHALL HAVE JURISDICTION AND VENUE OVER ANY CONTROVERSIES, PROCEEDINGS, OR DISPUTES IN CONNECTION WITH THIS AGREEMENT. THE PARTIES EXCLUDE IN ITS ENTIRETY THE APPLICATION TO THIS AGREEMENT OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.

14.15. Attorney's Fees. In any action to enforce this Agreement, the prevailing Party shall be awarded all arbitration costs or courts costs and reasonable attorneys' fees incurred, including such costs and attorneys' fees incurred in enforcing and collecting any judgment.

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

14.17. Choice of Language. The original of this Agreement has been written in English and the governing language of this Agreement shall be English.

14.18. \*\*\*

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\*\*\* Confidential treatment requested.

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14.19. Hiring. Except as may be limited by applicable law, during the term of this Agreement and for a period of \*\*\* year thereafter, each Party agrees not to solicit for employment or hire any technical or professional employees of the other Party assigned to work on this Agreement or any resultant contract without the prior written consent of the other Party. This paragraph does not restrict in any way the right of either Party to solicit generally in the media for required personnel, and hiring personnel (not assigned to work on this Agreement or related contracts) pursuant to public solicitation shall not constitute a breach of this paragraph. Furthermore, this paragraph does not restrict employees of either Party from pursuing on their own initiative, employment opportunities with the other Party.

14.20. Representations and Warranties of the Parties. Each party to this Agreement represents and warrants to the other that by signing this Agreement and performing the obligations contemplated hereunder, it is not breaching any existing contract or agreement with, or obligation to, any third party. Buyer further represents and acknowledges that Buyer's entry into this Agreement is not attributable to, and Seller did not, induce or influence Buyer to breach any existing contract or agreement with, or obligation to, any third party.

*(Remainder of Page Left Blank; Signature Page Follows)*

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\*\*\* Confidential treatment requested.

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives effective as of the Effective Date.

TECOM Industries Inc.

Row 44, Inc.

By: /s/ Robert J. McFall  
Name: Robert J. McFall  
Title: Director of Contracts

By: /s/ John Guidon  
Name: John Guidon  
Title: C.E.O.

By: /s/ Arsen Melconian  
Name: Arsen Melconian  
Title: President

(Signature Page to OEM Purchase and Development Agreement)

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**Exhibit A-1**

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\*\*\* Confidential treatment requested.

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**Exhibit A-2**  
**Product Antenna System Specifications**

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\*\*\* Confidential treatment requested.

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**Exhibit B**  
**Statement of Work**

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\*\*\* Confidential treatment requested.

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**Exhibit C**  
**Black Label Approval**

This is the path for Black Label certification:

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\*\*\* Confidential treatment requested.

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Exhibit D

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\*\*\* Confidential treatment requested.

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**FIRST AMENDMENT TO  
OEM PURCHASE AND DEVELOPMENT AGREEMENT BETWEEN**

**TECOM Industries, Inc.**

**And**

**Row 44, Inc.**

THIS FIRST AMENDMENT TO OEM PURCHASE AND DEVELOPMENT AGREEMENT (this **"First Amendment"**) is entered into as of December 19, 2011 between TECOM Industries, Inc. (**"Seller"** or **"TECOM"**), a California corporation located at 375 Conejo Ridge Avenue, Thousand Oaks, California 91361, and Row 44, Inc. (**"Buyer"** or **"Row 44"**), a Delaware corporation located at 4353 Park Terrace Drive, Westlake Village, California 91361 (hereinafter, each a **"Party"** and collectively, the **"Parties"**) and amends that certain OEM Purchase and Development Agreement (the **"Original Agreement"** and together with the First Amendment, the **"Agreement"**). This First Amendment modifies the Original Agreement only as expressly stated below. Except as modified by this First Amendment, all of the terms and conditions contained in the Original Agreement are and will remain in full force and effect. Capitalized terms used but not defined in this First Amendment will have the same meanings as defined for such terms in the Original Agreement. In the event of any conflict of terms, this First Amendment will solely and exclusively control.

**RECITALS**

A. On or about October 12, 2009, TECOM and Row 44 entered into the Original Agreement relating to the development and purchase of Product Antenna Systems.

B. Pursuant to Section 4.1 of the Original Agreement, Row 44 granted to TECOM a purchase money security interest in the Products, any other materials that TECOM furnishes, and all proceeds of the foregoing.

C. Certain disputes have since arisen between TECOM and Row 44 regarding the performance of the Original Agreement, including disputes regarding (i) non-payment by Row 44 for Product delivered by TECOM to Row 44, and (ii) \*\*\*. As of November 26, 2011, all outstanding amounts due and owing from Row 44 to TECOM is \*\*\* (not including interest for late payments) (the **"Outstanding Amount"**).

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\*\*\* Confidential treatment requested.

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D. Without any admission of fault or liability whatsoever, the Parties enter into this First Amendment to settle certain disputes that have arisen between the Parties and to amend the terms of the Original Agreement by this First Amendment.

**AGREEMENT**

1 . Row 44 Outstanding Amount Payments to TECOM. Row 44 shall make payments to TECOM for \*\*\* according to the following terms and schedule:

1.1 Row 44 shall make a payment to TECOM in the amount of \*\*\*, by no later than 2:00 p.m. Pacific Standard Time, on the Effective Date. This payment shall be made by wire transfer to the following account:

Account name: TECOM Industries, Inc.

Bank Name: JP Morgan Chase Bank

City/State: New York, NY

Account Number: \*\*\*

Routing Number: \*\*\*

1.2 \*\*\*

1.3 \*\*\*

1.4 \*\*\*

i. \*\*\*

ii. \*\*\*

iii. \*\*\*

iv. \*\*\*

v. \*\*\*

vi. \*\*\*

vii. \*\*\*

viii. \*\*\*

ix. \*\*\*

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\*\*\* Confidential treatment requested.

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1.5 Any payment of any amount due on the Outstanding Amount pursuant to the terms hereof not made within \*\*\* business days after it is due shall be considered a material breach of this Agreement and shall bear interest at a rate equal to \*\*\* percent (\*\*\*) per month or the highest rate permitted by applicable law, whichever is less, on the unpaid amounts from time to time outstanding from the date on which portions of such amounts became due and owing until payment thereof in full. In addition, if any payment of any amount due on the Outstanding Amount pursuant to the terms hereof is not made when due, then any and all amounts due and owing under this First Amendment or the Original Agreement shall become immediately due and payable if not cured within the \*\*\*-business-day period, and TECOM shall have the right to cease shipment of any Products ordered by Row 44 as of such due date, to reject any additional orders of Products made by Row 44 after such due date (without breach by TECOM of any of its obligations, including without limitation to ship and deliver Products on a timely basis), and to pursue all other rights and remedies TECOM may have under the Agreement or otherwise. This clause shall be a non-exclusive remedy for TECOM.

1.6 Row 44's payment obligations, and TECOM's rights with respect to those obligations, shall survive notwithstanding the expiration or termination of the Agreement and irrespective of the Parties' performance or non-performance of the Agreement.

2. Credit Limits. \*\*\*

3. Interest. If Row 44 timely makes all payments described in Sections 1.1, 1.2, 1.3, 1.4 above and Section 4 below when due or within \*\*\* business days after it is due, then TECOM agrees to waive its entitlement to all interest accrued on the Outstanding Amount. For the avoidance of doubt, the waiver contemplated by this Section shall be of no force and effect unless and until Row 44 timely makes all such payments. Should Row 44 fail to timely make any of such payments, all interest accrued on the Outstanding Amount (as calculated from the date on which the Outstanding Amount (or portion thereof) originally became due and owing) will immediately become due and payable to TECOM and interest on the Outstanding Amount will continue to accrue at the rate set forth in Section 5.2 of the Original Agreement until payment thereof in full. In addition, if TECOM, by judgment, agreement or otherwise, is required to disgorge any payments described in Sections 1.1, 1.2, 1.3, 1.4 above and Section 4 below, pursuant to actions under chapter 5 of title 11 of the United States Code or other applicable law, then the payments shall be deemed to have not been made pursuant to this First Agreement, the waiver shall be of no force and effect, and TECOM shall have retained its rights to pursue interest accrued on the Outstanding Amount as set forth herein.

4 . Invoices Going Forward. For all shipments and deliveries on or after November 26, 2011, invoices shall be due and payable in accordance with Section 5.1 of the Agreement provided, however, that, if \*\*\* and within the applicable payment period, the entire amount due for such Product Antenna System shall be payable on the later of (i) \*\*\* days after \*\*\* during such \*\*\* day period) and (ii) the payment period set forth in the Agreement.

5. Security Interest.

5.1 Section 4.1 of the Original Agreement is hereby amended and restated as follows, provided, however, that, if and when the Outstanding Amount is paid in full, the amended and restated provision set forth immediately below shall immediately revert to the language of Section 4.1 set forth in the Original Agreement:

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\*\*\* Confidential treatment requested.

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“4.1 Delivery Point. All shipments shall be F.O.B. origin (Seller’s U.S. shipping dock), and Buyer shall be responsible for all shipping costs (Buyer shall select the applicable carrier). Title and risk of loss shall pass to Buyer upon Seller’s tender of delivery to the common carrier or Buyer’s designee. In order to secure payment of \*\*\* of each invoiced amount owing by Buyer to Seller, from time to time, whether under this Agreement or under separate purchase orders or otherwise in each case arising after the Effective Date of the First Amendment hereto (the “**Secured Obligations**”) and subject to the terms of the Intercreditor Agreement (as defined below), Seller will have, and Buyer hereby grants to Seller, a purchase money security interest in (i) all of Buyer’s right, title and interest in the Products relating to such invoices (in each case, wherever located, and whether or not existing or hereafter arising), and all proceeds of the foregoing (everything in this subsection (i), the “**Products Collateral**”), (ii) all of Buyer’s right, title and interest in all accounts and other rights to payment generated by the sale, transfer, or other disposition of the Products Collateral, and all proceeds and products thereof and accessions thereto (wherever located, and whether now existing or hereafter arising ) (everything in this subsection (ii), the “**Accounts Receivable**”), and (iii) all of Buyer’s right, title, and interest in the deposit account described in the lockbox agreement to be established pursuant to Section 5.2 of the First Amendment (the “**Lockbox Account**”), and all proceeds and products thereof and accessions thereto (wherever located, and whether now existing or hereafter arising), to the extent that Seller is entitled thereto pursuant to the Intercreditor Agreement (everything in this subsection (iii), the “**Lockbox Funds**”). Everything upon which Seller has a lien pursuant to this Section is referred to herein as the “**Collateral**”. Buyer will execute and deliver to Seller any documentation required to perfect and/or maintain Seller’s security interest, including reasonably acceptable account control agreements and/or lockbox agreements. Buyer hereby authorizes Seller to sign and file any such documentation on its behalf or to file such documentation without its signature and to provide such notice to the holders of conflicting security interests as may be necessary to establish the priority of such lien. The security interest granted pursuant to this Section 4.1 is subject to the Intercreditor Agreement, dated as of [\_\_\_\_], (the “Intercreditor Agreement”) among Buyer, Seller and PAR Investment Partners, L.P., as collateral agent (the “Collateral Agent”). Seller hereby agrees that it shall have no Lien securing amounts due to Seller and accruing prior to the date of this First Amendment, and hereby releases any lien or security interest under the Original Agreement to the extent securing any such amounts.”.

5.2 Until such time as the Outstanding Amount is paid in full by Row 44, TECOM hereby agrees that, pursuant to the Intercreditor Agreement and a Lockbox Agreement implementing the Lockbox Account described above, the Collateral Agent and TECOM will agree to waterfall, intercreditor and lockbox arrangements satisfactory to the Collateral Agent and TECOM in their sole discretion.

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\*\*\* Confidential treatment requested.

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5.3 \*\*\*

5.4 Row 44 shall not settle or compromise any dispute with any end user regarding an Account Receivable without the prior written consent of TECOM and, should the Parties not agree on a settlement amount or other course of action with respect to any such dispute, Row 44 shall permit TECOM, in its reasonable discretion, to direct any litigation or negotiation with respect to such dispute and to resolve any dispute by settlement or otherwise, with all such monies realized upon any such litigation, settlement or other resolution to be deposited into the Lockbox Account.

6 . Shipments. As of the Effective Date, TECOM will immediately recommence the shipment and delivery of all ordered Products in the usual course of business and consistent with the Agreement. Row 44 shall ship all Products to end users within \*\*\* days of receipt of such Products by Row 44 from TECOM unless otherwise notified in writing by Row 44 to TECOM and agreed to in advance by TECOM (such agreement not to be unreasonably withheld or delayed).

7. Financial and Customer Information. \*\*\*

8. Release.

8 . 1 Release by Row 44. Row 44, on behalf of itself and its past, present and future affiliates, and their respective employees, officers, directors, managers, equityholders, advisors, consultants, representatives, agents, heirs, predecessors, successors and assigns (collectively, the “Row 44 Releasing Parties”), hereby, knowingly and voluntarily, forever settles, waives, releases and discharges with prejudice TECOM and its past, present and future affiliates including, without limitation all direct and indirect parents that hold a \*\*\* or more interest in TECOM and subsidiaries in which TECOM holds a \*\*\* or more interest, and their respective past, present and future employees, officers, directors, managers, equityholders, advisors, consultants, representatives, agents, heirs, predecessors, successors and assigns (collectively, the “TECOM Released Parties”) from any and all claims, rights, causes of action, protests, suits, disputes, orders, obligations, debts, demands, proceedings, contracts, agreements, promises, liabilities, controversies, costs, expenses, fees (including attorneys’ fees), or damages of any kind, whether known or unknown, suspected or unsuspected, accrued or not accrued, foreseen or unforeseen, or mature or immature, arising by any means, including, without limitation, subrogation, assignment, reimbursement, operation of law or otherwise, \*\*\* under the Agreement at any time prior to the Effective Date (collectively, “Row 44 Claims”); provided however, that a Row 44 Claim shall not include, and the Release set forth in this Section 8.1 and Section 9 below shall not apply in any way to any claim for warranty under Section 10.1 of the Agreement with respect to any Product shipped or delivered under the Agreement at any time prior to the Effective Date.

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\*\*\* Confidential treatment requested.

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8.2 Release by TECOM. TECOM, on behalf of itself and its past, present and future affiliates, and their respective employees, officers, directors, managers, equityholders, advisors, consultants, representatives, agents, heirs, predecessors, successors and assigns (collectively, the "TECOM Releasing Parties"), hereby, knowingly and voluntarily, forever settles, waives, releases and discharges with prejudice Row 44 and its past, present and future affiliates and subsidiaries and their respective past, present and future employees, officers, directors, managers, equityholders, advisors, consultants, representatives, agents, heirs, predecessors, successors and assigns (collectively, the "Row 44 Released Parties") from any and all claims, rights, causes of action, protests, suits, disputes, orders, obligations, debts, demands, proceedings, contracts, agreements, promises, liabilities, controversies, costs, expenses, fees (including attorneys' fees), or damages of any kind, whether known or unknown, suspected or unsuspected, accrued or not accrued, foreseen or unforeseen, or mature or unmature, arising by any means, including, without limitation, subrogation, assignment, reimbursement, operation of law or otherwise, arising with respect to Row 44's failure to make timely payments under the Agreement at any time prior to the Effective Date (collectively, "TECOM Claims"); provided however, that a TECOM Claim shall not include (i) any claim for payment by Row 44 of any amount due under the Agreement (as amended hereby), (ii) any claim for misappropriation, theft or similar such causes of action that relate to any intellectual owned by TECOM, licensed by TECOM or in which TECOM has any other such rights and (iii) any willful, reckless or grossly negligent conduct.

8.3 The Row 44 Claims and TECOM Claims (collectively and respectively, "Claims" for purposes of the remainder of this Section 8) released pursuant to Section 8.1 and Section 8.2, respectively, include, without limitation, Claims for breach of contract, tort or personal injury of any sort, whether intentional or negligent, including, without limitation, Claims for the negligence of any or all of the TECOM Released Parties and Row 44 Released Parties (collectively and respectively, "Released Parties" for purposes of the remainder of this Section 8); Claims under any federal, state or local statute, regulation, or rule, in equity or at common law. The Parties intend the release in Section 8.1 and Section 8.2 to be general and comprehensive in nature and to release all Claims and potential Claims covered by the release to the maximum extent permitted by law. Each Party acknowledges that such Party may discover facts different from, or in addition to, those such Party now knows or believes to be true with respect to the release and such Party agrees that the release shall be and remain in effect in all respects as a complete and general release as to all matters released, notwithstanding any different or additional facts.

8.4 Row 44 acknowledges that (i) the revised payment schedule, the waiver of interest by TECOM set forth in Section 2 and the other direct and indirect benefits afforded Row 44 by continuing the Agreement as amended by this First Amendment provide more than adequate consideration for the release and (ii) the release is valid, fair, adequate and reasonable. TECOM acknowledges that (a) the revised TAT and Spare Pool terms set forth in this First Amendment and the other direct and indirect benefits afforded TECOM by continuing the Agreement as amended by this First Amendment provide more than adequate consideration for the release and (b) the release is valid, fair, adequate and reasonable.

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\*\*\* Confidential treatment requested.

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8.5 Each Party, on behalf of itself and its respective TECOM Releasing Parties and Row 44 Releasing Parties (collectively and respectively, "Releasing Parties") for purposes of the remainder of this Section 8), hereby expressly agrees not to, at any time, sue, protest, initiate, institute or assist in instituting any proceeding, grievance, suit or investigation before any court or other governmental authority related to any Claim released pursuant to the release in Section 8.1, the release in Section 8.2 or otherwise assert any Claim released pursuant to such release against any of the Released Parties. Each Party hereby represents and warrants that it has not sold, assigned, pledged, transferred or otherwise disposed of, in whole or in part, any right, title, interest, security interest, or claim in, to, or with respect to, any Claim such Party or any of its respective Releasing Parties currently has, or has had in the past, against any such respective Released Party.

8.6 Each Party agrees, on behalf of itself and its respective Releasing Parties, to indemnify and hold harmless each of the Released Parties from and against all Claims arising out of any Claim released pursuant to the release.

9. Waiver of Rights (If Any) Under Section 1542 of the California Civil Code. In connection with the releases, settlements, waivers, discharges and covenants set forth in this First Amendment, each Party acknowledges that it has been advised by legal counsel (or has had the opportunity to consult with legal counsel and has chosen not to do so), and that it is familiar with the provisions of Section 1542 of the California Civil Code, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Each Party, on behalf of itself and each other of its respective Releasing Parties, hereby expressly waives and relinquishes (and hereby agrees to cause each other Releasing Party to expressly waive and relinquish) any and all rights that it may have under Section 1542 of the California Civil Code as well as any and all similar rights, rules, regulations, and provisions of the laws of other states and other jurisdictions of the United States and other countries. Each Party understands, acknowledges and agrees that this First Amendment will act as a waiver and release of all future claims that may arise from the released Claims, whether such claims are currently known, unknown, foreseen, unforeseen, suspected or unsuspected, and agrees that the release is intended to and shall constitute a full, complete, absolute and general release of all such claims. Each Party represents and warrants that the effect and import of the provisions of Section 1542 has been fully explained to it by its counsel and it expressly acknowledges its understanding of the same. Nothing in this Section 9 or the inclusion of this Section 9 in this First Amendment shall be deemed or construed to limit the provisions of Section 12.6 or to constitute an admission of the applicability of Section 1542 of the California Civil Code, or any other provision of the laws of the State of California, to this First Amendment or to its formation, existence, validity, enforceability, performance, interpretation, breach, or termination.

10. Additional Definitions: Turn Around Time; Spare Pool.

10.1 Additional Definitions: Section 1 of the Original Agreement is hereby amended to add the following definitions:

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**“Product Antenna System Component”** means any of the SAA, ACU, HPT and RF Cable Set.

**“SAA”** or **“Antenna Assembly”** means the satellite antenna assembly portion of the Product Antenna System.

**“HPT”** means the high powered transceiver portion of the Product Antenna System.

**“ACU”** means the antenna control unit portion of the Product Antenna System.

**“RF Cable Set”** means the RF cables set portion of the Product Antenna System.

10.2 Section 10.1 of the Original Agreement is hereby amended and restated as follows:

“Limited Warranty. Seller warrants that all Products (including associated firmware) sold by Seller under the terms of this Agreement, for a period of \*\*\* from delivery will be (a) free from defects in workmanship and materials and (b) conform to the Specifications under normal use and service. If any Product or part thereof contains a material defect in materials or workmanship, or otherwise fails to conform to the Specifications, during the warranty period, Seller shall at its expense correct any such defect by repairing such defective Product or part or, at Seller's option, by delivering to Buyer an equivalent Product or part replacing such defective Product or part. Seller shall process warranty claims made pursuant to this Agreement according to the following schedule, commencing from receipt of the applicable component by Seller, (i) deliver a report regarding the warranty claim in a form mutually agreed upon by Buyer and Seller within \*\*\* days, (ii) repair the applicable component within \*\*\* days, and (iii) if necessary, refurbish the applicable component within \*\*\* days (collectively, the foregoing periods shall be referred to as the “TAT Metric”). Notwithstanding the foregoing, in the event Seller encounters a novel failure mode of a Product Antenna System Component not previously seen by Seller with respect to such Product Antenna System Component, Seller may include in the report to be delivered to Buyer pursuant to the previous sentence, a notice regarding such failure mode, a description of why such failure model is novel, the steps taken to date to evaluate such product and the expected continuing failure analysis tests. In such event, Buyer shall in good faith reasonably extend the applicable TAT Metric with respect to repair and refurbishment set forth above by up to an additional \*\*\* days without implicating the TAT Metric Failure terms set forth in the Agreement, provided, that, Seller exercises all deliberate speed and diligence to continue the failure analysis testing, provides detailed reports to Buyer at least every \*\*\* business days regarding progress taken since the previous report and completes the repair of such product within such agreed upon extended TAT Metric time period. In addition to the provisions set forth in Section 10.1A, Seller shall waive any expedite charges to Buyer in order to effect earliest reasonable replacement of such defective Products. Seller acknowledges and agrees that the above warranty shall be transferable to customers of Buyer. Seller, in the exercise of its reasonable discretion, shall determine whether a Product has failed to conform to the above warranty, unless such determination is disputed by Buyer. In such case, Buyer and Seller agree to meet and confer in good faith to discuss the appropriate evaluation of such Product, and, if the parties are unable to agree following such meeting, agree to appoint a third party to make the determination as to the cause of the alleged defect. Warranty return shipments shall be the same as the process for shipments of new Products, as set forth elsewhere in this Agreement.”

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\*\*\* Confidential treatment requested.

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10.3           The Original Agreement is hereby amended to add a new Section 10.1A, entitled “TAT Metric Failure” following Section 10.1 therein and stating as follows:

Section 10.1A TAT Metric Failure.

In the event Seller is unable to meet the TAT Metric with respect to any Product Antenna System Components returned to Seller during the applicable warranty period, the warranty period set forth in Section 10.1 above shall be extended for such component based on the table below, including, without limitation, the issuance of a replacement unit for such returned Product Antenna System Component:

Days in excess of TAT Metric	Additional Warranty Period
***	*** months
***	*** months
***	*** months
***	*** months

In the event a Product Antenna System Component is returned to Seller for repair for the same or similar cause three times, Seller shall provide Buyer a replacement of the applicable major subassembly part of such Product Antenna System Component as determined by Seller in its reasonable discretion.

For the avoidance of doubt, Section 10.1A shall not apply to RMA of HPTAs returned units until the current backlog of RMA is reduced to \*\*\*.

\*\*\* Confidential treatment requested.

10.4 Spare Pool. The Original Agreement is hereby amended to add a new Section 10.8A, entitled "Spare Pool" following Section 10.8 therein and stating as follows:

Section 10.8A Spare Pool. The build plan provides the capability to create a safety stock for each unit type by the end of January 2012. This plan also allows for RMA repairs at anticipated return rates of \*\*\* units per month for SAAs and ACUs. Any returned RF cables will be immediately replaced with new cables as necessary. The build plan will allow for a total of at least the following numbers of units in advance of production:

ACUs	***
SSAs	***
Cable Sets	***
HPTAs	***

11. Deviations/\*\*\* Affirmative Obligation.

11.1 As of the Effective Date, the Parties acknowledge and agree that (i) the Product Antenna System is subject to the provisions of Section \*\*\*, of the Original Agreement with respect to \*\*\* and (ii) numerous deviations from specification, and associated commitments regarding correcting such deviations, have been agreed to by the Parties. Seller affirmatively commits to (a) continue to perform on its obligations pursuant to Section \*\*\* of the Original Agreement with respect to the \*\*\* currently in process, and (b) continue to perform on all deviations from specification previously agreed to by Parties.

11.2 Buyer's exclusive remedy for any claims by Buyer against Seller under the Agreement with respect to \*\*\* shall be the procedure set forth in Section \*\*\*.

11.3 Buyer expressly recognizes and agrees that, as of the Effective Date, Seller has satisfied all of its obligations under Section \*\*\* of the Original Agreement and Buyer has no claim with respect to Seller's performance or compliance thereunder.

12. Miscellaneous.

12.1 Confirmation. Except as amended hereby, the Agreement remains in full force and effect in accordance with its existing terms. All references to the Agreement shall mean the Agreement as modified by this First Amendment.

12.2 Counterparts; Faxes. This First Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This First Amendment may also be executed via facsimile, which shall be deemed an original.

12.3 Titles and Subtitles. The titles and subtitles used in this First Amendment are used for convenience only and are not to be considered in construing or interpreting this First Amendment.

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\*\*\* Confidential treatment requested.

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12.4 Severability. Any provision of this First Amendment that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof but shall be interpreted as if it were written so as to be enforceable to the maximum extent permitted by applicable law, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereby waive any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

12.5 Entire Agreement. This First Amendment, together with the Agreement, including the Exhibits thereto, constitute the entire agreement between the Parties hereof with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter hereof and thereof.

12.6 Governing Law. This First Amendment shall be construed in accordance with, and all disputes hereunder shall be governed by, the laws of the State of California, except its conflict of law rules.

13. Effective Date. This First Amendment shall be effective on the date on which the last of the items (11.1) through (11.4) set forth below is satisfied, as determined by TECOM (or waived in writing by TECOM) (the “**Effective Date**”), provided, however, that if the Effective Date does not occur on or before December 23, 2011, then this First Amendment shall automatically be null and void and of no force and effect. No obligation of TECOM under this First Amendment shall be operative or binding unless and until the occurrence of the Effective Date.

13.1 Lockbox Agreement. A Lockbox Agreement by and among Buyer, TECOM, the Collateral Agent and the depository financial institution effectuating the Lockbox Account contemplated by Section 5.1 and the necessary cash flow mechanisms contemplated by Section 5.2 has been executed by all necessary parties and is in effect.

13.2 Intercreditor Agreement. An intercreditor agreement by and among TECOM and the Collateral Agent and acknowledged by Buyer setting forth TECOM’s first priority lien rights in the Collateral and effectuating the necessary cash flow mechanisms contemplated by Section 5.2 has been executed by all necessary parties and is in effect.

13.3 Acknowledgments by End Users. \*\*\* and \*\*\* have each received the notice contemplated by Section 5.3.

13.4 Payment. Buyer has paid all sums due on the Effective Date pursuant to Sections 1.1, 1.2 and 1.3 of this First Amendment.

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\*\*\* Confidential treatment requested.

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IN WITNESS WHEREOF, the Parties have executed this First Amendment or caused their duly authorized officers to execute this Amendment as of the date first above written.

TECOM Industries, Inc.

Row 44, Inc.

By: /s/ Arsen Melconian  
Name: Arsen Melconian  
Title: President

By: /s/ John W. LaValle  
Name: John W. LaValle  
Title: COO, CFO

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**AMENDMENT TO THE FIRST AMENDMENT TO  
OEM PURCHASE AND DEVELOPMENT AGREEMENT BETWEEN**

**TECOM Industries, Inc.**

**And**

**Row 44, Inc.**

THIS AMENDMENT NO. 1 TO THE FIRST AMENDMENT TO OEM PURCHASE AND DEVELOPMENT AGREEMENT (this **“Amendment No. 1”**) is entered into as of December 23, 2011 between TECOM Industries, Inc. (**“Seller”** or **“TECOM”**), a California corporation located at 375 Conejo Ridge Avenue, Thousand Oaks, California 91361, and Row 44, Inc. (**“Buyer”** or **“Row 44”**), a Delaware corporation located at 4353 Park Terrace Drive, Westlake Village, California 91361 (hereinafter, each a **“Party”** and collectively, the **“Parties”**) and amends that certain First Amendment to OEM Purchase and Development Agreement (the **“First Amendment”**), which amended that certain OEM Purchase and Development Agreement (the **“Original Agreement”** and together with the First Amendment and Amendment No. 1, the **“Agreement”**). This Amendment No. 1 modifies the First Amendment only as expressly stated below. Except as modified by this Amendment No. 1, all of the terms and conditions contained in the First Amendment are and will remain in full force and effect. Capitalized terms used but not defined in this Amendment No. 1 will have the same meanings as defined for such terms in the First Amendment. In the event of any conflict of terms, this Amendment No. 1 will solely and exclusively control.

**AGREEMENT**

14. Deadline for Lockbox Agreement. If the Lockbox Agreement by and among Buyer, TECOM, the Collateral Agent and the depository financial institution effectuating the Lockbox Account contemplated by Section 5.1 of the First Amendment and the necessary cash flow mechanisms contemplated by Section 5.2 of the First Amendment has not been executed by all necessary parties and in effect within \*\*\* Business Days of the date of this Amendment No. 1, then Buyer shall be deemed to have committed a material breach of the Agreement and TECOM shall have the right to cease shipment of any Products ordered by Row 44 as of such due date, to reject any additional orders of Products made by Row 44 after such due date (without breach by TECOM of any of its obligations, including without limitation to ship and deliver Products on a timely basis), and to pursue all other rights and remedies TECOM may have under the Agreement or otherwise. This clause shall be a non-exclusive remedy for TECOM.

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\*\*\* Confidential treatment requested.

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15. Section 5.1 of the First Amendment is hereby amended by adding “(or any successor account)” to the quote of Section 4.1 after “deposit account” in (iii), and by adding “or other blocked account” after the defined term “Lockbox Account”.

16. Section 5.3 of the First Amendment is hereby amended by adding the following language at the end of the paragraph: “provided, however, that until the Lockbox Account is in place, Row 44 shall refer in such notice to the Blocked Account referenced in the Intercreditor Agreement, and provided further, however, that if and when the Lockbox Account is in place, Row 44 shall send another notice that supersedes the previous notice and refers to the Lockbox Account.”

17. Amendment of Lockbox Condition to Effectiveness of First Amendment. Section 13.1 of the First Amendment is hereby amended and restated as follows: “A Blocked Account Agreement by and among Buyer, the Collateral Agent and the depository financial institution effectuating the blocked account arrangement contemplated by the Intercreditor Agreement has been executed by all necessary parties and is in effect.”

18. Miscellaneous.

18.1 Confirmation. Except as amended hereby, the First Amendment remains in full force and effect in accordance with its existing terms.

18.2 Counterparts; Faxes. This Amendment No. 1 may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Amendment No. 1 may also be executed via facsimile, which shall be deemed an original.

18.3 Titles and Subtitles. The titles and subtitles used in this Amendment No. 1 are used for convenience only and are not to be considered in construing or interpreting this Amendment No.1.

18.4 Entire Agreement. This Amendment No. 1, together with the Agreement, including the Exhibits thereto, constitute the entire agreement between the Parties hereof with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter hereof and thereof.

18.5 Governing Law. This Amendment shall be construed in accordance with, and all disputes hereunder shall be governed by, the laws of the State of California, except its conflict of law rules.

19. Effective Date. This Amendment No. 1 shall be effective upon execution.

// Remainder of page intentionally left blank

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IN WITNESS WHEREOF, the Parties have executed this First Amendment or caused their duly authorized officers to execute this Amendment as of the date first above written.

TECOM Industries, Inc.

Row 44, Inc.

By: /s/ Arsen Melconian  
Name: Arsen Melconian  
Title: President

By: /s/ John LaValle  
Name: John LaValle  
Title: CEO

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**AMENDMENT NO. 2 TO THE FIRST AMENDMENT TO  
OEM PURCHASE AND DEVELOPMENT AGREEMENT BETWEEN**

**TECOM Industries, Inc.**

**And**

**Row 44, Inc.**

THIS AMENDMENT NO. 2 TO THE FIRST AMENDMENT TO OEM PURCHASE AND DEVELOPMENT AGREEMENT (this “**Amendment No. 2**”) is entered into as of January 6, 2012 between TECOM Industries, Inc. (“**TECOM**”), a California corporation located at 375 Conejo Ridge Avenue, Thousand Oaks, California 91361, and Row 44, Inc. (“**Row 44**”), a Delaware corporation located at 4353 Park Terrace Drive, Westlake Village, California 91361 (hereinafter, each a “**Party**” and collectively, the “**Parties**”) and amends that certain First Amendment to OEM Purchase and Development Agreement (as amended by Amendment No. 1 to the First Amendment to OEM Purchase and Development Agreement (“**Amendment No. 1**”), the “**First Amendment**”), which amended that certain OEM Purchase and Development Agreement (together with the First Amendment, Amendment No. 1, and Amendment No. 2, the “**Agreement**”). This Amendment No. 2 modifies the First Amendment only as expressly stated below. Except as modified by Amendment No. 1 and this Amendment No. 2, all of the terms and conditions contained in the First Amendment are and will remain in full force and effect. Capitalized terms used but not defined in this Amendment No. 2 will have the same meanings as defined for such terms in the First Amendment. In the event of any conflict of terms, this Amendment No. 2 will solely and exclusively control.

**AGREEMENT**

20. Section 2 of the First Amendment is hereby amended and restated as follows:

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21. Miscellaneous.

21.1 Confirmation. Except as amended hereby, the First Amendment remains in full force and effect in accordance with its existing terms.

21.2 Counterparts; Faxes. This Amendment No. 2 may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Amendment No. 2 may also be executed via facsimile, which shall be deemed an original.

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\*\*\* Confidential treatment requested.

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21.3 Titles and Subtitles. The titles and subtitles used in this Amendment No. 2 are used for convenience only and are not to be considered in construing or interpreting this Amendment No. 2.

21.4 Entire Agreement. This Amendment No. 2, together with the Agreement, including the Exhibits thereto, constitute the entire agreement between the Parties hereof with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter hereof and thereof.

21.5 Governing Law. This Amendment shall be construed in accordance with, and all disputes hereunder shall be governed by, the laws of the State of California, except its conflict of law rules.

22. Effective Date. This Amendment No. 2 shall be effective upon execution.

IN WITNESS WHEREOF, the Parties have executed this First Amendment or caused their duly authorized officers to execute this Amendment as of the date first above written.

TECOM Industries, Inc.

Row 44, Inc.

By: /s/ Arsen Melconian

By: /s/ John LaValle

Name: Arsen Melconian

Name: John LaValle

Title: President

Title: CEO

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**AMENDMENT NO. 3 TO THE FIRST AMENDMENT TO  
OEM PURCHASE AND DEVELOPMENT AGREEMENT BETWEEN**

**TECOM Industries, Inc.**

**And**

**Row 44, Inc.**

THIS AMENDMENT NO. 3 TO THE FIRST AMENDMENT TO OEM PURCHASE AND DEVELOPMENT AGREEMENT (this **“Amendment No. 3”**) is entered into as of January \_\_, 2012 between TECOM Industries, Inc. (**“TECOM”**), a California corporation located at 375 Conejo Ridge Avenue, Thousand Oaks, California 91361, and Row 44, Inc. (**“Row 44”**), a Delaware corporation located at 4353 Park Terrace Drive, Westlake Village, California 91361 (hereinafter, each a **“Party”** and collectively, the **“Parties”**) and amends that certain First Amendment to OEM Purchase and Development Agreement (as amended by Amendment No. 1 and Amendment No. 2 to the First Amendment to OEM Purchase and Development Agreement (**“Amendment No. 1”** and **“Amendment No. 2,”** respectively), the **“First Amendment”**), which amended that certain OEM Purchase and Development Agreement (together with the First Amendment, Amendment No. 1, Amendment No. 2 and Amendment No. 3, the **“Agreement”**). This Amendment No. 3 modifies the First Amendment and Amendment No. 1 only as expressly stated below. Except as modified by Amendment No. 1, Amendment No. 2 and this Amendment No. 3, all of the terms and conditions contained in the First Amendment are and will remain in full force and effect. Capitalized terms used but not defined in this Amendment No. 3 will have the same meanings as defined for such terms in the First Amendment. In the event of any conflict of terms, this Amendment No. 3 will solely and exclusively control.

**AGREEMENT**

23. Section 5.1 of the First Amendment is hereby amended by adding “and/or escrow account” to the quote of Section 4.1 after “deposit account”.

24. Section 13 of the First Amendment is hereby amended by replacing “items (11.1) through (11.4)” with “items (13.1) through (13.4)”.

25. Miscellaneous.

25.1 Confirmation. Except as amended hereby, the First Amendment remains in full force and effect in accordance with its existing terms.

25.2 Counterparts; Faxes. This Amendment No. 3 may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Amendment No. 3 may also be executed via facsimile, which shall be deemed an original.

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25.3 Titles and Subtitles. The titles and subtitles used in this Amendment No. 3 are used for convenience only and are not to be considered in construing or interpreting this Amendment No. 3.

25.4 Entire Agreement. This Amendment No. 3, together with the Agreement, including the Exhibits thereto, constitutes the entire agreement between the Parties hereof with respect to the subject matter hereof and thereof and supersedes all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter hereof and thereof.

25.5 Governing Law. This Amendment shall be construed in accordance with, and all disputes hereunder shall be governed by, the laws of the State of California, except its conflict of law rules.

26. Effective Date. This Amendment No. 3 shall be effective upon execution.

*[Signature Page to Follow]*

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IN WITNESS WHEREOF, the Parties have executed this First Amendment or caused their duly authorized officers to execute this Amendment as of the date first above written.

TECOM Industries, Inc.

Row 44, Inc.

By: /s/ Arsen Melconian  
Name: Arsen Melconian  
Title: President

By: /s/ John LaValle  
Name: John LaValle  
Title: CEO

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CONFIDENTIAL TREATMENT REQUESTED FOR PORTIONS OF THIS DOCUMENT. PORTIONS FOR WHICH CONFIDENTIAL TREATMENT IS REQUESTED HAVE BEEN MARKED WITH THREE ASTERISKS [\*\*\*] AND A FOOTNOTE INDICATING “CONFIDENTIAL TREATMENT REQUESTED”. MATERIAL OMITTED HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

**MASTER EQUIPMENT PURCHASE AGREEMENT**

**BETWEEN**

**HUGHES NETWORK SYSTEMS, LLC**

**AND**

**ROW 44, INC.**

**DRAFT**

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## MASTER EQUIPMENT PURCHASE AGREEMENT

This Agreement is entered into and made effective as of this \_\_\_\_ day of \_\_\_\_\_ 2007, (the "Effective Date") by and between Row 44, Inc., with offices at 31280 Oak Crest Drive, Suite #5, Westlake Village, CA 91361 ("Customer"), and Hughes Network Systems, L.L.C., having its principal offices at 11717 Exploration Lane, Germantown, MD 20876 ("HNS" or "Hughes").

WHEREAS, the parties hereto entered into that certain Satellite Delivery and Services Agreement on or about September 9, 2004, as amended by that certain Amendment No. 1 effective as of September 30, 2005 (collectively, the "Original Agreement");

WHEREAS, the Original Agreement contemplated that the parties would enter into a further agreement for the provision by HNS of certain equipment to be used in connection with Customer's deployment of a communication system for Internet connectivity on aircraft (the "System");

WHEREAS, the parties have agreed, in a certain Development Services Agreement heretofore entered into by each them on or about July 10, 2007, that the platform to be utilized for the System would be the HNS' HX Network, instead of the architecture initially contemplated in the Original Agreement;

WHEREAS, the Parties further intend that the Original Agreement be revised to provide, among other things, that the prices for the equipment and services to be utilized in connection with the System be changed to the prices and payment structure herein specified; and

NOW THEREFORE, for and in consideration of the foregoing and of the mutual premises hereinafter expressed, and intending to be legally bound hereby, it is mutually agreed as follows:

### **1. EQUIPMENT TO BE PURCHASED BY CUSTOMER**

During the Term (as defined), HNS will provide, and Customer will accept and pay for, the satellite communication equipment ("Equipment") in accordance with and subject to the terms and conditions set forth herein and Exhibits A and B attached hereto and incorporated herein:

Exhibit A – Equipment Order and Pricing

Exhibit B – HX 150 Warranty Repair and Out of Warranty Repair Services and Pricing

During the Term, Customer may order additional Equipment, (subject to the provisions described herein relating to the potential discontinuation of the supply of such Equipment) for the same at the prices set forth in this Agreement, including the Exhibits hereto. Prior to discontinuing the availability of any item Equipment for purchase by Customer, HNS will provide Customer with at \*\*\* months notice and will provide Customer the opportunity to make a "last buy" of any such Equipment. Further, in such event the conditions described in Exhibit A relative to HNS providing a license to the intellectual property associated with the remote Equipment to Customer will also apply.

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\*\*\* Confidential treatment requested.

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## **2. TERM OF AGREEMENT**

The term of this Agreement ("Term") and the term of Services provided hereunder will remain in effect for sixty (60) months (the "Initial Term"), unless terminated earlier as provided herein. At the end of the Initial Term, the Term will automatically renew for one additional five year period, unless otherwise terminated by Customer giving written notice to HNS at least ninety (90) days prior to the end of the Initial Term. At the end of the first additional five (5) year period, the Term will then automatically renew an additional five (5) year period, unless otherwise terminated by either party giving written notice of the other at least ninety (90) days prior to the end of the then current Term (each extended five (5) year period a "Renewal Term"). The Initial Term and the subsequent Renewal Terms are referred to in this Agreement as the "Term" of this Agreement.

## **3. DELIVERY, OWNERSHIP AND RISK OF LOSS**

Title and risk of loss to all Equipment, as identified in the Exhibit A, shall pass to Customer upon delivery. For purposes of this Agreement, in respect of the HX NOC Equipment to be provided by HNS, "delivery" shall take place upon shipment of the relevant Equipment to HNS' facility. This Agreement will constitute a security agreement with respect to all Equipment up to the date of payment, and Customer hereby authorizes HNS to sign and file on behalf of Customer any financing statements or other documents that may be necessary to perfect such security interest.

Customer hereby authorizes HNS to deliver the HX NOC equipment specified in Section A.1.A of Exhibit A to a \*\*\* by December 31, 2007. Customer further authorizes HNS to deliver the quantity of Remote Equipment, as specified in Section 2.4.1 of said Exhibit A, to a Customer designated location by December 31, 2007. HNS will maintain special security procedures for such equipment, including but not limited to keeping it separate from any other equipment maintained by HNS at such location. HNS will maintain all-risk insurance with coverage limits covering the replacement value of all Equipment and, in the event of any loss or damage to the Equipment, HNS will replace the Equipment.

## **4. EQUIPMENT ORDERS, LEAD TIMES AND FORECASTING**

Each time Customer elects to purchase Equipment, it shall issue a Purchase Order to HNS. Each individual Purchase Order for Equipment shall set forth the following required terms: (i) the identity and quantities of Equipment ordered, (ii) the price, pursuant to this Agreement, and (iii) the desired delivery schedule. Customer shall provide to HNS, on the first working day of each month, a rolling fifty-two (52) week forecast of its anticipated purchase of Equipment from HNS. A Purchase Order shall be issued at least sixteen (16) weeks prior to the production week, with week zero (0) being the scheduled production week. Accordingly, Customer's forecast volumes for weeks zero through sixteen (0-16) must be covered by binding Purchase Orders and forecast volumes for weeks beyond week sixteen shall be for planning purposes only.

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\*\*\* Confidential treatment requested.

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#### **4.A EQUIPMENT CHANGES AND CHANGE NOTICES**

HNS may, from time to time, make changes to the Equipment to be provided hereunder in order to add functionality or enhanced performance, reduce cost, or other reasons. In the event any such change affects the form, fit or function of such remote Equipment, HNS will provide notice of such change to Customer as promptly as practicable, but, in any event, no later than delivery of Equipment subject to such change. In the event that, after such notification and any subsequent discussions between the parties, Customer determines that any such changed remote Equipment will not be acceptable to Customer, Customer may order any quantity of the prior version of such Equipment as it deems necessary, and HNS will exercise its best reasonable efforts to supply such Equipment. Further, in the event that HNS is not able to provide such additional remote Equipment in the quantities required by Customer, HNS will grant Customer a license to the intellectual property required for the manufacture and supply of such Equipment pursuant to commercially reasonable terms.

#### **5. ASSIGNMENTS**

Except for (i) assignment to a successor who acquires substantially all of the assets and business of HNS or Customer, (ii) assignment to a subsidiary company, parent company, or subsidiary of parent company, or (iii) assignment, pledge, or transfer by HNS of any interest in any payments to be received by HNS hereunder, neither party hereto may assign this Agreement or any portion hereof without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed. Any assignment permitted hereunder, or otherwise agreed to by the other party hereto will not relieve the assigning party of any obligations with respect to any covenant, condition, or obligation required to be performed by the assigning party under this Agreement.

#### **6. PRICE AND PAYMENT TERMS**

- A. The prices for the Equipment to be provided hereunder ("Charges") are set forth in Exhibit A.
  - B. The prices for the Equipment set forth in Exhibit A shall be fixed for the Initial Term.
  - C. The Charges provided for in this Agreement are exclusive of the following taxes and charges with respect to the Services or Equipment provided hereunder: (i) any present or future Federal, State, or local excise, sales, or use taxes; (ii) any other present or future excise, sales or use tax, or other charge or assessment upon or measured by the gross receipts from the transactions provided in this Agreement or any allocated portion thereof or by the gross value of the Equipment, and other materials provided hereunder, including but not limited to a Universal Service Fund charge; and (iii) any present or future property, inventory, or value-added tax or similar charge. Customer will pay and discharge, either directly to the governmental agency or as billed by HNS, the foregoing taxes and charges and all assessments, and other taxes with respect to the transactions provided in this Agreement and all Equipment provided hereunder (excluding any Federal, state, local or foreign income taxes, or any tax on gross receipts or gross revenue which is in the nature of an income tax, or any franchise, net worth or capital taxes, imposed upon HNS).
  - D. Customer will pay all invoices submitted hereunder in accordance with the payment terms set forth in Exhibit A. In the event no such payment terms are described in said Exhibit A in respect of other item or items being purchased by Customer, Customer will pay such invoices net thirty (30) days from the date of invoice. Customer agrees to pay on demand a late payment charge on any amount that is not received by the due date for such payment, at an annual rate of the lesser of (i) the current prime rate (or equivalent), as last quoted by The Wall Street Journal prior to the due date of the payment, plus two percent (2%), or (ii) the maximum rate allowed by applicable law. Any invoice not disputed by Customer in writing within 120 days after issuance shall be deemed valid and shall not be subject to dispute.
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## **7. LICENSE OF SOFTWARE**

- A. Customer acknowledges that any software supplied by HNS to Customer hereunder as listed in Exhibit A is subject to the proprietary rights of HNS and/or HNS' vendor(s) (the "Licensor(s)") Customer acknowledges that any software licensed hereunder was developed using HNS' and its Licensor's typical commercial practices, and not in anticipation of Customer's particular aircraft-based application. Except for the licenses granted herein, HNS or its Licensor(s), as the case may be, will retain all right, title and interest in the Software. Customer acknowledges that it may use the Software only pursuant to the terms of this Agreement.
  - B. Subject to Customer payment of the Charges specified herein, HNS hereby grants to Customer and Customer hereby accepts from HNS a perpetual, irrevocable, worldwide, nonexclusive license (or sublicense, as applicable) to use the Software and associated documentation solely in connection with the Equipment provided hereunder, such license to commence upon delivery of the Software and associated Equipment to Customer. Customer's right to use Software shall include the right to use multiple versions or releases of the Software, if applicable (including any updates, "bug" fixes or enhancements).
  - C. Except as permitted by this Article, Customer will not (i) alter, modify, create derivative works of, or attempt to alter, modify, or create derivative works of the Software or any part thereof, (ii) copy, duplicate, or permit anyone else under the control of Customer to copy or duplicate, any part of the Software, or (iii) create or attempt to create, or permit others under the control of Customer to create or attempt to create, by decompiling, disassembling, reverse engineering or otherwise, the source programs or any part thereof from the object programs or from other information made available under this Agreement. Customer may at its own expense make one copy of the object program for archive purposes.
  - D. HNS acknowledges that Customer may resell or lease some portion of the Equipment provided hereunder to third parties, including its airline customers and suppliers. In such event, with respect to each item of Equipment, HNS further agrees that the license granted to Customer for Software installed or used in connection with such Equipment hereunder shall automatically transfer to such third party upon such resale or lease by Customer. Except as described herein, Customer will not, directly or indirectly, distribute, sell, assign, transfer, offer, disclose, lease (as lessor), or license the Software to any third party. Customer agrees to use commercially reasonable efforts to notify HNS within 30 days after it learns of the unauthorized possession, use or knowledge of the Software made available to Customer pursuant to this Agreement by any person under the control of Customer not authorized to have such possession, use or knowledge.
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## **8. FORCE MAJEURE**

Either party hereto shall be excused for delays or interruptions in the performance of its obligations under this Agreement when such delays or interruptions (i) are caused by the other party, or, (ii) except for the exercise of due care, are otherwise beyond the reasonable control of such party, including but not limited to war (whether or not actually declared), sabotage, insurrection, rebellion, riot or other act of civil disobedience, act of a public enemy, failure of or delay in transportation, any governmental act, judicial action, priorities given U.S. Government procurements, labor dispute, shortage of labor, fuel, raw material or machinery, fire, accident, explosion, epidemic, quarantine, storm, flood, earthquake, or other Acts of God ("Force Majeure"). The parties specifically agree that rain, snow or other ordinary weather conditions (excluding tornadoes, hurricanes, and other major storms) do not constitute Force Majeure conditions. If any such Force Majeure occurs, the party affected by such Force Majeure shall use its best efforts to abate the effect of such Force Majeure and restore compliance with the terms of this Agreement as soon as possible. In that regard, during a Force Majeure, HNS shall allocate production and deliveries of equipment to Customer on a basis no less detrimental than any other customer of HNS similarly subject to such Force Majeure; provided, that, HNS may give preferential treatment to allocating equipment to the U.S. Government. Customer may cancel any scheduled delivery that has been excusably delayed for reason (ii) above for more than two (2) months.

## **9. LIMITED WARRANTIES ON EQUIPMENT, DISCLAIMERS, PROCEDURES**

- A. HNS will deliver good title to all of the Equipment purchased by Customer pursuant to this Agreement, free from any and all liens, claims, or encumbrances.
  - B. Subject to the terms and conditions hereof, for any Equipment which is in the nature of NOC Equipment or applicable spare parts, , HNS warrants that such Equipment shall perform in accordance with the specifications for such Equipment for a period of 12 months from the date of delivery from HNS to Customer, provided, that, for the initial NOC order made herein, such warranty shall commence on the installation of such Equipment at the designated NOC. For Equipment which is in the nature of Remote Equipment, such as the HX 150 boards, HNS warrants that such Equipment will be manufactured in substantial conformity with HNS' standard manufacturing processes and will meet HNS' standard HX150 specifications (as such specifications are in effect as of the date of delivery of such Equipment to Customer) for a period of the lesser of 42 months from the date of delivery to Customer, or 36 months from the date of installation. HNS shall, at its option and expense in accordance with Paragraph C below, promptly repair or replace, or cause to be repaired or replaced, any Equipment that proves to have a defect during such warranty periods. Fees for repair or replacement of equipment beyond the warranty period are set forth in Exhibit B. In addition, in respect of any item which is separate "deliverable" pursuant to Exhibit A to this Agreement (as opposed to a component in a deliverable), in the event that HNS' agreements with its suppliers and subcontractors provide better warranties than those specified herein, HNS will pass through the benefit of any such better warranties to Customer.
  - C. The limited warranties set forth in this Article, except for the warranty of title, are contingent upon Customer's notifying HNS of an alleged defect during the warranty periods defined herein. Repair, replacement, amendment, or alteration will be performed in accordance with HNS' standard practices with respect to such Equipment. Customer shall be responsible for the return of Equipment to HNS' designated repair location (to be located within the contiguous United States), freight prepaid and packed to assure safe arrival. HNS shall return repaired, replaced, amended or altered Equipment, freight prepaid and packed to assure safe arrival, to Customer's designated location in the contiguous United States.
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- D. Except as set forth herein, Customer hereby acknowledges and agrees HNS make no representation, and disclaims any warranty, express or implied, regarding the Equipment, including, without limitation, the operation of the Equipment in Customer's aeronautical application. Without limiting the generality of the foregoing, HNS makes no representation regarding the fitness for use of the Equipment in Customer's aeronautical application and, except as described in Subsections A and B of this Section 9, Customer accepts remote equipment "as is" and without any other warranty. In addition, Customer has sole responsibility for any and all changes that may be required to ensure fitness for use in Customer's aeronautical application and for obtaining all necessary FAA, FCC and any other certifications that may be required for flight qualification. Further, limited warranties set forth in this Article will not apply with respect to (i) Equipment that has been subject to unauthorized alteration, modification, or repair, (ii) defects or failures resulting from handling, storage, operation, interconnection, or installation; (iii) failure to continually provide a suitable installation and operational environment; or (iv) any other cause beyond the range of normal usage for the equipment; provided, that, the exceptions above shall not apply where such exception results from HNS's actions pursuant to an agreement with Customer. In the event Customer desires to make a modification to the Equipment which is not "authorized" by HNS, Customer may, at its option, acquire a license from HNS to the intellectual property necessary for Customer or its contractor to manufacture of the relevant Equipment itself. The terms of any such license will be mutually agreed by the parties.
- E. EXCEPT AS SPECIFICALLY SET FORTH HEREIN, HNS NEITHER MAKES NOR ASSUMES ANY LIABILITY UNDER ANY WARRANTIES (WHETHER EXPRESS, IMPLIED, OR STATUTORY) ON OR WITH RESPECT TO THE SUPPLIED EQUIPMENT OR ANY COMPONENT THEREOF, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED CONDITIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**10. PATENT AND COPYRIGHT INDEMNITY**

- A. Hughes warrants that, to the best of its knowledge, the Software and the Equipment will not infringe any patent, copyright, trademark, trade secret, mask work right or other intellectual property right of any third party. If Customer promptly notifies Hughes in writing of a third party claim against Customer that any of the Equipment or Software provided by Hughes infringes a patent, copyright trade secret or other intellectual property right of a third party, Hughes will indemnify, defend and hold Customer harmless with respect to such claim at Hughes' expense and will pay any costs or damages that may be finally determined against Customer. In the event of any such claim, HNS shall have the right to control the defense thereof and Customer shall provide such reasonable assistance and information, at HNS' expense, as HNS requests in writing and as it is available to Customer.
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- B. Further, if any such item is, or in Hughes' opinion is likely to be, held to constitute an infringing product, Hughes shall at its expense and option either (a) procure the right for Customer to continue using it, (b) replace it with a non-infringing equivalent reasonably acceptable to Customer, (c) modify it to make it non-infringing or (d), only if the remedies above are impracticable, accept return of such item and, in addition to the indemnification obligations above and such other rights and remedies of Customer available herein, refund to Customer the fees paid for such item less a reasonable amount for Customer's use of the relevant item up to the time of return.
- C. Notwithstanding the above, HNS will not be liable for any such damages or costs attributable to claims resulting from (i) HNS' compliance with Customer's designs, specifications, or instructions, (ii) use of any item provided by HNS in combination with products not supplied by HNS, to the extent the claim would not have otherwise arisen but for such combined use, or (iii) a manufacturing or other process carried out by or through Customer and utilizing any item provided by HNS that constitutes either direct or contributory infringement of any patent or other intellectual property right. In addition, the exclusion from HNS' intellectual property indemnity, as described in Section 9(e) of the Development Services Agreement heretofore entered into by the parties, as said exclusion applies to claims of infringement which would not have arisen but for such development work, shall continue to apply. All such claims for which HNS has no indemnity obligation are hereafter referred to as "Other Claims". Customer will indemnify HNS from any and all losses, liabilities, damages and costs finally awarded or agreed upon in any settlement of a claim for infringement of any patent or intellectual property right in any suit resulting from Other Claims, and from reasonable expenses incurred by HNS in defense of such suit if Customer does not undertake the defense thereof.
- D. The foregoing indemnity shall be Customer's sole and exclusive remedy for any patent and copyright infringement claims arising out of the use of the Equipment, Software and documentation provided to Customer hereunder, and is in lieu of any other indemnity or warranty, express or implied, with respect to intellectual property.

## **11. INDEMNIFICATION**

Customer and HNS shall indemnify, defend and hold the other harmless from and against any claims, demands, and causes of action asserted against the indemnitee by any person (including, without limitation, HNS' and Customer's employees, HNS' subcontractors and employees of such subcontractors or any third party) for personal injury or death or for loss of or damage to property resulting from the indemnitor's negligence or willful misconduct hereunder. Where personal injury, death or loss of or damage to property is the result of the joint negligence or willful misconduct of Customer and HNS, the indemnitor's duty of indemnification shall be in proportion to its allocable share of joint negligence or willful misconduct.

Customer shall indemnify, defend and hold HNS harmless from and against any claims, demands, and causes of action asserted against the indemnitee by any person (including, without limitation, any of Customer's customers or any person or entity that Customer permits to use any service provided by Customer) based on any claim in connection with: (i) the Equipment provided to any customer of Customer (including end users or airlines) or the failure of Customer to provide such Equipment and any service; (ii) any material misrepresentation or material omission made to by Customer regarding the Equipment or any service to be provided by Customer; (iii) any claim by any customer of Customer arising from loss of service due to the termination of this Agreement or any other reason; and (iv) any violation by Customer of local, state or federal laws, rules and regulations.

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Each party's indemnification obligation shall be contingent upon the indemnitee giving prompt written notice to the indemnitor of any such claim, demand, or cause of action and permitting the indemnitor to have sole control of the defense thereof.

## **12. INSURANCE.**

- A. Commencing not later than the first installation by Customer on a commercial aircraft and thereafter during the Term, Customer shall obtain and maintain at its own expense insurance of the type and in the amounts set forth below:
    - i Commercial General Liability (“**CGL**”) coverage on an occurrence basis (not claims made), with limits at least \$20,000,000 per occurrence for bodily injury and property damage, including coverage for liability arising from (i) premises; (ii) operations; (iii) broad form property damage; (iv) personal injury; (v) independent contractor's liability; and (vi) work performed by Customer.
    - ii Excess Liability coverage with respect to the CGL policy described above, in an umbrella form and on an occurrence basis with limits of at least \$20,000,000 per occurrence.
    - iii Professional Liability coverage with limits of at least \$5,000,000 providing coverage for claims arising out of the performance of Customer and its subcontractors in providing or failing to provide the equipment and services to its customers, airlines and end users, including, but not limited to, coverage for errors and omissions caused by Customer's or its subcontractor's negligence in the performance thereof.
  - B. Upon obtaining such insurance, Customer shall deliver certificates of insurance in a form acceptable to HNS which evidence that Customer has the insurance required by this Section. HNS shall be named as an “Additional Insured” with respect to all coverages required by this Section. Customer shall obtain the insurance policies required by this Section from a provider that has a rating of A-X or better from A.M. Best's or a comparable rating from another rating agency. These policies shall not be canceled or materially changed without ten (10) days prior written notice from the insurer to HNS and Customer.
  - C. Notwithstanding anything to the contrary in this Agreement if Customer fails to maintain the insurance required by this Section, or if any of the required insurance is cancelled and not replaced within a commercially reasonable timeframe, HNS may terminate this Agreement for the default of Customer without further obligation.
  - D. The insurance required by this Section shall be primary insurance and not excess over nor contributing with any insurance maintained by HNS. In addition, the insurance requirements set forth above are minimal coverage requirements and are not to be construed in any way as a limitation on Customer's liability under this Agreement.
  - E. As an alternative to Customer's requirement to secure the Comprehensive General Liability coverage and the Excess Liability coverage referenced in Sections A.i and A.ii above, Customer may provide HNS with proof that (a) its airline customers are not requiring these coverages from Customer, (b) that such airline customers are intending to address any insurance requirements relating to these coverages themselves through their own aviation insurance coverage, or (c) that such airline customers are indemnifying and holding Customer harmless from and against any liability for personal injury and property damage arising from or relating to Customer's provision of equipment and services to such airline customers or end users.
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### **13. DEFAULT BY CUSTOMER**

#### **13.1 Definition**

The occurrence of any one or more the following events (herein called "Events of Customer Default") shall constitute a default by Customer under this Agreement:

- A. Default by Customer in the payment of any charge payable hereunder as and when the same becomes due and payable and such default continues for a period of thirty (30) days after notice of such default from HNS; ~~or~~
- B. Default by Customer in the performance of any other term, covenant or condition of this Agreement, which default shall continue for a period of thirty (30) days after written notice; or
- C. The making of an assignment by Customer for the benefit of its creditors or the admission by Customer in writing of its inability to pay its debts as they become due, or the insolvency of Customer, or the filing by Customer of a voluntary petition in bankruptcy, or the adjudication of Customer as bankrupt, or the filing by Customer of any petition or answer seeking for itself any reorganization, arrangement, composition or readjustment precipitated by the insolvency or bankruptcy of Customer, any liquidation, dissolution or similar relief under any present or future statute, law or regulation, or the filing of any answer by Customer admitting, or the failure by Customer to deny, the material allegations of a petition filed against it for any such relief, or the seeking or consenting by Customer to, or acquiescence by Customer in, the appointment of any trustee, receiver or liquidator of Customer or of all or any substantial part of the properties of Customer, or the inability of Customer to pay its debts when due, or the commission by Customer of any act of bankruptcy; or
- D. The failure by Customer, within sixty (60) days after the commencement of any proceeding against Customer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, to obtain the dismissal of such proceeding or, within sixty (60) days after the appointment, without the consent or acquiescence of Customer, or any trustee, receiver or liquidator of Customer or of all or any substantial part of the properties of Customer, to vacate such appointment.

#### **13.2 Remedies**

Upon the occurrence of any Event of Customer Default, HNS may, in addition to any other rights or remedies available to it at law or in equity, terminate this Agreement immediately upon written notice. In addition, upon termination of this Agreement for the default of Customer, HNS may, at its option, require Customer to disable any Equipment previously installed in any aircraft. Customer shall in any event remain fully liable for reasonable damages as provided by law and for all costs and expenses incurred by HNS on account of such default including all court costs and reasonable attorneys fees.

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## **14. DEFAULT BY HNS**

### **14.1 Definition**

The occurrence of any one or more the following events (herein called "Events of HNS Default") shall constitute a default by HNS under this Agreement:

- A. Default by HNS in the performance of any other term, covenant or condition of this Agreement, which default shall continue for a period of thirty (30) days after notice; or
- B. The making of an assignment by HNS for the benefit of its creditors or the admission by HNS in writing of its inability to pay its debts as they become due, or the insolvency of HNS, or the filing by HNS of a voluntary petition in bankruptcy, or the adjudication of HNS as bankrupt, or the filing by HNS of any petition or answer seeking for itself any reorganization, arrangement, composition or readjustment precipitated by the insolvency or bankruptcy of HNS, any liquidation, dissolution or similar relief under any present or future statute, law or regulation, or the filing of any answer by HNS admitting, or the failure by HNS to deny, the material allegations of a petition filed against it for any such relief, or the seeking or consenting by HNS to, or acquiescence by HNS in, the appointment of any trustee, receiver or liquidator of HNS or of all or any substantial part of the properties of HNS, or the inability of HNS to pay its debts when due, or the commission by HNS of any act of bankruptcy, as amended; or
- C. The failure by HNS, within sixty (60) days after the commencement of any proceeding against HNS seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, to obtain the dismissal of such proceeding or, within sixty (60) days after the appointment, without the consent or acquiescence of HNS, or any trustee, receiver or liquidator of HNS or of all or any substantial part of the properties of HNS, to vacate such appointment.

### **14.2 Remedies**

Upon the occurrence of any one or more Events of HNS Default, Customer may, in addition to any other rights or remedies available to it at law or in equity, and subject to the limitations described in Section 15, terminate this Agreement immediately upon written notice. HNS shall in any event remain fully liable for reasonable damages as provided by law and for all costs and expenses incurred by Customer on account of such default including all court costs and reasonable attorneys fees.

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## **15. LIMITATION OF LIABILITY**

- A. IN NO EVENT WILL CUSTOMER, HNS, OR ASSIGNEES BE LIABLE TO EACH OTHER FOR SPECIAL, COLLATERAL, EXEMPLARY, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE (INCLUDING WITHOUT LIMITATION, LOSS OF GOODWILL, LOSS OF PROFITS OR REVENUES, LOSS OF DATA, LOSS OF SAVINGS, LOSS OF USE, INTERRUPTIONS OF BUSINESS, AND CLAIMS OF CUSTOMERS) ARISING OUT OF OR RELATED TO THIS AGREEMENT, OR THE EQUIPMENT, SOFTWARE, AND SERVICES PROVIDED HEREUNDER, EVEN IF SUCH DAMAGES WERE FORESEEABLE.
- B. HNS' MAXIMUM AGGREGATE LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE PURCHASE PRICE OF THE EQUIPMENT ON WHICH SUCH LIABILITY IS BASED.
- C. The remedies of Customer and HNS set forth herein are exclusive and in lieu of all other remedies, express or implied. Except for the remedies provided for herein, neither HNS nor its subcontractors shall be liable for any delay or failure of performance of the Equipment, Software or Services provided herein.

## **16. INDEPENDENT CONTRACTOR AND SUBCONTRACTING**

- A. HNS and Customer will be and shall act as independent contractors, and neither party is authorized to act as an agent or partner of, or joint venturer with, the other party for any purpose. Neither party by virtue of this Agreement shall have any right, power, or authority to act or create any obligation, express or implied, on behalf of the other party. Customer acknowledges and agrees that HNS will be solely responsible to determine the method and manner of performing its obligations hereunder.
- B. Customer agrees that HNS may, at its sole discretion, subcontract the whole or any part of its obligations under this Agreement; provided that HNS agrees that it will retain full responsibility for such obligations despite such subcontract.

## **17. CONFIDENTIALITY**

- A. HNS and Customer, to the extent of their contractual and lawful right to do so, will exchange proprietary or confidential information as reasonably necessary for each to perform its obligations under this Agreement. All information relating to this Agreement provided by either party to the other, whether oral or written, and when identified as confidential or proprietary in writing, is hereby deemed to be confidential and proprietary information ("Proprietary Information").
  - B. Except as set forth in Paragraph C below, a party receiving Proprietary Information pursuant hereto (the "Receiving Party") will keep such Proprietary Information confidential, and will not, without the prior written consent of the party disclosing such information (the "Disclosing Party"), (i) use any portion of the Proprietary Information for any purpose other than the purpose of this Agreement, or (ii) disclose any portion of the Proprietary Information to any persons or entities other than the employees and consultants of the Receiving Party (and HNS' subcontractors) who reasonably need to have access to the Proprietary Information in connection with the purposes of this Agreement and who have agreed to protect Proprietary Information as though they were a party to this Agreement.
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- C. A Receiving Party will not be liable for disclosure of Proprietary Information, or any part thereof, if the Receiving Party can demonstrate that such Proprietary Information (i) was in the public domain at the time it was received or subsequently entered the public domain through no fault of the Receiving Party; (ii) was known to or is in the possession of the Receiving Party at the time of receipt; (iii) became known to the Receiving Party from a source other than the Disclosing Party without breach of an obligation of confidentiality; or (iv) is disclosed more than five (5) years after the date of receipt of the proprietary Information by the Receiving Party. In the event of any legal action or proceeding or asserted legal requirement for disclosure of Proprietary Information furnished hereunder, the Receiving Party will promptly notify the Disclosing Party and, upon the request and at the expense of the Disclosing Party, will cooperate with the Disclosing Party in lawfully contesting such disclosure. Except in connection with any failure to discharge its responsibilities under the preceding sentence, the Receiving Party will not be liable for any disclosure pursuant to court order.
- D. Proprietary Information will remain the property of the Disclosing Party and will, at the Disclosing Party's request and after it is no longer needed for the purposes of this Agreement or upon expiration or termination of this Agreement for any reason, whichever occurs first, promptly be returned to the Disclosing Party or be destroyed, together with all copies made by the Receiving Party and by anyone to whom such Proprietary Information has been made available by the Receiving Party in accordance with the provisions of this Section 17.D.

## **18. RESOLUTION OF DISPUTES**

Any and all disputes arising under or in connection with this Agreement shall be resolved in accordance with this Section 18.

### **A.. Negotiation.**

The parties shall attempt to resolve any dispute, controversy or difference that may arise between them through good faith negotiations. In the event the parties fail to reach resolution of any such dispute within sixty (60) days after entering into negotiations, either party may refer such dispute to arbitration pursuant to the provisions of Section 18.B. Notwithstanding the above, the parties may elect to waive applicability of this section (i) if both parties agree in writing that the nature of their dispute is such that it cannot be resolved through negotiations; or (ii) if a party shall suffer irrevocable harm by such delay.

### **B. Arbitration.**

Arbitration shall be conducted in accordance with the International Arbitration Rules of the American Arbitration Association ("AAA") in effect at the time of arbitration. The arbitration shall be in accordance with the following guidelines except to the extent the parties to arbitration shall agree otherwise:

1. The place of arbitration shall be Washington, D.C.
  2. The arbitration panel shall be composed of one arbitrator. If the parties fail to mutually agree on an arbitrator within thirty (30) days from the date the dispute is referred to arbitration, any party may refer such selection to the AAA.
  3. The proceeding shall be conducted and transcribed in English. Any document submitted in a language other than English shall be accompanied by an English translation. Neither party will be entitled to discovery in connection with such arbitration unless otherwise mutually agreed in writing.
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4. The results of any such arbitration, and all testimony and evidence related to the confidential information or trade secrets of either party shall be deemed to be Proprietary Information subject to Section 16 and shall be safeguarded and maintained as confidential, with access to such evidence to be only on a need-to-know basis and subject to all reasonable precautions so as not to jeopardize the confidential information or trade secrets of any party.
5. The parties hereby accept jurisdiction of the arbitral tribunal over the parties and over the subject matter of the dispute.
6. Notwithstanding the foregoing, either party shall have the right to seek injunctive relief regarding any disputes arising under Section 17.

## **19. ADDITIONAL CLAUSES**

- A. **EXPORT CONTROL:** It is expressly agreed that the execution of this Agreement and the subsequent delivery of any Equipment or Software under this Agreement are subject to all applicable export controls imposed or administered by the U.S. Department of Commerce as well as by any other U.S. Government Agency that may impose any such controls, including but not limited to the export of technical data, equipment, software and know-how. Each party shall perform their obligations under this Agreement in compliance with such laws and regulations and shall not take any action contrary thereto. Customer will not export or re-export, directly or indirectly, any Software, Equipment, documentation or other technical data provided to it hereunder, without complying with all export control laws and regulations, and without first obtaining any required export licenses and approvals. HNS shall provide reasonable cooperation and assistance to enable Customer to obtain any such export licenses and approvals.
  - B. **ENTIRE AGREEMENT:** This Agreement, the Exhibits hereto, and any other documents referred to herein constitute the entire agreement between the parties, and supersedes any prior written or oral agreement or understanding with respect to the subject matter hereof. No interpretation, amendment, or change to this Agreement will be effective unless made in writing and signed by both parties, except that each party may change the address or the name of the person to whom notices to that party will be sent by giving written notice of such change to the other party as provided in Section 19.E hereof.
  - C. **NO WAIVER:** Failure by either party to exercise any rights under this Agreement in any one or more instances will not constitute a waiver of such rights in any other instance. Waiver by such party of any default under this Agreement will not be deemed a waiver of any other default. No alteration or modification of any provision of this Agreement will be binding unless in writing and signed by duly authorized representatives of both parties.
  - D. **GOVERNING LAW:** This Agreement, the rights and obligations of the parties hereto, and any claims or disputes relating thereto, will be governed by and construed in accordance with the laws of the State of Maryland notwithstanding the place of execution or performance of this Agreement (without reference to its conflict of laws principles) and applicable Federal laws.
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- E. CROSS DEFAULT: In the event that either party is in breach of any other agreement between the parties hereto, such breach may, at the option of the non-breaching party, be deemed to be a breach of this Agreement. Consequently, in the event the breach of such other agreement between the parties is not cured pursuant to the terms of such agreement, thus leading to the termination of such agreement for default, this Agreement may likewise be terminated for default.
- F. NOTICES: All notices, demands, requests, or other communications provided for herein (other than routine communications concerning the Services) will be given in writing and will be effective when delivered personally or when sent by registered or certified mail, return receipt requested, postage prepaid, or transmitted by facsimile, hand delivery, telegram, or telex/TWX. All notices sent by either party will be addressed as follows:

If to HNS:

Hughes Network Systems, LLC  
11717 Exploration Lane  
Germantown, Maryland 20876  
ATTN: General Counsel

If to Customer:

Row 44, Inc.  
31280 Oak Crest Drive, Suite #5  
Westlake Village, CA 91361  
Attn: Chief Executive Officer

With a copy to:

Strategic Law Partners, LLP  
500 S. Grand Avenue, Suite 2050  
Los Angeles, CA 90071  
Attn: Timothy F. Silvestre

Either party may designate by notice in writing a new address to which any notice, demand, request, or communication will be delivered, as provided above.

- G. SEVERABILITY: If any of the provisions or any portion of the provisions of this Agreement shall be held invalid or unenforceable, such invalidity or unenforceability will not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement will be construed as if not containing the particular invalid or unenforceable provisions or portion thereof, and the rights and obligations of the parties hereto will be construed and enforced accordingly.
-

- H. COUNTERPARTS. One execution original of this Agreement, together with its Exhibits and Addendums, marked "Original", shall be the original of this Agreement evidencing use agreements covering the Equipment. All other executed counterparts of this Agreement shall be marked "Duplicate". To the extent that this Agreement constitutes chattel paper, as such term is defined in the Uniform Commercial Code of the applicable jurisdiction, no security interest in this Agreement may be created through the transfer of possession of any counterpart other than the Original of this Agreement.
- I. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns.
- J. COMPLIANCE WITH LAWS. Each party agrees to comply with all applicable laws, rules, and regulations in connection with its activities under this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by and through their duly authorized representatives.

Hughes Network Systems, LLC

By: /s/ Philip K. O'Brien  
Name: Philip K. O'Brien  
Title V.P. Legal  
Date: 12/21.2007

Row 44, Inc.

By: /s/ John Guidon  
Name: John Guidon  
Title: CEO

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**EXHIBIT A**  
**TO MASTER PURCHASE AGREEMENT**  
**EQUIPMENT ORDER AND PRICING**

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## **EXHIBIT A EQUIPMENT ORDER AND PRICING**

### **1.0 SCOPE**

This Exhibit sets forth a description of the Equipment and related items that are to be provided pursuant to this Agreement. This Exhibit also includes the prices for such Equipment and related items, the pricing for additional Equipment that may be purchased by Customer from time to time, as well as the payment terms associated with such Equipment. HNS will provide full duplex point-to-multipoint satellite communication equipment and services, in accordance with the terms of this Agreement, and shall install (as provided herein) and commission the quantity of dedicated HX Networks specified in Section 2.1 below, consisting of certain network operations center (“NOC”) equipment and Customer supplied and Customer operated integrated aeronautical terminal units. HNS will supply standard HX 150 baseband and RF boards (Remote Equipment) to Customer for incorporation by Customer into Customer’s aeronautical terminal units..

\*\*\*

### **1.1 NOC DELIVERABLES**

HNS will deliver the hub equipment summarized below. The associated pricing information is listed in Section 2 below. \*\*\* If that assumption proves in-correct, then additional equipment and services will be required.

F. \*\*\*

G. HX System Software and all associated 3<sup>rd</sup> party licenses

H. Full complement of Customer hub spares to be resident at \*\*\* as specified and priced in Section 2.2 below

I. Shipping, installation and testing, including all travel and expenses.

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\*\*\* Confidential treatment requested.

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## **1.2 HX NOC INSTALLATION AND TESTS**

HNS will install and test the deliverable NOC Equipment in accordance with the terms hereof. There are a number of tests associated with the manufacture, installation, and commissioning of the HX NOC equipment. A description of each of these tests follows, as well as a description of the NOC installation services to be provided by HNS, follows.

### **1.2.1 HX NOC SITE PREPARATION AND INSTALLATION**

HNS will be responsible to provide the hub earth station (use of existing RFTs) and to provide and install the HX NOC Equipment described above at \*\*\*. HNS will provide electrical power, air conditioning, fire protection provisions, floor space, and any required backhaul equipment and facilities, and other necessary preparations.

### **1.2.2 HX NOC ACCEPTANCE TESTS**

HNS will conduct the onsite HX NOC acceptance tests in accordance with a test plan agreed and documented by the parties. The test plan will be based on HNS' standard HX NOC ATP with additional tests for Customer-specific changes.

### **1.2.3 HNS RESPONSIBILITIES FOR HX NOC ACCEPTANCE TESTING**

HNS responsibilities will include the following:

- Provide test personnel to conduct the onsite tests
- Provide satellite test time (at the cost of Customer)
- Conduct the onsite tests in conjunction with the Customer and document the result

### **1.2.4 CUSTOMER RESPONSIBILITIES FOR HX NOC ACCEPTANCE TESTING**

Customer responsibilities will include the following:

- Provide test personnel to assist in conducting the onsite tests.

G. Provide aeronautical terminal equipment to be used in connection with the test

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\*\*\* Confidential treatment requested.

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### 1.3 REMOTE EQUIPMENT

HNS will deliver the HX 150 baseband and RF board sets detailed below. The associated pricing information is listed in Section 2. A single HX 150 baseband board and RF board set constitutes a “remote”. Each delivery of remotes shall include board level factory functional test results for such equipment as well as a statement certifying that such equipment has been built and tested in compliance with HNS’ standard manufacturing processes and in conformance to the HX 150 standard product board specifications.

- H. HX 150 Board Set
    - a. Baseband Board
    - b. RF Board
-

## **2. INITIAL ORDER**

Customer hereby orders \*\*\* including installation and acceptance testing and \*\*\*. The following sets forth the Equipment configuration that comprises the Initial Order under this Agreement.

### **2.1 HX NOC Equipment:**

\*\*\*

### **2.2. HX NOC Equipment Spare Parts**

\*\*\*

### **2.3. Backhaul Equipment**

\*\*\*

### **2.4. Remote Equipment**

Remote equipment consists of HX 150 standalone baseband and RF boards produced using Hughes' existing commercial procurement, board level manufacturing and test process and does not include any changes or additional testing to the existing individual board level tests. The warranties and associated limitations applicable to this Equipment are described in Section 9 of this Agreement.

#### **Initial Order Remote Equipment**

\*\*\*

#### **.2.4.2 Additional Remote Equipment**

Customer may order additional Remote Equipment in accordance with the prices described below:

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\*\*\* Confidential treatment requested.

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After the initial order of remote equipment described in Section 2.4.1 above, additional orders of such remote equipment \*\*\*.

In order to qualify for the discount described above, Customer must direct that all ordered Equipment be delivered within 16 weeks. In the event that HNS is unable to fulfill an order from Customer for additional sets of Remote Equipment, due to parts unavailability or obsolescence or other reasons, HNS will (i) use commercial reasonable efforts to fast track production to meet the order quantity ordered, including, without limitation, requesting “hot lots” at HNS’s expense and, if still unable to fulfill the order, enter into good faith negotiations with Customer on the licensing of the design of the Equipment and Software at commercially reasonable rates, in order to give Customer the opportunity to maintain a continuity of supply of such Equipment. In addition, HNS will provide notice to Customer of its intention to discontinue the supply of such Equipment, and will afford Customer the opportunity to make a last buy of such Equipment in accordance with the terms set forth in Section 1 of this Agreement.

HNS at its sole discretion may define and implement HX 150 baseband or RF board Engineering Change Notices (ECNs). HNS will inform the Customer of ECNs which affect the form, fit or function of the HX 150 baseband or RF boards as promptly as possible prior to implementing any such change. HNS will not inform the Customer of changes to the HX 150 baseband or RF boards that do not impact form, fit or function (e.g., the use of alternative parts that comply with the bill of material specifications). The other terms set forth in Section 4.A of the Agreement shall also apply to Engineering Change Notices.

### **3. HX NOC OPTIONS**

HX NOC inroute spreading option:

\*\*\*

The following Expansion capabilities are all optional:

\*\*\*

### **4. DOCUMENTATION**

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\*\*\* Confidential treatment requested.

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## 5. PAYMENT TERMS

Equipment

\*\*\*

HNS will invoice Customer for the initial lot of Remote Equipment as specified in Section 2.4.1

\*\*\*

B. Except as otherwise provided in this Section, payment will be due net thirty (30) days from date of invoice.

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\*\*\* Confidential treatment requested.

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**EXHIBIT B**

**HX 150 WARRANTY AND OUT OF WARRANTY REPAIRS**

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**EXHIBIT B**  
**HX 150 WARRANTY AND OUT OF WARRANTY REPAIRS**

**DEFINITIONS**

Cannot Duplicate (CND) – This indicates that HNS has tested the Equipment and cannot duplicate a problem using the test fixtures. The unit will be returned to Customer so that it can be reentered into service.

ECN, No Problem Found – This indicates that HNS has tested the Equipment and cannot duplicate a problem using the test fixtures. However, since the unit was manufactured, there has been a suggested engineering change notice (ECN) and HNS has updated the unit in accordance with the ECN. The unit will be returned to Customer so that it can be reentered into service.

Return – Un-repaired – This indicates that the unit has evidence of damage caused by Customer or end-user actions. The unit is returned in the condition in which it was sent.

Scrap – This indicates the Equipment cannot be repaired and is out of warranty. The unit is returned to Customer for disposal.

Return Merchandise Authorization (RMA) – Authorization number that is assigned to a batch of equipment that is returned for repair. The RMA number is used to track the equipment from initial shipment by Customer to return shipment by HNS.

**HX 150 WITHIN WARRANTY PRICING**

The Section sets forth the applicable pricing associated with the additional services herein provided during the Warranty Period. This pricing applies to the HX 150 baseband and RF board set.

HNS will perform diagnostic testing on the equipment and will return it to Customer if the equipment appears to be functioning correctly. In that case, the CND fee would apply. Depending on the revision of the equipment, HNS will occasionally update the unit in accordance with an engineering change notice. In this scenario, there was no problem found, but work was done on the unit to implement the ECN. If there is a defect, then HNS will repair the unit or replace the unit at no charge.

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\*\*\* Confidential treatment requested.

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## **HX 150 OUT OF WARRANTY PRICING**

The Section sets forth the applicable pricing associated with the additional services herein provided after the Warranty Period has ended. This pricing applies to HX 150 baseband and RF board set.

HNS will perform diagnostic testing on the equipment and will return it to Customer if the equipment appears to be functioning correctly. In that case, the CND fee would apply. Depending on the revision of the equipment, HNS will occasionally update the unit in accordance with an engineering change notice. In this scenario, there was no problem found, but work was done on the unit to implement the ECN.

If a Defect is confirmed after the Warranty Period, then HNS will inform Customer of the status and Customer can elect to have the failed unit returned for the Return – Un-repaired fee or HNS will repair the unit if the unit is repairable. If Customer elects to have the unit repaired, then only the appropriate equipment price below is charged.

\*\*\*

## **REPAIR TIME**

After Customer has submitted an RMA request and received an authorization number, Customer will ship the equipment, freight prepaid and packed to assure safe arrival, to HNS. Upon receipt of the equipment at HNS, HNS will compare the RMA request to the material received. Once there is a complete match between the RMA and material, HNS will endeavor to complete any repairs and return the equipment within forty-five (45) days. HNS shall return repaired equipment, freight prepaid and packed to assure safe arrival, to Customer's designated location.

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\*\*\* Confidential treatment requested.

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CONFIDENTIAL TREATMENT REQUESTED FOR PORTIONS OF THIS DOCUMENT. PORTIONS FOR WHICH CONFIDENTIAL TREATMENT IS REQUESTED HAVE BEEN MARKED WITH THREE ASTERISKS [\*\*\*] AND A FOOTNOTE INDICATING “CONFIDENTIAL TREATMENT REQUESTED”. MATERIAL OMITTED HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

**MASTER SERVICES AGREEMENT**

**BETWEEN**

**HUGHES NETWORK SYSTEMS, LLC**

**AND**

**ROW 44, INC.**

**DRAFT**

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## MASTER SERVICES AGREEMENT

This Agreement is entered into and made effective as of this \_\_\_\_ day of \_\_\_\_\_ 2007, (the "Effective Date") by and between Row 44, Inc., with offices at 31280 Oak Crest Drive, Suite #5, Westlake Village, CA 91361 ("Customer" or "Row 44"), and Hughes Network Systems, L.L.C., having its principal offices at 11717 Exploration Lane, Germantown, MD 20876 ("HNS").

WHEREAS, the parties hereto entered into that certain Satellite Delivery and Services Agreement on or about September 9, 2004, as amended by that certain Amendment No. 1 effective as of September 30, 2005 (collectively, the "Original Agreement");

WHEREAS, the Original Agreement contemplated that the parties would enter into a further agreement for the provision by HNS of certain equipment to be used in connection with Customer's deployment of a communication system for Internet connectivity on aircraft (the "System");

WHEREAS, the Original Agreement contemplated that HNS would be paid for said equipment and services in accordance with a formula therein specified;

WHEREAS, the parties have agreed, in a certain Development Services Agreement heretofore entered into by each them on or about July 10, 2007, that the platform to be utilized for the System would be the HNS' HX Network, instead of the architecture initially contemplated in the Original Agreement;

WHEREAS, the Parties further intend that the Original Agreement be revised to provide, among other things, that the prices for the equipment and services to be utilized in connection with the System be changed to the prices and payment structure herein specified; and

WHEREAS, on even date herewith, the parties have executed a Master Purchase Agreement covering Customer's purchase of certain equipment to be used in connection with Customer's provision of the System; and

WHEREAS, the parties now desire to set forth the terms and conditions under which HNS will provide certain services related to the System.

NOW THEREFORE, for and in consideration of the foregoing and of the mutual premises hereinafter expressed, and intending to be legally bound hereby, it is mutually agreed as follows:

### **1. SCOPE OF SERVICES**

During the Term (as defined), HNS will provide, and Customer will accept and pay for, the services in accordance with and subject to the terms and conditions set forth herein and Exhibits A, B and C attached hereto and incorporated herein (which services are hereafter referred to as the "Services").:

Exhibit A – Statement of Work

Exhibit B – Hub Operations, Maintenance and Technical Support Services

Exhibit C – Service Pricing and Payment Terms

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During the Term, Customer may order additional Services subject to the terms hereof, for the same at the prices set forth in this Agreement, including the Exhibits hereto. Notwithstanding the foregoing, Customer acknowledges that additional Space Segment Services will be subject to the availability of such Space Segment capacity. In order to increase the likelihood that HNS will be able to provide any such additional Space Segment capacity when such capacity is required by Customer, the parties will establish a mutually acceptable methodology for forecasting and ordering any additional space segment that may be required by Customer. In addition, on a regular basis HNS will provide Customer with its best estimate of the amount of Space Segment capacity currently available and to anticipated to become available on any of the satellites used by Customer.

In addition, from time to time, Customer may request HNS to provide certain supplementary services for Customer, including supplementary maintenance and repair services, which are outside the scope of the Services ("Demand Services"). The parties will, prior to providing any Demand Services, develop and mutually agree in writing upon the details regarding such services and the associated pricing and commercial terms.

**2. TERM OF AGREEMENT**

The term of this Agreement ("Term") and the term of Services provided hereunder will remain in effect for sixty (60) months (the "Initial Term"), unless terminated earlier as provided herein. At the end of the Initial Term, the Term will automatically renew for one additional, five (5) year period, unless otherwise terminated by Row 44 giving written notice to HNS at least ninety (90) days prior to the end of the Initial Term. At the end of the first additional five (5) year period, the Term will then automatically renew an additional five (5) year period, unless otherwise terminated by either party giving written notice of the other at least ninety (90) days prior to the end of the then current Term (each extended five (5) year period\_a "Renewal Term"). The Initial Term and Renewal Terms are referred to in this Agreement as the "Term" of this Agreement.

**2A. EXCLUSIVITY**

a. \*\*\*

b. \*\*\*

c. \*\*\*

i. \*\*\*

ii. \*\*\*

D. \*\*\*

E. Notification; Cure. In the event HNS believes Row 44 has failed to meet the applicable exclusivity metric for any given period set forth in this section, HNS will provide written notice of the same to Row 44 and Row 44 shall thereafter have 60 days to make a cash payment to HNS in the amount of such shortfall.

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\*\*\* Confidential treatment requested.

F. No Assignment of Exclusivity Right. HNS' exclusivity obligation, as herein specified, shall be personal to Customer itself, and shall not extend to any successors or assigns of Customer, without the prior consent of HNS, except that in the event of any assignment which take place by virtue of the sale of all or substantially all of the assets of Row 44, HNS will not unreasonably withhold its consent to such assignment.

G. \*\*\*

### **3. ASSIGNMENTS**

Except for (i) assignment to a successor who acquires substantially all of the assets and business of HNS or Customer, (ii) assignment to a subsidiary company, parent company, or subsidiary of parent company, or (iii) assignment, pledge, or transfer by HNS of any interest in any payments to be received by HNS hereunder, neither party hereto may assign this Agreement or any portion hereof without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed. Any assignment permitted hereunder, or otherwise agreed to by the other party hereto will not relieve the assigning party of any obligations with respect to any covenant, condition, or obligation required to be performed by the assigning party under this Agreement.

### **4. PRICE AND PAYMENT TERMS**

- A. The prices for the Services to be provided hereunder ("Charges") are set forth in Exhibit C.
- B. The prices for the Services to be provided hereunder as set forth in Exhibit C, except for the price of Space Segment shall be fixed for the Initial Term. In respect of Space Segment, the price in Exhibit C for Customer's initial order of Space Segment shall be fixed for the Initial Term. In the event that Customer requires additional Space Segment, or Space Segment on a different satellite, Customer shall advise HNS of the scope of its requirement as soon as possible. Subject to the terms described in Section 1 above, HNS will procure additional Space Segment on behalf of Customer per Customer's order at mutually agreed Space Segment pricing.
- C. The Services Charges provided for in this Agreement are exclusive of the following taxes and charges with respect to the Services or Equipment provided hereunder: (i) any present or future Federal, State, or local excise, sales, or use taxes; (ii) any other present or future excise, sales or use tax, or other charge or assessment upon or measured by the gross receipts from the transactions provided in this Agreement or any allocated portion thereof or by the gross value of the Services and other materials provided hereunder, including but not limited to a Universal Service Fund charge; and (iii) any present or future property, inventory, or value-added tax or similar charge. Customer will pay and discharge, either directly to the governmental agency or as billed by HNS, the foregoing taxes and charges and all assessments, and other taxes with respect to the transactions provided in this Agreement and all Services provided hereunder (excluding any Federal, state, local or foreign income taxes, or any tax on gross receipts or gross revenue which is in the nature of an income tax, or any franchise, net worth or capital taxes, imposed upon HNS).

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\*\*\* Confidential treatment requested.

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- D. HNS will invoice all recurring monthly Service Charges on a monthly basis.
- E. Customer will pay all invoices submitted hereunder in accordance with the payment terms set forth in Exhibit C. In the event no such payment terms are described in said Exhibit C, in respect of other Services being provided to Customer, Customer will pay such invoices net thirty (30) days from the date of invoice. Customer agrees to pay on demand a late payment charge on any amount that is not received by the due date for such payment, at an annual rate of the lesser of (i) the current prime rate (or equivalent), as last quoted by The Wall Street Journal prior to the due date of the payment, plus two percent (2%), or (ii) the maximum rate allowed by applicable law. Any invoice not disputed by Customer in writing within 120 days after issuance shall be deemed valid and shall not be subject to dispute.

## **5. LICENSE OF SOFTWARE**

- A. Customer acknowledges that any software supplied by HNS to Customer is subject to the proprietary rights of HNS and/or HNS' vendor(s) (the "Licensor(s)") Customer acknowledges that that any software licensed hereunder was developed using HNS' and its Licensor's typical commercial practices, and not in anticipation of Customer's particular aircraft-based application. Except for the licenses granted herein, HNS or its Licensor(s), as the case may be, will retain all right, title and interest in the Software. Customer acknowledges that it may use the Software only pursuant to the terms of this Agreement.
  - B. Subject to Customer payment of the Charges specified herein, HNS hereby grants to Customer and Customer hereby accepts from HNS a perpetual, irrevocable, worldwide, nonexclusive license (or sublicense, as applicable) to use the Software and associated documentation solely in the connection with the Equipment provided hereunder, such license to commence upon delivery of the Software and associated Equipment to Customer. Customer's right to use Software shall include the right to use multiple versions or releases of the Software, if applicable (including any updates, "bug" fixes or enhancements).
  - C. Except as permitted by this Article, Customer will not (i) alter, modify, create derivative works of, or attempt to alter, modify, or create derivative works of the Software or any part thereof, (ii) copy, duplicate, or permit anyone else to copy or duplicate, any part of the Software, or (iii) create or attempt to create, or permit others to create or attempt to create, by decompiling, disassembling, reverse engineering or otherwise, the source programs or any part thereof from the object programs or from other information made available under this Agreement. Customer may at its own expense make one copy of the object program for archive purposes.
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## **6. FORCE MAJEURE**

Either party hereto shall be excused for delays or interruptions in the performance of its obligations under this Agreement when such delays or interruptions (i) are caused by the other party, or, (ii) except for the exercise of due care, are otherwise beyond the reasonable control of such party, including but not limited to war (whether or not actually declared), sabotage, insurrection, rebellion, riot or other act of civil disobedience, act of a public enemy, failure of or delay in transportation, any governmental act, judicial action, priorities given U.S. Government procurements, labor dispute, shortage of labor, fuel, raw material or machinery, fire, accident, explosion, epidemic, quarantine, storm, flood, earthquake, or other Acts of God ("Force Majeure"). The parties specifically agree that rain, snow or other ordinary weather conditions (excluding tornadoes, hurricanes, and other major storms) do not constitute Force Majeure conditions. If any such Force Majeure occurs, the party affected by such Force Majeure shall use its best efforts to abate the effect of such Force Majeure and restore compliance with the terms of this Agreement as soon as possible. In that regard, during a Force Majeure, HNS shall allocate production and deliveries of equipment to Customer on a basis no less detrimental than any other customer of HNS similarly subject to such Force Majeure; provided, that, HNS may give preferential treatment to allocating equipment to the U.S. Government.. Customer may cancel any scheduled delivery that has been excusably delayed for reason (ii) above for more than two (2) months.

## **7. LIMITED WARRANTIES ON SERVICES, DISCLAIMERS, PROCEDURES**

- A. Subject to the terms and conditions hereof, HNS warrants that all Services will be performed in a professional and workmanlike manner and in accordance with applicable specification, if any. In the event of any breach of the foregoing warranty, HNS shall, at its option and expense in accordance with, promptly reperform, repair or replace, or cause to be reperformed, repaired or replaced, any Service that proves to have a defect.
  - B. Any reperformance, repair, replacement, amendment, or alteration will be performed in accordance with HNS' standard practices with respect to such Services. .
  - C. Customer acknowledges and agrees that, except for the services performed in connection with the Development Agreement (which services are warranted in accordance with the terms of such Development Agreement), HNS has not evaluated or certified the functionality of Customer's antenna or associated equipment as substitutes for the equipment typically provided by HNS for use with the Service or evaluated the performance or capability of the same (or combination of such antenna with any equipment or services provided by HNS) in connection with Customer's aeronautical application. HNS makes no representations regarding such substituted equipment or such combination and the effect of the same on the performance of the Service impacts the System or otherwise. Without limiting the generality of the foregoing, HNS makes no representation regarding the fitness for use of the Service in the System or Customer's aeronautical application. In addition, Customer has sole responsibility for any and all changes that may be required to ensure fitness or use in Customer's application and for obtaining all necessary FAA, FCC and any other certifications that may be required for flight qualification.
  - D. EXCEPT AS SPECIFICALLY SET FORTH HEREIN, HNS NEITHER MAKES NOR ASSUMES ANY LIABILITY UNDER ANY WARRANTIES (WHETHER EXPRESS, IMPLIED, OR STATUTORY) ON OR WITH RESPECT TO THE SERVICE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED CONDITIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
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## **8. PATENT AND COPYRIGHT INDEMNITY**

- A. Hughes warrants that, to the best of its knowledge, the Services, Software and the Equipment will not infringe any patent, copyright, trademark, trade secret, mask work right or other intellectual property right of any third party. If Customer promptly notifies Hughes in writing of a third party claim against Customer that any of the Equipment, Software or Service provided by Hughes infringes a patent, copyright trade secret or other intellectual property right of a third party, Hughes will indemnify, defend and hold Customer harmless with respect to such claim at Hughes' expense and will pay any costs or damages that may be finally determined against Customer. In the event of any such claim, HNS shall have the right to control the defense thereof and Customer shall provide such reasonable assistance and information, at HNS' expense, as HNS requests in writing and as it is available to Customer.
  - B. Further, if any such item is, or in Hughes' opinion is likely to be, held to constitute an infringing product, Hughes shall at its expense and option either (a) procure the right for Customer to continue using it, (b) replace it with a non-infringing equivalent reasonably acceptable to Customer, (c) modify it to make it non-infringing or (d), only if the remedies above are impracticable, accept return of such item and, in addition to the indemnification obligations above and such other rights and remedies of Customer available herein, refund to Customer the fees paid for such item less a reasonable amount for Customer's use of the relevant item up to the time of return.
  - C. Notwithstanding the above, HNS will not be liable for any such damages or costs attributable to claims resulting from (i) HNS' compliance with Customer's designs, specifications, or instructions, (ii) use of any item provided by HNS in combination with products not supplied by HNS, to the extent the claim would not have otherwise arisen but for such combined use, or (iii) a manufacturing or other process carried out by or through Customer and utilizing any item provided by HNS that constitutes either direct or contributory infringement of any patent or other intellectual property right. In addition, the exclusion from HNS' intellectual property indemnity, as described in Section 9(e) of the Development Services Agreement heretofore entered into by the parties, as said exclusion applies to claims of infringement which would not have arisen but for such development work, shall continue to apply. All such claims for which HNS has no indemnity obligation are hereafter referred to as "Other Claims". Customer will indemnify HNS from any and all losses, liabilities, damages and costs finally awarded or agreed upon in any settlement of a claim for infringement of any patent or intellectual property right in any suit resulting from Other Claims, and from reasonable expenses incurred by HNS in defense of such suit if Customer does not undertake the defense thereof.
  - D. The foregoing indemnity shall be Customer's sole and exclusive remedy for any patent and copyright infringement claims arising out of the use of the Equipment, Software and documentation provided to Customer hereunder, and is in lieu of any other indemnity or warranty, express or implied, with respect to intellectual property.
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## **9. TERMS OF USE**

Customer agrees to require its end users, or, if applicable, Customer agrees to require its airline customer reseller of its service, to require their respective end users to agree to terms and conditions relating to service to be provided by Customer which terms are substantially similar to those set forth in Attachment 1 to this Agreement.

## **10. INDEMNIFICATION**

Customer and HNS shall indemnify, defend and hold the other harmless from and against any claims, demands, and causes of action asserted against the indemnitee by any person (including, without limitation, HNS' and Customer's employees, HNS' subcontractors and employees of such subcontractors or any third party) for personal injury or death or for loss of or damage to property resulting from the indemnitor's negligence or willful misconduct hereunder. Where personal injury, death or loss of or damage to property is the result of the joint negligence or willful misconduct of Customer and HNS, the indemnitor's duty of indemnification shall be in proportion to its allocable share of joint negligence or willful misconduct.

Customer shall indemnify, defend and hold HNS harmless from and against any claims, demands, and causes of action asserted against the indemnitee by any person (including, without limitation, any of Customer's customers or any person or entity that Customer permits to use the any service provided by Customer) based on any claim in connection with: (i) the Service provided to any customer of Customer (including end users or airlines) or the failure of Customer to provide such Service; (ii) any material misrepresentation or material omission made to by Customer regarding the Services or any service to be provided by Customer; (iii) any claim by any customer of Customer arising from loss of service due to the termination of this Agreement or any other reason; and (iv) any violation by Customer of local, state or federal laws, rules and regulations.

Each party's indemnification obligation shall be contingent upon the indemnitee giving prompt written notice to the indemnitor of any such claim, demand, or cause of action and permitting the indemnitor to have sole control of the defense thereof.

## **11. INSURANCE.**

- A. Commencing not later than on the first installation by Customer on commercial aircraft and thereafter during the Term, Customer shall obtain and maintain at its own expense, and require its agents, subcontractors and representatives to obtain and maintain at their own expense or at Customer's expense, insurance of the type and in the amounts set forth below:
- i Commercial General Liability ("CGL") coverage on an occurrence basis (not claims made), with limits at least \$20,000,000 per occurrence for bodily injury and property damage, including coverage for liability arising from (i) premises; (ii) operations; (iii) broad form property damage; (iv) personal injury; (v) independent contractor's liability; and (vi) work performed by Customer.
  - ii Excess Liability coverage with respect to the CGL policy described above, in an umbrella form and on an occurrence basis with limits of at least \$20,000,000 per occurrence.
  - iii Professional Liability coverage with limits of at least \$5,000,000 providing coverage for claims arising out of the performance of Customer and its subcontractors in providing or failing to provide the equipment and services to its customers, airlines and end users, including, but not limited to, coverage for errors and omissions caused by Customer's or its subcontractor's negligence in the performance thereof.
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- B. Upon obtaining such insurance, Customer shall deliver certificates of insurance in a form acceptable to HNS which evidence that Customer has the insurance required by this Section. HNS shall be named as an "Additional Insured" with respect to all coverages required by this Section. Customer shall obtain the insurance policies required by this Section from a provider that has a rating of A- X or better from A.M. Best's or a comparable rating from another rating agency. These policies shall not be canceled or materially changed without ten (10) days prior written notice from the insurer to HNS and Customer.
- C. Notwithstanding anything to the contrary in this Agreement if Customer fails to maintain the insurance required by this Section, or if any of the required insurance is cancelled and not replaced within a commercially reasonable timeframe, HNS may terminate this Agreement for the default of Customer without further obligation.
- D. The insurance required by this Section shall be primary insurance and not excess over nor contributing with any insurance maintained by HNS. In addition, the insurance requirements set forth above are minimal coverage requirements and are not to be construed in any way as a limitation on Customer's liability under this Agreement.
- E. As an alternative to Customer's requirement to secure the Comprehensive General Liability coverage and the Excess Liability coverage referenced in Sections A.i and A.ii above, Customer may provide HNS with proof that (a) its airline customers are not requiring these coverages from Customer, (b) that such airline customers are intending to address any insurance requirements relating to these coverages themselves through their own aviation insurance coverage, or (c) that such airline customers are indemnifying and holding Customer harmless from and against any liability for personal injury and property damage arising from or relating to Customer's provision of equipment and services to such airline customers or end users.

## **12. DEFAULT BY CUSTOMER**

### **12.1 Definition**

The occurrence of any one or more the following events (herein called "Events of Customer Default") shall constitute a default by Customer under this Agreement:

- A. Default by Customer in the payment of any charge payable hereunder as and when the same becomes due and payable and such default continues for a period of thirty (30) days after notice of such default from HNS, or
  - B. Default by Customer in the performance of any other term, covenant or condition of this Agreement, which default shall continue for a period of thirty (30) days after written notice; or
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- C. The making of an assignment by Customer for the benefit of its creditors or the admission by Customer in writing of its inability to pay its debts as they become due, or the insolvency of Customer, or the filing by Customer of a voluntary petition in bankruptcy, or the adjudication of Customer as bankrupt, or the filing by Customer of any petition or answer seeking for itself any reorganization, arrangement, composition or readjustment precipitated by the insolvency or bankruptcy of Customer, any liquidation, dissolution or similar relief under any present or future statute, law or regulation, or the filing of any answer by Customer admitting, or the failure by Customer to deny, the material allegations of a petition filed against it for any such relief, or the seeking or consenting by Customer to, or acquiescence by Customer in, the appointment of any trustee, receiver or liquidator of Customer or of all or any substantial part of the properties of Customer, or the inability of Customer to pay its debts when due, or the commission by Customer of any act of bankruptcy; or
- D. The failure by Customer, within sixty (60) days after the commencement of any proceeding against Customer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, to obtain the dismissal of such proceeding or, within sixty (60) days after the appointment, without the consent or acquiescence of Customer, or any trustee, receiver or liquidator of Customer or of all or any substantial part of the properties of Customer, to vacate such appointment.

## **12.2 Remedies**

Upon the occurrence of any Event of Customer Default, HNS may, in addition to any other rights or remedies available to it at law or in equity, terminate this Agreement immediately upon written notice. In addition, upon termination of this Agreement for the default of Customer, HNS may, at its option, require Customer to disable any equipment provided by HNS which has been previously installed in any aircraft. Customer shall in any event remain fully liable for reasonable damages as provided by law and for all costs and expenses incurred by HNS on account of such default including all court costs and reasonable attorneys fees.

## **13. DEFAULT BY HNS**

### **13.1 Definition**

The occurrence of any one or more the following events (herein called "Events of HNS Default") shall constitute a default by HNS under this Agreement:

- A. Default by HNS in the performance of any other term, covenant or condition of this Agreement, which default shall continue for a period of thirty (30) days after notice; or
  - B. The making of an assignment by HNS for the benefit of its creditors or the admission by HNS in writing of its inability to pay its debts as they become due, or the insolvency of HNS, or the filing by HNS of a voluntary petition in bankruptcy, or the adjudication of HNS as bankrupt, or the filing by HNS of any petition or answer seeking for itself any reorganization, arrangement, composition or readjustment precipitated by the insolvency or bankruptcy of HNS, any liquidation, dissolution or similar relief under any present or future statute, law or regulation, or the filing of any answer by HNS admitting, or the failure by HNS to deny, the material allegations of a petition filed against it for any such relief, or the seeking or consenting by HNS to, or acquiescence by HNS in, the appointment of any trustee, receiver or liquidator of HNS or of all or any substantial part of the properties of HNS, or the inability of HNS to pay its debts when due, or the commission by HNS of any act of bankruptcy, as amended; or
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- C. The failure by HNS, within sixty (60) days after the commencement of any proceeding against HNS seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, to obtain the dismissal of such proceeding or, within sixty (60) days after the appointment, without the consent or acquiescence of HNS, or any trustee, receiver or liquidator of HNS or of all or any substantial part of the properties of HNS, to vacate such appointment.

### **13.2 Remedies**

Upon the occurrence of any one or more Events of HNS Default, Customer may, in addition to any other rights or remedies available to it at law or in equity, and subject to the limitations described in Section 15, terminate this Agreement immediately upon written notice. HNS shall in any event remain fully liable for reasonable damages as provided by law and for all costs and expenses incurred by Customer on account of such default including all court costs and reasonable attorneys fees.

### **14. LIMITATION OF LIABILITY**

- A. IN NO EVENT WILL CUSTOMER, HNS, OR ASSIGNEES BE LIABLE TO EACH OTHER FOR SPECIAL, COLLATERAL, EXEMPLARY, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE (INCLUDING WITHOUT LIMITATION, LOSS OF GOODWILL, LOSS OF PROFITS OR REVENUES, LOSS OF DATA, LOSS OF SAVINGS, LOSS OF USE, INTERRUPTIONS OF BUSINESS, AND CLAIMS OF CUSTOMERS) ARISING OUT OF OR RELATED TO THIS AGREEMENT, OR THE EQUIPMENT, SOFTWARE, AND SERVICES PROVIDED HEREUNDER, EVEN IF SUCH DAMAGES WERE FORESEEABLE.
- B. HNS' MAXIMUM AGGREGATE LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE SERVICE CHARGES PAID BY CUSTOMER DURING THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING HNS' RECEIPT OF NOTICE OF THE EVENT THAT GAVE RISE TO SUCH LIABILITY.
- C. The remedies of Customer and HNS set forth herein are exclusive and in lieu of all other remedies, express or implied. Except for the remedies provided for herein, neither HNS nor its subcontractors shall be liable for any delay or failure of performance of the Equipment, Software or Services provided herein.

### **15. INDEPENDENT CONTRACTOR AND SUBCONTRACTING**

- A. HNS and Customer will be and shall act as independent contractors, and neither party is authorized to act as an agent or partner of, or joint venturer with, the other party for any purpose. Neither party by virtue of this Agreement shall have any right, power, or authority to act or create any obligation, express or implied, on behalf of the other party. Customer acknowledges and agrees that HNS will be solely responsible to determine the method and manner of performing its obligations hereunder.
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- B. Customer agrees that HNS may, at its sole discretion, subcontract the whole or any part of its obligations under this Agreement; provided that HNS agrees that it will retain full responsibility for such obligations despite such subcontract.

## **16. CONFIDENTIALITY**

- A. HNS and Customer, to the extent of their contractual and lawful right to do so, will exchange proprietary or confidential information as reasonably necessary for each to perform its obligations under this Agreement. All information relating to this Agreement provided by either party to the other, whether oral or written, and when identified as confidential or proprietary in writing, is hereby deemed to be confidential and proprietary information ("Proprietary Information").
  - B. Except as set forth in Paragraph C below, a party receiving Proprietary Information pursuant hereto (the "Receiving Party") will keep such Proprietary Information confidential, and will not, without the prior written consent of the party disclosing such information (the "Disclosing Party"), (i) use any portion of the Proprietary Information for any purpose other than the purpose of this Agreement, or (ii) disclose any portion of the Proprietary Information to any persons or entities other than the employees and consultants of the Receiving Party (and HNS' subcontractors) who reasonably need to have access to the Proprietary Information in connection with the purposes of this Agreement and who have agreed to protect Proprietary Information as though they were a party to this Agreement.
  - C. A Receiving Party will not be liable for disclosure of Proprietary Information, or any part thereof, if the Receiving Party can demonstrate that such Proprietary Information (i) was in the public domain at the time it was received or subsequently entered the public domain through no fault of the Receiving Party; (ii) was known to or is in the possession of the Receiving Party at the time of receipt; (iii) became known to the Receiving Party from a source other than the Disclosing Party without breach of an obligation of confidentiality; or (iv) is disclosed more than five (5) years after the date of receipt of the proprietary Information by the Receiving Party. In the event of any legal action or proceeding or asserted legal requirement for disclosure of Proprietary Information furnished hereunder, the Receiving Party will promptly notify the Disclosing Party and, upon the request and at the expense of the Disclosing Party, will cooperate with the Disclosing Party in lawfully contesting such disclosure. Except in connection with any failure to discharge its responsibilities under the preceding sentence, the Receiving Party will not be liable for any disclosure pursuant to court order.
  - D. Proprietary Information will remain the property of the Disclosing Party and will, at the Disclosing Party's request and after it is no longer needed for the purposes of this Agreement or upon expiration or termination of this Agreement for any reason, whichever occurs first, promptly be returned to the Disclosing Party or be destroyed, together with all copies made by the Receiving Party and by anyone to whom such Proprietary Information has been made available by the Receiving Party in accordance with the provisions of this Section 16.D.
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## **17. RESOLUTION OF DISPUTES**

Any and all disputes arising under or in connection with this Agreement shall be resolved in accordance with this Section 17.

### **A.. Negotiation.**

The parties shall attempt to resolve any dispute, controversy or difference that may arise between them through good faith negotiations. In the event the parties fail to reach resolution of any such dispute within sixty (60) days after entering into negotiations, either party may refer such dispute to arbitration pursuant to the provisions of Section 17.B. Notwithstanding the above, the parties may elect to waive applicability of this section (i) if both parties agree in writing that the nature of their dispute is such that it cannot be resolved through negotiations; or (ii) if a party shall suffer irrevocable harm by such delay.

### **B. Arbitration.**

Arbitration shall be conducted in accordance with the International Arbitration Rules of the American Arbitration Association ("AAA") in effect at the time of arbitration. The arbitration shall be in accordance with the following guidelines except to the extent the parties to arbitration shall agree otherwise:

1. The place of arbitration shall be Washington, D.C.
2. The arbitration panel shall be composed of one arbitrator. If the parties fail to mutually agree on an arbitrator within thirty (30) days from the date the dispute is referred to arbitration, any party may refer such selection to the AAA.
3. The proceeding shall be conducted and transcribed in English. Any document submitted in a language other than English shall be accompanied by an English translation. Neither party will be entitled to discovery in connection with such arbitration unless otherwise mutually agreed in writing.
4. The results of any such arbitration, and all testimony and evidence related to the confidential information or trade secrets of either party shall be deemed to be Proprietary Information subject to Section 16 and shall be safeguarded and maintained as confidential, with access to such evidence to be only on a need-to-know basis and subject to all reasonable precautions so as not to jeopardize the confidential information or trade secrets of any party.
5. The parties hereby accept jurisdiction of the arbitral tribunal over the parties and over the subject matter of the dispute.
6. Notwithstanding the foregoing, either party shall have the right to seek injunctive relief regarding any disputes arising under Section 17.

## **18. \*\*\***

\*\*\* Confidential treatment requested.

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## **19. ADDITIONAL CLAUSES**

- A. **EXPORT CONTROL:** It is expressly agreed that the execution of this Agreement and the subsequent delivery of any Equipment or Software under this Agreement are subject to all applicable export controls imposed or administered by the U.S. Department of Commerce as well as by any other U.S. Government Agency that may impose any such controls, including but not limited to the export of technical data, equipment, software and know-how. Each party shall perform their obligations under this Agreement in compliance with such laws and regulations and shall not take any action contrary thereto. Customer will not export or re-export, directly or indirectly, any Software, Equipment, documentation or other technical data provided to it hereunder, without complying with all export control laws and regulations, and without first obtaining any required export licenses and approvals. HNS shall provide reasonable cooperation and assistance to enable Customer to obtain any such export licenses and approvals.
  - B. **ENTIRE AGREEMENT:** This Agreement, the Exhibits hereto, and any other documents referred to herein constitute the entire agreement between the parties, and supersedes any prior written or oral agreement or understanding with respect to the subject matter hereof. No interpretation, amendment, or change to this Agreement will be effective unless made in writing and signed by both parties, except that each party may change the address or the name of the person to whom notices to that party will be sent by giving written notice of such change to the other party as provided in Section 19.E hereof.
  - C. **NO WAIVER:** Failure by either party to exercise any rights under this Agreement in any one or more instances will not constitute a waiver of such rights in any other instance. Waiver by such party of any default under this Agreement will not be deemed a waiver of any other default. No alteration or modification of any provision of this Agreement will be binding unless in writing and signed by duly authorized representatives of both parties.
  - D. **GOVERNING LAW:** This Agreement, the rights and obligations of the parties hereto, and any claims or disputes relating thereto, will be governed by and construed in accordance with the laws of the State of Maryland notwithstanding the place of execution or performance of this Agreement (without reference to its conflict of laws principles) and applicable Federal laws.
  - E. **CROSS DEFAULT:** In the event that either party is in breach of any other agreement between the parties hereto, such breach may, at the option of the non-breaching party, be deemed to be a breach of this Agreement. Consequently, in the event the breach of such other agreement between the parties is not cured pursuant to the terms of such agreement, thus leading to the termination of such agreement for default, this Agreement may likewise be terminated for default.
  - F. **NOTICES:** All notices, demands, requests, or other communications provided for herein (other than routine communications concerning the Services) will be given in writing and will be effective when delivered personally or when sent by registered or certified mail, return receipt requested, postage prepaid, or transmitted by facsimile, hand delivery, telegram, or telex/TWX. All notices sent by either party will be addressed as follows:
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If to HNS:

Hughes Network Systems, LLC  
11717 Exploration Lane  
Germantown, Maryland 20876  
ATTN: General Counsel

If to Customer:

Row 44, Inc.  
31280 Oak Crest Drive, Suite #5  
Westlake Village, CA 91361  
Attn: Chief Executive Officer

With a copy to:

Strategic Law Partners, LLP  
500 S. Grand Avenue, Suite 2050  
Los Angeles, CA 90071  
Attn: Timothy F. Silvestre

Either party may designate by notice in writing a new address to which any notice, demand, request, or communication will be delivered, as provided above.

- G. SEVERABILITY: If any of the provisions or any portion of the provisions of this Agreement shall be held invalid or unenforceable, such invalidity or unenforceability will not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement will be construed as if not containing the particular invalid or unenforceable provisions or portion thereof, and the rights and obligations of the parties hereto will be construed and enforced accordingly.
  - H. COUNTERPARTS. One execution original of this Agreement, together with its Exhibits and Addendums, marked "Original", shall be the original of this Agreement evidencing use agreements covering the Equipment. All other executed counterparts of this Agreement shall be marked "Duplicate". To the extent that this Agreement constitutes chattel paper, as such term is defined in the Uniform Commercial Code of the applicable jurisdiction, no security interest in this Agreement may be created through the transfer of possession of any counterpart other than the Original of this Agreement.
  - I. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns.
  - J. COMPLIANCE WITH LAWS. Each party agrees to comply with all applicable laws, rules, and regulations in connection with its activities under this Agreement.
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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by and through their duly authorized representatives.

Hughes Network Systems, LLC

By: /s/ Philip K. O'Brien  
Name: Philip K. O'Brien  
Title V.P. Legal  
Date: 12/21/2007

Row 44, Inc.

By: /s/ John Guidon  
Name: John Guidon  
Title: CEO  
Date:

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**ATTACHMENT 1**  
**REQUIRED END-USER AGREEMENT TERMS AND CONDITIONS**

As specified in Section 9 of this Agreement, this Attachment contains the terms and conditions which Customer, or its airline customer, must incorporate, in pertinent part, into its End-User Agreements with its customers.

**PROHIBITED CONDUCT**

You agree not to use the Service as follows: (a) for any unlawful, improper or criminal purpose or activity; (b) to post or transmit information or communications that, whether explicitly stated, implied, or suggested through use of symbols, are libelous, defamatory, invasive of another person's privacy, sadistic, cruel, or racist in content; or which espouses, promotes or incites bigotry, hatred or racism; or which might be legally actionable for any reason; (c) hurts minors in any way; (d) forge headers or otherwise manipulate identifiers in order to disguise the origin of any content transmitted through the Service; (e) intentionally or unintentionally violate any applicable local, provincial, state, national or international law, including, but not limited to, rules, orders and regulations having the force of law; (f) to attempt to access or access the accounts of others, to spoof or attempt to spoof the URL or DNS address, or to attempt to penetrate or penetrate our security measures or other entities' systems ("hacking") whether or not the intrusion results in corruption or loss of data; (g) to bombard individuals or newsgroups with uninvited communications, data or information, or other similar activities, including but not limited to "spamming", "flaming" or denial or distributed denial of service attacks; (h) to transmit unsolicited voluminous emails (for example, spamming) or to intercept, interfere with or redirect email intended for third parties using the Service; (i) to introduce viruses, worms, harmful code and/or Trojan horses on the Internet; (j) to post information on newsgroups which is not in the topic area of the newsgroup; (k) to interfere with another person's usage or enjoyment of the Internet or this Service; (l) to post or transmit information or communications that are defamatory, fraudulent, obscene or deceptive, including but not limited to scams such as "make-money-fast" schemes or "pyramid/chain" letters; (m) to damage the name or reputation of Service Provider or its subcontractors, or any of their respective parents, affiliates and subsidiaries, or any third parties; (n) to transmit confidential or proprietary information, except solely at your own risk; (o) to violate our or any third party's copyright, trademark, proprietary or other intellectual property rights, including trade secret rights; (p) to generate excessive amounts (as determined in our sole discretion) of Internet traffic, or to disrupt net user groups or email use by others; (q) to engage in activities designed to or having the effect of degrading or denying Service to other users or others (including activities that compromise a server, router, circuit or software; (r) to use any name or mark of Service Provider Hughes Network Systems, or their respective parents, affiliates or subsidiaries, as a hypertext link to any Web site or in any advertising publicity or other commercial manner; (t) to use the Service or the Internet in a manner intended to threaten, harass, or intimidate others; (u) to cause the screen to "scroll" faster than other subscribers or users are able to type to it, or any action that has a similar disruptive effect, on or through the Service; (v) to use the Service to disrupt the normal flow of online dialogue, (w) to use the Service to violate any operating rule, policy or guideline of any other online services provider or interactive service; (x) to attempt to subvert or to aid third parties to subvert, the security of any computer facility or system connected to the Internet; (y) to impersonate any person or using a false name while using the Service; (z) to install "auto-responders," "cancel-bots" or similar automated or manual routines which generate excessive amounts of net traffic, or disrupt net user groups or email use by others; (aa) to make false or unverified complaints against any subscriber, or otherwise abusing any of our complaint response procedures; (bb) to export software or any information in violation of US export laws; or (cc) to use the Service in contravention of the limitations of the pricing plan you have chosen.

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## ILLEGAL PURPOSES

You agree not to use the Service nor any of its elements or related facilities or capabilities to conduct any business or activity, or solicit the performance of any activity, which is prohibited by or would violate any applicable law, rule, regulation or legal obligation.

## OTHER OBLIGATIONS RELATING TO CONTENT

You agree we do not, and we shall not without cause, pre-screen content transmitted by you over the Service, but we shall have the right (but not the obligation) in our sole discretion to refuse or move any such content that is available via the Service, including without limitation any content that violates the terms of this Agreement or is otherwise objectionable. You agree to evaluate, and bear all risks associated with, the use of any content, including any reliance on the accuracy, completeness, or usefulness of such content, and acknowledge that you may not rely on any content created by, or submitted to, ourselves.

You agree we may preserve and disclose content if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce the terms of this Agreement; (c) respond to claims that any content violates the rights of third-parties; or (d) protect the rights, property, or personal safety of Service Provider, its users and the public.

## RESERVATION OF RIGHTS

We reserve all copyrights and other rights in and to any content available through the Service which is identified as, claimed by us as, or known by you to be, proprietary to us (or our licensors). The content on the Service is protected under applicable copyright law, including as a collective work. All copying, modification, distribution, publication or other use by you, or by any user of your account, of any such content or other works is prohibited, except as expressly permitted by ourselves.

## NO ENDORSEMENT

We do not endorse or in any way vouch for the accuracy, completeness, truthfulness or reliability of any service, opinion, advice, communication, information or other content on or made available through the Service. None of such content should be construed or understood to constitute or reflect the views or approval of Service Provider or any of the subcontractors, subsidiaries or affiliates. We do not recommend that such content be relied on for reaching important decisions or conclusions without appropriate verification and, as appropriate, professional advice.

## INTERNET

YOU ACKNOWLEDGE THAT INTERNET SITES, AND USE OF THE INTERNET, MIGHT CONSIST OF, INCLUDE AND/OR PROVIDE ACCESS TO IMAGES, SOUND, MESSAGES, TEXT, SERVICES OR OTHER CONTENT AND MATERIAL THAT MAY BE UNSUITABLE FOR MINORS AND THAT MAY BE OBJECTIONABLE TO MANY ADULTS. YOU ACKNOWLEDGE THAT WE ARE NOT RESPONSIBLE FOR ANY SUCH CONTENT OR MATERIAL AND AGREES THAT ACCESS TO SAME THROUGH USE OF THE SERVICE IS AT YOUR SOLE RISK. The reliability, availability, legality, performance and other aspects of resources accessed through the Internet are beyond our reasonable control and are not in any way warranted or supported by ourselves or our third party contractors. You acknowledge that safeguards relative to copyright, ownership, appropriateness, reliability, legality and integrity of content may be entirely lacking with respect to the Internet and content accessible through it. You confirm that you assume all risk and liability of any use of the Internet through your account, including your continuous compliance with the Subscriber Agreement.

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## DISCLAIMER OF WARRANTIES, LIABILITY AND RESPONSIBILITY

YOU EXPRESSLY AGREE THAT USE OF THE SERVICE IS AT YOUR SOLE RISK. NEITHER WE NOR ANY OF OUR INFORMATION OR CONTENT PROVIDERS, SERVICE PROVIDERS, LICENSORS, EMPLOYEES OR AGENTS WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE; NOR DO WE OR ANY OF OUR INFORMATION OR CONTENT PROVIDERS, SERVICE PROVIDERS, LICENSORS, EMPLOYEES OR AGENTS MAKE ANY WARRANTY AS TO THE RESULTS TO BE OBTAINED FROM USE OF THE SERVICE, INCLUDING ANY MINIMUM UPLOAD OR DOWNLOAD SPEEDS. THE SERVICE IS DISTRIBUTED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE, EXCEPT FOR THOSE WARRANTIES, IF ANY, WHICH ARE IMPLIED BY, AND INCAPABLE OF EXCLUSION, RESTRICTION OR MODIFICATION UNDER, THE LAWS APPLICABLE TO THIS SUBSCRIBER AGREEMENT. WE EXPRESSLY DISCLAIM ANY REPRESENTATION OR WARRANTY THAT THE SERVICE WILL BE ERROR FREE, SECURE OR UNINTERRUPTED OR OPERATE AT ANY MINIMUM SPEED. NO ORAL ADVICE OR WRITTEN INFORMATION GIVEN BY OURSELVES, OUR EMPLOYEES, DEALERS, AND LICENSORS OR THE LIKE SHALL CREATE A WARRANTY; NOR SHALL YOU RELY ON ANY SUCH INFORMATION OR ADVICE. IN ADDITION, WE FURTHER DISCLAIM ANY LIABILITY OR RESPONSIBILITY FOR THE TIMELINESS, DELETION, MIS-DELIVERY, NON-DELIVERY OR FAILURE TO STORE OR ACCURATELY STORE, ANY E-MAIL OR OTHER COMMUNICATIONS, ADDRESSES OR PERSONALIZATION SETTINGS.

IN PARTICULAR, BECAUSE WE MAY PROVIDE ITS SUBSCRIBERS WITH ELECTRONIC ACCESS TO THE CONTENT AVAILABLE ON THE SERVICE, WHICH CONTENT MAY BE ORIGINATED BY INDEPENDENT PUBLISHERS AND/OR PROVIDERS AND WHICH CONTENT IS NOT AUGMENTED BY OURSELVES, WE CANNOT AND DO NOT WARRANT THE ACCURACY OF ANY OF THE INFORMATION AS ORIGINATED BY SAID INDEPENDENT PUBLISHERS AND/OR PROVIDERS, AND WE SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER FOR ANY ERRORS, OMISSIONS, OR INACCURACIES RELATING THERETO. IF DEFECTIVE, YOU - NOT OURSELVES, OUR DEALERS, DISTRIBUTORS, AGENTS, EMPLOYEES OR ANY THIRD-PARTY CONTENT PROVIDER - ASSUME THE CONSEQUENCES RESULTING THEREFROM.

NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY OURSELVES, OUR DEALERS, DISTRIBUTORS, AGENTS, EMPLOYEES OR ANY THIRD-PARTY CONTENT PROVIDER, SHALL CREATE ANY WARRANTY IN OR TO THE SERVICE OR THE CONTENT, AND YOU MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS. YOU MAY HAVE OTHER RIGHTS, WHICH VARY FROM STATE TO STATE.

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## LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER WE NOR ANY OF OUR INFORMATION OR CONTENT PROVIDERS, SERVICE PROVIDERS, LICENSORS, EMPLOYEES OR AGENTS SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF USE OF THE SERVICE OR INABILITY TO USE THE SERVICE OR OUT OF ANY BREACH OF ANY REPRESENTATION OR WARRANTY. WITHOUT IN ANY WAY LIMITING THE FOREGOING, IF FOR ANY REASON, BY OPERATION OF LAW OR OTHERWISE, ANY PORTION OF THE FOREGOING LIMITATION OF LIABILITY SHALL BE VOIDED, THEN IN SUCH EVENT OUR MAXIMUM, SOLE, AND EXCLUSIVE LIABILITY, OUR DEALERS, DISTRIBUTORS, AGENTS, EMPLOYEES OR THIRD PARTY CONTENT PROVIDER, IF ANY, SHALL BE LIMITED TO GENERAL MONEY DAMAGES IN AN AMOUNT NOT TO EXCEED THE TOTAL AMOUNT ACTUALLY PAID TO OURSELVES BY YOU FOR SERVICES FURNISHED UNDER THIS SUBSCRIBER AGREEMENT DURING AND FOR A PERIOD OF TIME COMMENCING UPON THE OCCURRENCE OF SUCH ERROR, DEFECT OR FAILURE AND CEASING UPON THE DISCOVERY OF SUCH, IN WHOLE OR IN PART; PROVIDED, HOWEVER, THAT IN NO EVENT SHALL SUCH PERIOD OF TIME EXCEED THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE WHICH SUCH ERROR, DEFECT OR FAILURE IS FIRST DISCOVERED IN WHOLE OR IN PART.

## INDEMNITY

You agree to indemnify Service Provider, Hughes Network Systems, and each of their respective subcontractors against all claims, liability, damages, costs and expenses, including but not limited to reasonable attorneys fees, arising out of or related to any and all use of your account, including any content transmitted over the Service, your use of the Service, your violation of this Agreement, and your violation of any rights of any other person. This includes, without limitation, responsibility for all such consequences of your (or that of any user of your account) violation of this Subscriber Agreement or placement on or over, or retrieval from or through, the Service of any software, file, information, communication or other content.

## PROPRIETARY RIGHTS

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[Row 44 Letterhead]

June 6, 2008

Philip K. O'Brien  
Vice President  
Associate General Counsel  
Hughes Network Systems  
11717 Exploration Lane  
Germantown, MD 20876

***Re: Clarification of Master Equipment Purchase Agreement—Modem Warranty***

Dear Phil:

In connection with that certain Master Equipment Purchase Agreement (the "Agreement"), dated on or about December 21, 2007, between Hughes Network Systems, LLC ("HNS") and Row 44, Inc. ("Row 44"), HNS and Row 44 acknowledge and agree that for purposes of the warranty exclusion clause set forth in Section 9(D)(i) of the Agreement, Row 44's assembly procedures provided to HNS (namely, the use of applied heat sinks, hot glue and related steps to secure certain components of the modem module as outlined in the AP Labs document 5140316-1-AI, 5140317-1-AI and 5140302\_A) will not void the warranty on the entire modem module; provided, that HNS shall not be required to provide warranty service on either (a) the actual sub-components of the modem that are modified by Row 44 and which fail as a result of such modifications, or (b) modules or components which fail as a result of such modifications.

If the above clarification of the Agreement is acceptable to HNS, please acknowledge so by your signature below.

Yours truly,  
/s/ John LaValle

John LaValle  
Chief Operating Officer

Acknowledged and agreed:

Hughes Network Systems, LLC

By: /s/ Philip K. O'Brien

Name: Philip K. O'Brien

Title: V.P. Legal

---



June 30, 2009

Mr. John Guidon, CEO  
Mr. John LaValle, CFO  
Row 44, Inc.  
31280 Oak Crest Drive, Suite #5  
Westlake Village, CA 91361

Gentlemen:

This letter will set forth the terms under which Hughes Network Systems (HNS) will be supplying space segment and related services for the period between July 1, 2009 and December 31, 2009.

I. Revised Capacity

Transponder capacity on each of the existing Row44 transponders will be reduced to the amounts in the table below effective July 1, 2009 per Row44's transponder "slim-down" request. The amount and pricing for capacity each month of this period will be as set forth in the table below:

\*\*\*

By a date not later than November 1, 2009, Row 44 will advise HNS of its request to either continue to receive capacity at the levels specified above, or change these levels to different amounts. Row 44 acknowledges and agrees, however, HNS makes no guarantee as to the availability of additional capacity on the transponders listed above, or any other transponders on the applicable satellites. \*\*\*

II. SES Deferral Payments

HNS has requested that SES defer the repayment of the amounts otherwise due SES on account of the lower prices provided in the first quarter for a period of ninety (90) days. \*\*\*

III. NOC Operations Charges

HNS has agreed to reduce the "NOC Operations" charge from \*\*\* to \*\*\*. This reduction will commence in July, 2009, and will continue until the date that HNS equipment has been installed and is operational in a commercial aircraft and is being used for the generation of revenue (as opposed to pilots or tests), after which time the price will revert to the contract level of \*\*\*.

IV. Payments for Certain Services to be Provided after June 30, 2009.

As previously discussed, Row 44 will be required to make payments for each of the charges listed above \*\*\*. Thus, assuming HNS' request for further deferral of the Q1 SES amounts is granted, the payment schedule for the balance of the year would be as follows:

\*\*\*

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\*\*\* Confidential treatment requested.

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Note: All charges are exclusive of applicable taxes. Taxes may, at HNS' option, be billed separately and will be due net 30 days from invoice.

\*\*\*

In the event this request is not granted, the payment schedule will be as follows:

\*\*\*

Note: All charges are exclusive of applicable taxes. Taxes may, at HNS' option, be billed separately and will be due net 30 days from invoice.

\*\*\*

Should HNS terminate service, HNS will terminate Row44 related space segment agreements with SES and Intelsat and HNS makes no representation about its ability to re-secure space segment or restart services at a later date.

V. Payments for other Equipment and other Charges to be provided after July 1, 2009.

Unless otherwise specified by HNS, charges for development services provided by HNS will be billed in accordance with the current regime and will be due net 30 days from the date of invoice. Notwithstanding the foregoing, in the event that Row 44 requires that a significant development project be undertaken by HNS which may be reasonably expected to consume more than 100 man-days, HNS may require that an alternative payment structure be utilized, which may include some amount of the total project cost to be paid in advance. In the event that any additional equipment is required by Row 44, such equipment will be invoiced and paid for in advance of shipment.

VI. Payment for Amount Unpaid as of June 26, 2009

\*\*\*

This note will be prepared by HNS and submitted to Row 44 for signature by July 7, 2009.

In the event that these arrangements are in accordance with your understandings, we would appreciate it if you could signify the same by signing of copy of this letter and returning it to us. Thank you very much for your consideration.

Very truly yours,

/s/ Philip K. O'Brien  
Philip K. O'Brien  
Vice President, Legal

Accepted:  
Row 44, Inc.  
/s/ John Guidon  
By: John Guidon  
Title: Chief Executive Officer  
Date: June 30, 2009

\*\*\*

Confidential treatment requested.

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## AMENDMENT NO. 3 TO MASTER SERVICES AGREEMENT

***THIS AMENDMENT No. 3 (the "Amendment") to Master Services Agreement is entered into November \_\_\_\_, 2010 (the "Amendment Effective Date") by and between Hughes Network Systems, LLC ("HNS") located at 11717 Exploration Lane, Germantown MD 20876, and Row 44, Inc. ("Row 44" or "Customer") located at 31280 Oak Crest Drive, Suite #5, Westlake Village, CA 91361***

**WHEREAS**, Row 44 and HNS entered into a Master Services Agreement on or about December 28, 2007 (hereafter referred to as the "MSA") which agreement has been heretofore amended on two prior occasions; and

**WHEREAS**, Row 44 now desires to purchase and HNS desires to sell, certain services in Europe, which services are substantially similar to the services provided pursuant to the MSA, as previously amended; and

**WHEREAS**, the parties now desire to amend the terms of the MSA to cover the provision and purchase of the European services herein described; the delivery dates for space segment services contained in this MSA will be per Attachment III.

**NOW THEREFORE**, for and in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Row 44 and HNS hereby agree as follows:

### **1. SCOPE OF SERVICES**

During the Amendment No. 3 Term (as defined below), HNS will provide, and Row 44 will accept and pay for the services in accordance with and subject to the terms and conditions set forth herein and Attachments I, II and III hereto and incorporated herein (which services are hereafter referred to as the "Services").:

Attachment I – Statement of Work

Attachment II – NOC Operations, Maintenance and Technical Support Services

Attachment III – Service Pricing and Payment Terms

During the Term, Row 44 may order additional Services subject to the terms hereof, for same prices set forth in this Agreement (except for additional space segment services, which are subject to adjustment in accordance with the term set forth in Section 3 of Attachment III), including the Exhibits hereto. Notwithstanding the foregoing, Row 44 acknowledges that additional Space Segment Services will be subject to the availability of such Space Segment capacity. In order to increase the likelihood that HNS will be able to provide any such additional Space Segment capacity when such capacity is required by Row 44, the parties will establish a mutually acceptable methodology for forecasting and ordering any additional space segment that may be required by Row 44. In addition, on a regular basis HNS will provide Row 44 with its best estimate of the amount of Space Segment capacity currently available and anticipated to become available on any of the satellites used by Row 44.

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**2. TERM OF AGREEMENT**

The term of this Agreement ("Amendment No. 3 Term") and the term of Services provided hereunder will remain in effect for a period which ends on December 31, 2011, unless terminated earlier as provided herein.

**3. TERMS APPLICABLE TO THE PROVISION OF SATELLITE CAPACITY.**

In addition to the terms set forth herein, the additional terms and conditions set forth in Annex A to this Amendment shall apply in respect of HNS' provision of satellite capacity to Row 44.

**4. OTHER TERMS**

Except as amended herein, all terms and conditions of the MSA as amended shall remain in full force and effect. For the avoidance of doubt, inasmuch as the provisions of Section 2.A of the MSA dealt with certain rights and obligations of the parties relating to exclusivity in the North American market, this Amendment is not intended to extend any such right or obligation outside of North America.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Amendment No. 3 to be executed as of the Amendment Effective Date by and through their duly authorized representatives.

**Hughes Network Systems, LLC**

By: /s/ Philip K. O'Brien

Title: V.P. Legal

Date: 11/15/2010

**Row 44, Inc.**

By: /s/ John Guidon

Title: C.E.O.

Date: 11/12/2010

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## ANNEX A

This Annex sets forth certain additional terms and conditions in respect of the provision, sale and use of satellite capacity, which shall be binding on Row 44 during the period that such capacity is being provided by HNS to Row 44 for Row 44's European NOC. For purposes of this Annex, Row 44 shall be referred to as the "Customer."

### I. DEFINITIONS

"Affiliates" shall mean, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control (*i.e.*, the power to direct affairs by reason of ownership of voting stock, by contract or otherwise) with such Person and any member, director, officer or employee of such Person.

"Authorization" shall mean, the HNS written document which provides technical details such as satellite, transmit frequency and contractual power level for Customer carriers.

"Governmental Communications Authority" shall mean the governmental body or bodies in Europe that are required to approve the transmissions over Customer's system.

"Hughes" or "HNS" shall mean Hughes Network Systems, LLC, or any of its Affiliates.

"Eutelsat" shall mean Eutelsat Communications SA.

"Laws" shall mean all international, federal, state, local and other laws, rules and other regulations, including without limitation, those issued by the Governmental Communications Authorities.

"Non-Preemptible" shall mean transponders or partial capacity that is not protected in the event of a satellite failure but is not subject to preemption to restore any other service.

"Person" shall mean any person or entity, whether an individual, trustee, corporation, general partnership, limited partnership, trust, unincorporated organization, business association, firm, joint venture, governmental agency or authority, or otherwise.

"Preemptible" shall mean capacity that is not protected in the event of a failure but may be used by HNS and/or the Satellite Operator to recover other carriers or service affected by a satellite failure. HNS shall have the right to immediately preempt or interrupt Customer's use of Customer's Capacity in the event that any HNS or the Satellite Operator domestic satellite(s) suffers a failure to meet any applicable performance specifications. This preemption will be for service recovery only and not for business only reasons.

"Satellite" shall mean the Satellite(s) specified in Attachment III to this Amendment or the Replacement Satellite thereof from which Customer's Transponder Capacity is being provided at any given time.

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“Satellite Operator” shall mean Eutelsat.

“Transponder(s)” shall mean a specified component of the Satellite which, for a particular frequency band, receives, amplifies, translates frequency and retransmits radio signals. Each Transponder contains one traveling wave tube amplifier (a “TWTAs”). Transponder shall also mean, for purposes of this definition, any replacement of alternate components thereof.

“Transponder Capacity” shall mean the capacity on the Satellite for Use by Customer as specified in Attachment III to the Amendment 3. Transponder Capacity shall also mean the capacity on a Transponder other than the one specified in Attachment III, to which HNS or the Satellite Operator directs Customer to move, after notice thereof from HNS or the Satellite Operator, as the case may be. In the case where the Customer’s outroute traffic is multiplexed into a shared outroute, the “Transponder Capacity” for the outroute traffic shall mean the number of Mbps of the Customer’s traffic in the shared outroute.

“Transponder Capacity Failure” shall mean the failure of Hughes to provide Customer’s aggregate Transponder Capacity on a Transponder which meets a saturated downlink EIRP level of 43 dBW. Determination that a Transponder Capacity Failure has occurred shall be made by Hughes or the Satellite Operator in its sole discretion using facilities located at the Satellite Operator’s telemetry, tracking and control earth station.

“Usage” or “Use” shall refer to Customer’s (or its uplinking or other agents’) radio transmission to, or utilization of, the Satellite(s) or Customer’s Transponder Capacity.

“User” shall mean the actual owner of a Transponder, including HNS or the Satellite Operator, if there remain any unsold or unleased Transponders, or any permitted lessee, licensee, or assignee of such Transponder, or any entity to which HNS or the Satellite Operator provides services on a Transponder.

## **II. CERTAIN UNDERSTANDINGS**

1. Ownership of Transponders. Customer understands and agrees that the Satellite Operator is the authorized operator of the Satellite(s). Neither this Amendment 3 nor Customer’s Use of Transponder Capacity shall, or shall be deemed to, convey title or any other ownership interest to Customer in or to any Transponder. Customer acknowledges and agrees (i) that nothing contained in the MSA shall prevent any sale, mortgage, or encumbrance of the Satellite or any Transponder thereof by the Satellite Operator, (ii) that Customer’s Transponder Capacity is provided on a leased basis and is not being sold to Customer, (iii) that neither any Transponder nor any Satellite, nor any lease thereof nor any interest of any type therein, shall be subject to any claim, prior, subsequent or otherwise, of Customer or its creditors as a result of the MSA, and (iv) that, as to any Transponder, the rights of Customer under this Amendment III will be subject and subordinate to the rights of any purchaser purchasing such Transponder and leasing it back to HNS pursuant to a sale and leaseback transaction.

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2. Control of Satellite. Customer understands and agrees that the Satellite Operator shall control and provide for the operation of the Satellite. Customer agrees that the Satellite Operator shall be responsible for: (i) securing, providing and maintaining the license(s) for the Satellite; (ii) maintaining the Satellite; (iii) complying at all times during the term of this Amendment with all applicable regulations relating to the Satellite.

### **III. SERVICE DEFINITION**

HNS shall provide authorization for Customer to operate on carriers as specified in Attachment III on the Transponder specified in said Attachment III, or as such Transponder Capacity may be changed in accordance with the terms herein provided.

HNS shall provide in writing to Customer a Satellite Capacity Authorization document which will provide all technical elements of the carriers authorized for this capacity. Customer shall make best efforts to operate within the provided authorization.

### **IV. CONTINUITY OF SERVICE**

1. Preemption/Interruption of Service. Customer recognizes and agrees that for “Technical or Safety Reason(s)”, which shall include, but shall not be limited to, (1) the protection of the overall health or performance of the Satellite or its Transponders; (2) the prevention of interference or cross-talk; (3) the protection of public safety; or (4) compliance with an order from the governmental authorities, HNS and/or the Satellite Operator may take the following “Action(s)”: (i) preempt or interfere with Customer’s Use of any Transponder or other component of the Satellite, (ii) reassign TWTAs to different Transponders on the Satellite, or (iii) reassign the frequency assignment of Customer’s Transponder Capacity. Customer acknowledges and agrees that an Action by HNS and/or the Satellite Operator may result in the preemption or interruption of the Use of Customer’s Transponder Capacity. To the extent technically feasible, HNS shall give Customer oral or written notice prior to taking an Action and shall use reasonable efforts to schedule and conduct such Action so as to minimize the disruption of Customer’s Use of Customer’s Transponder Capacity. Customer acknowledges and agrees that if such preemption or interruption occurs, then Customer shall cooperate with and assist HNS during such periods and Customer may be entitled to Service Credits pursuant to Section 3 of this Attachment I or the termination of the provision of Space Segment Services pursuant to Section VIII below.

2. Provision of Continuing Service. In the event of a Transponder Capacity Failure, HNS will make best efforts with the Satellite Operator to restore Customer’s Transponder Capacity using a spare component of a Transponder on the Satellite (including a spare traveling wave tube), if available, or if such spare component is unavailable, then by using an alternate Transponder on the Satellite, if available. The availability of such spare component or alternate Transponder on the Satellite, on a permanent or temporary basis, shall be determined by the Satellite Operator.

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## V. CUSTOMER OBLIGATIONS

1. Non-interference and Use Restrictions. Customer's transmissions to and from the Satellite and its use of the Customer's Transponder Capacity shall comply with all applicable governmental laws, rules and regulations. Customer will follow established practices and procedures for frequency coordination and will not use the Customer's Transponder Capacity, or any portion thereof, in a manner which would or could be expected to, under standard engineering practice, harm the Customer's Transponder Capacity or interfere with the use of or harm any portion of the Transponder from which the Customer's Transponder Capacity is provided that is not assigned to Customer, any other Transponder, the Satellite, or any other in-orbit satellite or transponder on such satellite. Customer shall also comply with the operational requirements as may be issued by HNS from time to time, in its reasonable discretion.
  2. Permitted Use. The Customer's Transponder Capacity may be used by Customer solely for transmission of its own or its customers' digital telecommunications services
  3. Compliance With Laws. From the Effective Date and through and during the Amendment No. 3 Term, Customer (which includes any and all uplinking or other agents of Customer) shall comply with the terms in this Annex and shall be responsible for complying with, and shall comply with all Laws (including the Obscenity Laws defined below) applicable to it regarding the operation and Use of the Satellite and the Transponders, or Customer's lease or Use of Customer's Transponder Capacity (including, but not limited to, the transmission of any programming or material).
  4. Transmission Parameters. Customer transmissions to the Satellite must be within the technical parameters specified by HNS or the Satellite Operator for the transmission type Used and the Transponder Used. If Customer leases Partial Transponder Capacity, Customer shall supply HNS with all information reasonably requested, including but not limited to transmission parameters. Customer shall comply with the Satellite Access Procedures provided by HNS from time to time. Customer's Use of Customer's Transponder Capacity shall not interfere with the Use of that or any other Transponder by others and shall not cause physical harm to that or any other Transponder or to the Satellite. In order to minimize interference among various users of the Transponder Capacity, Customer shall notify HNS in a timely manner of Customer's proposed transmission parameters, including power, frequency, modulation, and such other information as HNS may reasonably request. Customer shall not initiate transmission or change its transmission parameters until written approval of such initiation or change is received from HNS. It is specifically contemplated by HNS and Customer that if Customer requires Partial Transponder Capacity, HNS may initially specify, and later change (upon ten days advance notice to Customer), the operating center frequency of Customer's carriers in order to place intermodulation products at frequencies which allow for maximum use of the Transponder.
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5. Customer's Transmitting Terminals. Customer shall be responsible for the provision, installation, operation, maintenance of, and for securing all necessary licenses and/or authorizations for all facilities and equipment not owned or operated by HNS ("Customer-Provided Facilities"), for transmitting signals to, or receiving signals from, the Satellite in accordance with the requirements set forth in this Annex. Customer shall configure, equip, and operate earth terminal facilities and all other equipment used in connection with Customer's Use of Transponder Capacity to conform to the characteristics and technical parameters of the Satellite as provided by HNS from time to time. Customer shall operate all Customer Provided Facilities with qualified and authorized personnel and in a manner that allows for the immediate cessation of transmission. Upon written or oral notice from the satellite provider that operational or technical reasons necessitate a cessation (as determined by the Satellite Operator in its sole discretion), or that Customer's Use is in violation of any law, Customer shall immediately cease transmission. HNS shall have the right, but not the obligation, to inspect any Customer-Provided Facilities together with associated facilities and equipment used by Customer, or by a third party under the authority of Customer, to transmit to any of the Customer's Transponder Capacity. HNS will use all reasonable efforts to schedule inspections to minimize the disruption of the operation of the facilities, and Customer shall make the facilities available for inspection at all reasonable times. Customer shall, upon HNS' request, provide measured proof that any transmissions from Customer-Provided Facilities meet or exceed applicable requirements established by Governmental Communications Authorities.

6. Cooperation. Customer shall cooperate with HNS in order to facilitate HNS' provision of Customer's Transponder Capacity on a continuous basis. For example (and by way of illustration and not limitation), Customer shall cooperate with HNS in trouble determination and fault isolation activities. Customer shall furnish HNS with such relevant information as HNS may reasonably require in order to provide and protect the Transponder(s) used in providing Customer's Transponder Capacity. Customer shall promptly notify HNS when it believes that a Transponder Capacity Failure has occurred.

7. Additional Usage Representations and Obligations. Customer has not been convicted for the criminal violation of, and has not been found by any governmental authority with appropriate jurisdiction (collectively, the "Governmental Authority") to have violated any Laws concerning illegal or obscene program material or the transmission thereof (the "Obscenity Laws"), and Customer is not aware of any pending investigation (including, without limitation, a grand jury investigation) involving Customer's programming or any pending proceeding against Customer for the violation of any Obscenity Laws. Customer will notify HNS as soon as it receives notification of, or becomes aware of, any pending investigation by any Governmental Authority, or any pending criminal proceeding against Customer, which investigation or proceeding concerns transmissions by Customer potentially in violation of any Law relating to the Use of Customer's Transponder Capacity, including without limitation, Obscenity Laws. Customer will not Use, or allow the Use of, Customer's Transponder Capacity for direct distribution of programming to television viewers unless the programming is scrambled such that television viewers can receive the programming only through the use of a decoder authorized by Customer or Customer's authorized agent.

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## VI. OUTAGES

1. Failure of Capacity. If, after the commencement date of services hereunder, the Customer's Transponder Capacity fails to meet the applicable specifications described in Attachment A for (a) a cumulative period of ten (10) hours during any consecutive 30-day period, or (b) any period of time following a catastrophic event under circumstances that make it clearly ascertainable that a failure described in clause (a) will occur, the Customer's Transponder Capacity shall be deemed to have suffered a "Confirmed Failure," unless such failure is the result of a Force Majeure event, in which event the consequences of such failure shall be governed under said Section. Any such failure(s) must be confirmed by HNS. If confirmed, the failure shall be measured as commencing from the later to occur of (i) Customer's cessation of use of the affected Customer's Transponder Capacity and (ii) notice from Customer to HNS of such failure. Any such failure shall be deemed to have ended upon the earlier to occur of (x) Customer's resumption of use of the Customer's Transponder Capacity and (y) notice by HNS to Customer that the affected Customer Transponder Capacity meets the applicable specifications.

In the event of a Confirmed Failure of Customer's Transponder Capacity, HNS or the Satellite Operator shall, as soon as possible and to the extent technically feasible, employ certain redundant equipment units on the Satellite ("Spare Equipment") on a first-needed, first-served basis as among Customer and other Transponder owners, customers, and users, including without limitation, those who may take service via capacity provided by the Satellite Operator, but who may have no direct right to access the capacity themselves, such as compressed digital channel customers ("Protected Parties"), as a substitute for an equipment unit which has failed; provided, that Customer acknowledges that the Satellite Operator may elect to use "Substitute Capacity" (as provided in below), if available, in lieu of using Spare Equipment.

Customer acknowledges and agrees that the Spare Equipment redundancy plan of the Satellite may require the Satellite Operator to reassign certain SSPAs or TWTAs, as applicable, among Transponders to make use of Spare Equipment. In circumstances in which a spare SSPA or TWTA is required to be employed for any Protected Party and to do so requires a change in the SSPA or TWTA assigned to Customer, Customer shall, on notice from HNS or the Satellite Operator, immediately cease transmitting to the Satellite to allow the SSPA or TWTA that is assigned to its Transponder to be reassigned and a different unit (that meets the Performance Specifications) to be put in its place.

If: (a) the Customer's Transponder Capacity suffers a Confirmed Failure, and (b) the Spare Equipment associated with such Customer's Transponder Capacity is not available or the use of such Spare Equipment would not correct the failure, and (c) equivalent capacity on another Transponder meeting the Performance Specifications (the "Substitute Capacity"), is available and its use by Customer in accordance with the Satellite Operator's Operational Requirements is not predicted to interfere with the use or rights of others using the Satellite, in each case as determined by the Satellite Operator, acting in good faith, then the Satellite Operator, as soon as possible and to the extent technically feasible, employ such Substitute Capacity for the Customer's Transponder Capacity to satisfy HNS' obligations under the MSA. In the event such Substitute Capacity for the failed Customer's Transponder Capacity is deployed, such Substitute Capacity shall be deemed to be Customer's Transponder Capacity for all purposes under the Amendment 3.

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In the event that two or more Transponders on the Satellite simultaneously fail to meet their respective service or performance specifications and Spare Equipment or Substitute Capacity is available for some, but not all of the affected capacity, then the allocation of such Spare Equipment or Substitute Capacity shall be determined by the Satellite Operator. As used in this Section, the term "simultaneously" shall be deemed to mean occurring within a 24-hour period.

2. Service Credits. In the event of a "Confirmed Outage" of Customer's Transponder Capacity which Outage results in the Service Performance Standard specified in Section 3 of Attachment I not being met, Customer shall be entitled to Service Credits in accordance with the provisions of said Section 3.

3. Replacement of Satellite and/or Communications Payload. During the Amendment No. 3 Term, HNS or the Satellite Operator may replace the Satellite or one of its communications payloads (e.g. Ku or C-band) with another satellite (a "Replacement Satellite") at the same orbital location or at such other orbital location to which such Replacement Satellite may be authorized by the Governmental Communications Authorities to be located. In such circumstances, provided there is available substantially comparable substitute capacity on the Replacement Satellite, HNS shall provide such capacity to Customer (the "Replacement Capacity") and Amendment 3 shall continue with such Replacement Capacity in lieu of the capacity originally provided for the remainder of its scheduled Capacity Term. The Replacement Capacity shall be deemed substantially comparable if the performance specifications for the Replacement Capacity (the "Replacement Performance Specifications") have materially the same or better coverage and performance than the original specifications. HNS shall use all reasonable efforts to minimize any disruption of operations while the Customer's Transponder Capacity is being transferred from one satellite to the other and Customer may be entitled to Service Credits during any period that the Customer's Transponder Capacity may be unavailable from both satellites. In the event of a replacement of Customer's Transponder Capacity under this Section, all references in this Annex to the Satellite, Customer's Transponder Capacity shall thereafter be deemed to refer to the Replacement Satellite. In the event that the Replacement satellite cannot be served via an existing Hughes RFT at the Greisheim NOC, Hughes will provide pricing for an additional RFT if feasible or alternative teleportal approach if available.

## **VII. INDEMNIFICATION**

### **1. Indemnification.**

- a) Customer shall indemnify and save HNS and the Satellite Operator harmless from all claims, liabilities losses, costs or damages, including attorneys fees and costs, arising out of (i) Customer's Use of Customer's Transponder Capacity pursuant to this Attachment, including, without limitation, Customer's violation or alleged violation of any of the Laws, including without limitation, the Obscenity Laws described in Section V or any actual or alleged libel, slander, obscenity, indecency, infringement of copyright, breach in the privacy or security of transmissions; (ii) Customer's breach of its obligations under the MSA; (iii) any disputes between or among Customer and its transmission recipients or its programs or other transmission content suppliers; or (iv) any claims made under any warranty, representation or statement by Customer to any third party concerning Customer's Transponder Capacity.
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- b) Customer shall pay all expenses (including attorneys' fees) incurred by HNS in connection with all legal or other formal or informal proceedings concerning claims of third parties arising out of or related to the items specified in Section 1(a) above, and Customer shall satisfy all judgments, costs, or other awards which may be incurred by or rendered against HNS.
- c) HNS shall have the sole right of defense in any legal or other formal or informal proceedings concerning claims of third parties, provided, however, that HNS shall conduct such defense with legal counsel reasonably satisfactory to Customer. Customer shall pay any settlement of any such claim or legal or other formal or informal proceeding, but Customer shall not agree to any settlement of any third party claim without first giving thirty (30) days prior written notice of the terms and conditions of such settlement to HNS and obtaining HNS' written consent to such settlement.

2. Injunctive Relief

- a) HNS' Right to Injunctive Relief. In order to protect against or prevent violations of Laws or to protect the Satellite, other satellites and/or the transponder capacity or other Users (including HNS) from interference or other similar breaches of the MSA, HNS shall have the right immediately to obtain injunctive relief, including a temporary restraining order on notice of four (4) hours or more to Customer, to prevent Customer from breaching, or to compel Customer to perform, its obligations under the MSA.
- b). Customer's Right to Injunctive Relief. In order to protect Customer's right to Use Customer's Transponder Capacity from a wrongful termination by HNS pursuant to Section VIII below, or a wrongful denial by HNS of Customer's access pursuant to Section VIII, Customer shall have the right immediately to seek injunctive relief, including a temporary restraining order on notice of four (4) hours or more to HNS, if any such wrongful termination or denial of access occurs.

4. Right to Deny Access.

- a) If Customer violates any provision of this Attachment, and, following notice from HNS, continues to violate any such provision, then in addition to its other rights hereunder, HNS shall have the immediate right to prevent Customer from accessing Customer's Transponder Capacity to the extent, but only to the extent necessary and for the time necessary to prevent such breach from continuing.
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- b) If, in connection with Using Customer's Transponder Capacity,
- i) Customer is convicted under any Obscenity Law or has been found by any Governmental Authority to have violated any such law;
  - ii) based on any Use of Customer's Transponder Capacity by Customer, HNS is indicted or otherwise charged as a criminal defendant, or is convicted under any Obscenity law, or becomes the subject of a criminal proceeding or a governmental action seeking a fine, license revocation or other sanctions, or any Governmental Authority seeks a cease and desist or other similar order or filing;
  - iii) A Governmental Communications Authority has issued an order initiating a proceeding to revoke HNS or the Satellite Operator's authorization to operate the Satellite;
  - iv) HNS obtains a court order pursuant to this Section, or a court or Governmental Authority of competent jurisdiction orders HNS to deny access to user or orders user to cease transmission; or
  - v) HNS receives notice (the "Illegal Programming Notice"), written or oral, from a Governmental Authority that such authority considers Customer and/or any other user's programming to be in violation of Obscenity Laws (the "Illegal Programming"), and that if HNS does not cease transmitting such Illegal Programming, then HNS and/or its parent or affiliates and/or any of their executives will be indicted or otherwise charged as a criminal defendant, will become the subject of a criminal proceeding or a governmental action seeking a fine, license revocation or other sanctions, or that such Governmental Authority will seek a cease and desist or other similar order or filing (with HNS being obligated, to the extent permitted by law, to provide Customer with a copy of such Illegal Programming Notice, if written, or with other verification, including the details thereof, if oral);

then, upon written notice from HNS to Customer (the "Denial of Access Notice"), which may be oral directed to Customer, Customer shall cease using Customer's Transponder Capacity, immediately, in the case of a denial of access pursuant to subparagraphs (i), (ii), (iii) or (iv) above, or within 24 hours following receipt of such notice, in the case of a denial of access pursuant to subparagraph (v), above; and if user does not voluntarily cease using such capacity at the appropriate time, then HNS shall have the right to take such steps as they may deem necessary to prevent user from accessing Customer's Transponder Capacity. Provided, however, that if user has more than one programming service, then the denial of access by HNS shall apply only to the Transponder used to provide the illegal Programming Service; and provided further, however, that if, upon receipt of the Denial of access Notice from HNS, user does not immediately cease transmission of such Illegal Programming Service, then HNS shall have the right to take such steps as they deem necessary to prevent user from accessing the Transponder used to transmit such Illegal Programming Service (and if, thereafter, Customer transmits such Illegal Programming Service using any of Customer's Transponder Capacity, then HNS shall have the immediate right, without further notification, to take such steps as HNS deems necessary to prevent Customer from accessing any of Customer's Transponder Capacity). As used herein, "user" shall mean Customer and any person to whom Customer transfers all or part of its right to Use Customer's Transponder Capacity, including without limitation, a sublessee, licensee or assignee.

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## VIII. TERMINATION OF SPACE SEGMENT SERVICES

The provision of in Amendment 3 relative to Space Segment Services shall terminate automatically as specified in said Amendment, unless terminated earlier pursuant to one of the following paragraphs:

1. Events of Customer Default. In the event that an Event of Customer Default, as defined in the MSA, occurs, then HNS may, by giving written notice thereof to Customer, terminate the provisions of Amendment 3 relative to Space Segment Services as of a date specified in such notice of termination. In the event that HNS terminates Amendment 3 for any such reason, in addition to all of HNS' other remedies at law or in equity, HNS may declare immediately due and payable a "Termination Fee" equal to the monthly fees remaining unpaid over the balance of the term of this Amendment 3.

Further, in such event, HNS shall be entitled to use the Customer's Transponder Capacity for whatever purpose HNS sees fit and Customer shall not be entitled to any equitable relief with respect to such use or any refund of amounts paid to HNS. Customer acknowledges that HNS' rights set forth in this section: (i) are reasonable under all of the circumstances existing as of this date; (ii) constitute liquidated damages for the loss of a bargain; and (iii) do not constitute a penalty.

2. Termination for Transponder Capacity Failure. If a Transponder Capacity Failure continues uninterrupted for more than ten (10) consecutive days, or such other period as is mutually agreed upon in writing by HNS and Customer, then the provisions of the MSA relative to Space Segment may be immediately terminated by either party by written notice to the other delivered on or before the thirtieth day after the calendar day on which the Transponder Capacity Failure began. If so terminated, HNS shall refund to Customer a prorated amount of any prepaid charges for the terminated transponder capacity and HNS shall have no other or further liability to Customer.

3. Termination for Removal of Satellite. If, during the Term, the Satellite Operator or HNS, in their sole discretion, (1) determines that it is necessary to remove the Satellite from operation and (2) does not elect to provide equivalent replacement capacity to Customer at the same orbital slot as was previously occupied by the Satellite, then it is understood and agreed that upon removing the Satellite from its assigned orbital location, HNS shall have no further obligations to Customer relative to the provision Space Segment under in respect of that Satellite under the MSA ; provided, however, that until the Satellite is removed, HNS shall continue to make available Customer's Transponder Capacity as provided for herein. HNS will, to the extent possible, provide Customer with ninety (90) days notice prior to the disposition of the Satellite. Upon any termination of the MSA pursuant to this Section, HNS shall refund to Customer a prorated amount of any prepaid charges for the terminated Transponder Capacity. Except as set forth in the preceding sentence, HNS shall have no liability to Customer upon such termination.

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## **ATTACHMENT I STATEMENT OF WORK**

### **1.0 SCOPE OF WORK**

In accordance with the terms hereof, HNS will provide services in Europe which required to provide full duplex point-to-multipoint satellite communication system using a dedicated HX Network ("Network") consisting of certain network operations center ("NOC") equipment, and Customer supplied and Customer operated integrated aeronautical terminal units. The Equipment associated with the Network is being provided in accordance with the purchase order previously issued by Customer for the European NOC Equipment.

The program effort associated with the maintenance and operation of the Network will be carried out as follows:

HNS will provide services including;

- 1) HNS North America will be the prime contractor for and Row44 point of contact for all program management services, including network engineering and implementation of Equipment and Services.
- 2) Provision and operation of Row44 dedicated inroute Ku-band space segment (the "Space Segment") per Customer's instructions subject to space segment availability. Provision and operation of Row44 outroute capacity per Customer's instructions.
- 3) \*\*\*
- 4) Read-only access to monthly Service reports to provide information regarding the Services including service NOC outages during the prior calendar month, and planned activities for the upcoming calendar month.
- 5) \*\*\*

### **2.0 DELIVERABLE SERVICES**

This section sets forth the services to be provided under this Agreement.

#### **2.1 NOC OPERATIONS AND MAINTENANCE**

HNS will provide the NOC Operations and Maintenance Services as described in Attachments II and III.

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## **2.2 SPACE SEGMENT**

Dedicated transponder capacity to support the Customer's dedicated outroute and inroutes will be procured by HNS on the \*\*\*. The satellite is configured with redundant traveling wave tube amplifiers ("TWTAs"), which provide inherent backup capability in the event of a primary TWTA failure.

## **2.3 REPORTS AND OTHER INFORMATION; REMOTE ACCESS**

HNS will provide Customer with read-only access to the following reports via a web-based application in HNS standard formats:

1. Chronological list of trouble reports summarizing NOC related or customer reported problem(s) and resolution(s) of problems with timed duration of outage. This report will also provide information on HNS' performance in resolving the problem in accordance with the applicable severity level.
2. Network service availability is reported on the Network Outage reports for network outage conditions and/or Operations Trouble Tickets.
3. Other reports as may be made available in accordance with Attachment II.

Customer may request other reports and information, which, upon mutual agreement, HNS will provide for an additional fee.

## **2.4 HNS PROGRAM TASKS**

HNS has the overall responsibility for implementation of Customer's dedicated European Network as described in this Amendment. This section details some of the specific tasks that will be the responsibility of HNS during the accomplishment of this work. Section 4.0 notes Customer's responsibilities related to the network implementation.

### **2.4.1 Program Management Team**

In order to ensure that work under the Agreement proceeds at the planned rate, HNS' program management team will consist of experienced professionals in the various areas of expertise required. This team will be headed by a Program Manager to coordinate all HNS resources required for the successful conduct of the work, and to ensure that required coordination takes place between HNS and Customer personnel.

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Tasks to be performed by the program management team include:

- Schedules
- Status reporting
- Staffing
- Subcontractor interface (if applicable)
- Space segment technical support
- System configuration
- Documentation preparation

#### **2.4.2 Progress Reports and Status Reviews**

A program status review meeting will be held weekly during the network implementation, and monthly thereafter, unless otherwise agreed by the parties, to review the most recent progress reports and discuss any particular program problem areas. The scheduling of meetings will be by mutual agreement. HNS will prepare and action item list and trouble Trouble Ticket status to track project status.

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### **3.0 SERVICE PERFORMANCE**

The following provisions shall apply to the European HX NOC equipment operated by HNS.

#### **3.1 Service Performance Standard**

HNS will use commercially reasonable efforts to make the Services available (“Service Availability”) \*\*\* of the Scheduled Service Time (as defined in Paragraph 3.3 below) for each calendar month of the Term, such that the aggregate number of minutes of Service interruption for the HX NOC for a given calendar month of the Term shall not exceed \*\*\* of the aggregate number of minutes of Scheduled Service Time.

#### **3.2 Service Performance Conditions**

HNS will use commercially reasonable efforts to provide the Services in accordance with the Service performance standard set forth in Paragraph 3.1 above. In the event that HNS fails to meet such Service performance standard in any calendar month, as Customer's sole and exclusive remedy, HNS will pay Customer liquidated damages calculated in accordance with Paragraph 3.4 below. A failure to meet the Service performance standard does not constitute a Service interruption for purposes of calculating liquidated damages under this section when due to any of the following causes:

- A. The failure or nonperformance of any Customer-provided facilities or equipment, or third-party facilities or equipment acquired by HNS on behalf of Customer, including any out-of-tolerance earth station conditions not caused by HNS

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\*\*\* Confidential treatment requested.

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- B. The fault, negligent act, or negligent failure to act of Customer, its employees, agents, or invitees.
- C. Preventive maintenance and/or other scheduled Service outages (when done pursuant to a preventive maintenance schedule provided by HNS, and reasonably agreed by Customer) as may be necessary to maintain the Services in satisfactory operating condition, to provide additional system capacity, to protect the overall performance of the Services, to protect the overall performance of the Services, or any other such or for any other reasonable cause. For the avoidance of doubt, preventive maintenance schedules in respect of Customer's own NOC equipment shall be mutually agreed to occur outside of each of Customer's typical network usage hours.
- D. An event of Force Majeure suspending HNS' performance obligations in accordance the applicable terms of this Agreement.
- E. The unavailability of Services to Customer, pursuant to orders of applicable Governmental Communications authorities, during emergency conditions such as major natural or man-made disasters and emergencies involving national defense and security.

### **3.3 Service Interruption**

The Services shall be available on a 24-hour per day, 365-days per year basis (the "Scheduled Service Time"). The duration of a Service interruption is measured by the number of hours during the Scheduled Service Time that elapse from the time that a trouble ticket is opened to the time that HNS notifies Customer that the Services have been restored. Customer's availability for a given calendar month shall be a percentage equal to 100% minus a fraction, the numerator of which shall be equal to the aggregate number of minutes of interruption for Customer's HX NOC Equipment, and the denominator of which shall be equal to the total number of minutes of scheduled Service time for such month.

### **3.4 Service Interruption Liquidated Damages**

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## **4.0 CUSTOMER RESPONSIBILITIES**

### **4.1 PROGRAM MANAGER**

Customer will designate a primary point of contact for overall coordination of Customer related activities.

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## **4.2 LICENSES**

Except for the licenses associated with HNS's NOC operations, Customer will be responsible for obtaining all necessary licenses for operating the network, including licenses for governmental bodies having responsibilities for communications and air travel . HNS, however, will provide Customer reasonable support in applying for such licenses. Customer shall remain responsible for actually filing the applications and holding and maintaining the licenses.

## **4.3 CUSTOMER SUPPLIED EQUIPMENT**

All Customer-owned Equipment (with the exception of the HX NOC) located at the NOC shall be operated by the Customer including monitoring, control, trouble isolation and resolution. HNS' services pertaining to this Customer-owned equipment shall be limited to installation or replacement of Customer supplied equipment upon request by the Customer.

Customer supplied equipment necessary for HNS to perform system integration and testing shall be in good working order at the time of the system integration.

## **4.4 CUSTOMER REMOTE EQUIPMENT INSTALLATION, MAINTENANCE AND TROUBLESHOOTING RESPONSIBILITIES**

Except for HNS remotely servicing the remote equipment, such as, resetting such equipment, uploading software to such equipment as requested by Customer, or making mutually agreed configuration changes to the remote equipment Customer is responsible for all remote equipment installation, maintenance and troubleshooting and field service issues.

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## ATTACHMENT II

### NOC OPERATIONS, MAINTENANCE AND TECHNICAL SUPPORT SERVICES

#### 1. General

This Attachment II defines the work to be performed by HNS (HNS) to provide European HX NOC operations, maintenance, and technical support services.

European HX NOC operations and maintenance services consists of operating and maintaining the Customer's dedicated HX NOC facilities installed at the Greisheim NOC.

#### 2. Support Services

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Technical systems and software support will be provided for operational problems by HNS. Technical support services are those services, related to the isolation and resolution of problems occurring within the Hughes supplied equipment and software. Customer is responsible for isolation and troubleshooting of aeronautical terminal problems, except that HNS will provide status monitoring of the remote terminals. The operational status of each remote terminal (active or inactive) will be accessible to Customer via the network management system.

The various technical support services that will be provided to Customer as part of this Maintenance Agreement are described below.

- NOC and system level support 24 hours per day, seven days per week. In the event of a NOC operational issue, HNS will open a Customer Case Record (CCR) and notify the customer of the event. Periodic updates will be made to the ticket which track major problem isolation steps and results.
- Customer shall be provided with a URL and a Username/Password that will enable them to read their CCRs via the Internet. This access will also show the last 60 days of activities (tickets opened/closed) and provides a means of commenting back to the assigned support engineer or HNS management.
- HNS will provide Customer Service Bulletins (CSBs) periodically to notify Customer of problems that have been reported with the system, the current correction status of these problems and/or operational procedures to provide a work around to the problems. CSBs also provide additional information, not available in the current system documentation.
- Upgrades to the current version of software within the Customer's Hub equipment will be made as necessary to incorporate bug fixes. Update schedules will be mutually agreed with the Customer.
- Customer access to the HX network Vision system for terminal related monitoring, maintenance and diagnostic functions such as: terminal commissioning support, display of terminal status, display of terminal link statistics, and terminal reset commands. Remote terminal software downloads or configuration changes will be the responsibility of HNS.

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- HNS will provide Customer access to the HX network management system for the monitoring of alarm conditions with respect to HNS HX-NOC (not the NOC components that are on the shared platform) equipment. Any NOC related software downloads or configuration changes will be the responsibility of HNS.

### **3. Problem Severity Levels**

When a CCR is opened a severity level is assigned based upon the impact or potential impact of the problem. The various severity level designations are described below.

Severity 1: Network down  
Severity 2: Problem that will cause a severity 1 circumstance if not corrected  
Severity 3: Recurring operational problem  
Severity 4: Technical questions / future release request / software upgrades  
Severity 5: Single event problem with minor impact  
Severity 6: Currently used for advance warranty issues if applicable  
Severity 7: Problems that will be resolved in a future software release.

The specific severity level definitions, actions, and escalation timeframes for critical problems (severity level 1 through 3 are described below.

#### **3.1 Severity Level 1 - Network down**

A network may be declared down if either:

50% or more of the remote sites are not communicating  
50% or more of the remote connections fail.

The goal is to have the network restored within one (1) hour of the event. The following are the escalations for Severity Level 1:

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Level	Time CCR Opened	Responsibility	Action
1	0 hr	Network Operator	Open CCR, document problem, notify section supervisor.
2	0 hr	Network Engineer	Work to resolve the problem.
3	0 hr	Section Manager	Support network engineer and obtain additional resources as required. Inform network engineering management and program manager as appropriate.
4	1 hr	Network Engineering Director, Program Manager	Network engineering director determines if development engineering involvement is necessary and reviews the situation with the program manager. Program manager reviews the situation with the Customer.
5	1 hr	Sr. Director of Network Engineering	The senior director examines the situation and provides additional resources if required, estimates the time to resolution, and escalates to senior management.
6	8 hrs	Senior Vice President	SVP examines the actions taken, determines if additional resources are required, reviews the status and next steps with the Customer's executives.
7 & 8	20 hrs	QA War Room Exec VP	QA war room reviews the overall actions, determines if additional actions are required, advises the executive vp and the OOTC of the status, and determines whether process changes are required.

## 2.2 Severity Level 2 - Condition exists that has a major negative impact on the customer or if left unchecked could result in a severity level 1 event

Examples of this are:

- Loss of redundancy
- Continuous connectivity problems
- Failure of a previously implemented protocol or application.
- Failure of a newly applied patch or fix to an existing problem.

The goal is to address the problem within 4 hours with a work-around, patch, parts replacement or an alternative plan that has been agreed with by the Customer. If the original problem is resolved with a temporary fix the original CCR is to be closed and a second CCR opened at a lower severity level to track the ongoing problem resolution.

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Level	Time CCR Opened	Responsibility	Action
1	0 hr	Network Operator	Open CCR, document problem, notify section supervisor.
2	1 hr	Network Engineer	Work with Customer to resolve the problem.
3	4 hr	Section Manager	Support network engineer and obtain additional resources as required. Inform network engineering management and the program manager as appropriate.
4	6 hr	Network Engineering Director, Program Manager	Network engineering director determines if development Engineering involvement is necessary and reviews the situation with the program manager. The program manager reviews the situation with the Customer.
5	12 hr	Sr. Director of Network Engineering	The Sr Director examines the situation, provides additional resources if required, estimates the time to resolution and escalates to senior management.
6	24 hrs	Senior Vice President	SVP examines the actions taken, determines if additional resources are required, and advises Customer executives as to status and next steps.
7 & 8	48 hrs	QA War Room, Executive VP	QA war room determines if additional actions are required, advises the executive vp and the OOTC of the status, and determines whether process changes are required.

### 2.3 Severity Level 3 - Reoccurring operational issue with moderate impact

Examples are daily events including the following:

- a) Hub component resets
- b) Remote resets due to HNS system issue
- c) Improper implementation of a new protocol or feature



The goal is to address the condition within 10 Days with either a patch or a final fix acceptable to Customer. If the solution is temporary, the original CCR will be closed and a new severity level 7 CCR will be opened to track planning and implementation of the permanent solution.

Level	Time CCR Opened	Responsibility	Action
1	0 hr	Network Operator	Open CCR, document problem, and notify section supervisor.
2	8 hr	Network Engineer	Work with Customer to resolve the problem.
3	4 d	Section Manager	Obtain additional resources as required, inform network engineering management and program manager as appropriate.
4	5 d	Network Engineering Director	Network engineering director reviews the situation with development engineering and the program manager if appropriate. Program manager reviews the situation with the Customer.
5	6 d	Sr. Director of Operations Support	The senior director examines the situation and determines if additional resources are required, estimates the time to resolution, and escalates to senior management.
6	10 d	Senior Vice President	SVP examines the actions taken, determines if additional resources are required, and advises Customer's executives of status and next steps.

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#### **4.0 SERVICE LIMITATIONS**

The Technical Support Services are offered with the limitations outlined in this section.

Technical Support Services do not include support and service for the following:

- 1) Service and repair of software, equipment accessories, attachments, or any other devices not specifically purchased by Customer under the Master Purchase Agreement.
- 2) Servicing Equipment and Software that has been changed, modified, or altered other than by means of approved upgrades and configuration changes.

#### **4.0 CUSTOMER RESPONSIBILITIES**

##### **4.1 FAULT ISOLATION AND PROBLEM DETERMINATION**

Customer shall maintain a technical staff with the capability of performing airborne terminal fault isolation and problem determination. Further, the Customer's trained staff shall be readily accessible by phone during periods when the Customer requests Technical Support. The Customer's staff shall assist HNS personnel in system troubleshooting, fault isolation, and problem determination to the extent requested.

##### **4.2 SPARES**

Customer shall purchase and maintain the HNS recommended complement of spares

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## ATTACHMENT III

### SERVICE ORDER, PRICE SCHEDULE AND PAYMENT TERMS

#### 1. INITIAL SERVICE ORDER

##### **1.1 NOC Operations, Technical Support and Maintenance**

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##### **1.2 Remote Services**

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##### **1.3 Backhaul Services**

\*\*\*

##### **1.4 Space Segment**

\*\*\*

#### 2. OPTIONAL SERVICES

##### **A. Customer Furnished Equipment Expansion Services**

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#### 3. PAYMENT TERMS

Program Management, Backhaul Services, NOC Operations, Maintenance and Technical Support Services will be invoiced one month in advance. Invoices for NOC Operations, Maintenance and Technical Support charges will commence on the date of activation of the NOC Equipment. Invoices for backhaul services will start on the date such services are activated. The NOC Operations and Maintenance Charges described in Section 1.1 above will commence on December 1, 2010.

Except as otherwise provided in this Section, payment will be due net thirty (30) days from date of invoice.

Space Segment Services will be invoiced monthly in advance. Invoices for space segment will be due and payable in accordance with the schedule set forth below.

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\*\*\* Confidential treatment requested.

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In the event that Customer requires that the Space Segment described above be provided by HNS for a period beyond December 31, 2011, Customer will so advise HNS by XXXXXX, after which point, Customer and HNS will exercise their respective best efforts to reach agreement on the payment terms and prices for any such capacity after December 31, 2011.

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\*\*\* Confidential treatment requested.

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**AMENDMENT NO. 4 TO MASTER SERVICES AGREEMENT**

***THIS AMENDMENT No. 4 (the "Amendment") to Master Services Agreement is entered into November \_\_\_\_, 2010 (the "Amendment Effective Date") by and between Hughes Network Systems, LLC ("HNS") located at 11717 Exploration Lane, Germantown MD 20876, and Row 44, Inc. ("Row 44" or "Customer") located at 31280 Oak Crest Drive, Suite #5, Westlake Village, CA 91361***

**WHEREAS**, Row 44 and HNS entered into a Master Services Agreement on or about December 28, 2007 (hereafter referred to as the "MSA") which agreement has been heretofore amended on two prior occasions; and

**WHEREAS**, Row 44 now desires to purchase and HNS desires to sell, certain additional satellite capacity in North America; and

**WHEREAS**, the parties now desire to amend the terms of the MSA to cover the provision and purchase of the additional satellite capacity herein described.

**NOW THEREFORE**, for and in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Row 44 and HNS hereby agree as follows:

**1. ADDITIONAL CAPACITY**

Commencing November 23, 2010, the amount of satellite capacity to be provided by HNS during the Term of the Agreement will be increased to the levels described in the table below:

\*\*\*

**2. NOC OPERATIONS CHARGE**

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\*\*\* Confidential treatment requested.

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### **3. PAYMENT SCHEDULE**

As previously agreed by the parties, Row44 will be required to make payments for each of the charges described above on before the end of the last day of the month prior to the month for which services are to provided.

In the event that any payment is not received by the due date, HNS may, at its option, immediately terminate services as of the first day of the next following month. By way of example, in the event that the July 2011 payment is not made by the end of the day on June 30, 2011, HNS may terminate or suspend service on July 1, 2011.

Should HNS terminate service, HNS will terminate Row44 related space segment agreements with \*\*\* and HNS makes no representation about its ability to re-secure space segment or restart services at a later date.

Further, the table below sets forth a schedule for the payment of the monthly NOC Operations and Maintenance charges, along with the monthly satellite capacity charges, as modified by this Amendment.

\*\*\*

### **4. OTHER TERMS**

Except as amended herein, all terms and conditions of the MSA as amended shall remain in full force and effect.

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\*\*\* Confidential treatment requested.

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**IN WITNESS WHEREOF**, the Parties hereto have caused this Amendment No. 3 to be executed as of the Amendment Effective Date by and through their duly authorized representatives.

**Hughes Network Systems, LLC**

By: /s/ Philip K. O'Brien

Title: V.P. Legal

Date: 11/18/2010

**Row 44, Inc.**

By: /s/ John Guidon

Title: C.E.O.

Date: 11/17/2010

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## AMENDMENT NO. 5 TO MASTER SERVICES AGREEMENT

***THIS AMENDMENT No. 5 (the "Amendment") to Master Services Agreement is entered into January \_\_\_\_, 2011 (the "Amendment Effective Date") by and between Hughes Network Systems, LLC ("HNS") located at 11717 Exploration Lane, Germantown MD 20876, and Row 44, Inc. ("Row 44" or "Customer") located at 31280 Oak Crest Drive, Suite #5, Westlake Village, CA 91361***

**WHEREAS**, Row 44 and HNS entered into a Master Services Agreement on or about December 28, 2007 (hereafter referred to as the "MSA") which agreement has been heretofore amended on a number of prior occasions; and

**WHEREAS**, Row 44 now desires to purchase and HNS desires to sell, certain additional satellite capacity in North America; and

**WHEREAS**, the parties now desire to amend the terms of the MSA to cover the provision and purchase of the additional satellite capacity herein described.

**NOW THEREFORE**, for and in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Row 44 and HNS hereby agree as follows:

### **1. ADDITIONAL CAPACITY**

Commencing January 24, 2011, the amount of \*\*\* to be provided by HNS during the Term of the Agreement will be increased to the level described in the table below:

\*\*\*

#### **III. Payments for Services**

Row44 will be required to make payments for the charges listed above before the end of the last day of the month prior to the month for which services are to be provided.

In the event that any payment is not received by the due date, HNS may, at its option, immediately terminate services as of the first day of the next following month. \*\*\*

Should HNS terminate service, HNS will terminate Row44 related space segment agreements with \*\*\* and HNS makes no representation about its ability to re-secure space segment or restart services at a later date.

#### **IV. Payment Schedule**

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\*\*\* Confidential treatment requested.

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4. OTHER TERMS

Except as amended herein, all terms and conditions of the MSA as amended shall remain in full force and effect.

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**IN WITNESS WHEREOF**, the Parties hereto have caused this Amendment No. 3 to be executed as of the Amendment Effective Date by and through their duly authorized representatives.

**Hughes Network Systems, LLC**

By: /s/ Philip K. O'Brien

Title: V.P. Legal

Date: 01/15/2011

**Row 44, Inc.**

By: /s/ John LaValle

Title: COO & CFO

Date: 01/14/2011

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## AMENDMENT NO. 6 TO MASTER SERVICES AGREEMENT

***THIS AMENDMENT No. 6 (the "Amendment") to Master Services Agreement is entered into January \_\_\_\_, 2011 (the "Amendment Effective Date") by and between Hughes Network Systems, LLC ("HNS") located at 11717 Exploration Lane, Germantown MD 20876, and Row 44, Inc. ("Row 44" or "Customer") located at 31280 Oak Crest Drive, Suite #5, Westlake Village, CA 91361***

**WHEREAS**, Row 44 and HNS entered into a Master Services Agreement on or about December 28, 2007 (hereafter referred to as the "MSA") which agreement has been heretofore amended on a number of prior occasions; and

**WHEREAS**, Row 44 now desires to purchase and HNS desires to sell, certain additional satellite capacity in North America; and

**WHEREAS**, the parties now desire to amend the terms of the MSA to cover the provision and purchase of the additional satellite capacity herein described.

**NOW THEREFORE**, for and in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Row 44 and HNS hereby agree as follows:

### **1. ADDITIONAL CAPACITY**

Commencing April 1, 2011, the amount of satellite capacity to be provided by HNS on both the \*\*\* and the \*\*\* will be increased by \*\*\*, to the price levels listed below. For the sake of clarity, the table below also include the pricing and technical parameters for \*\*\*.

\*\*\*

### **III. Payments for Services**

Row44 will be required to make payments for the charges listed above before the end of the last day of the month prior to the month for which services are to be provided.

In the event that any payment is not received by the due date, HNS may, at its option, immediately terminate services as of the first day of the next following month. \*\*\*.

Should HNS terminate service, HNS will terminate Row44 related space segment agreements with \*\*\* and HNS makes no representation about its ability to re-secure space segment or restart services at a later date.

### **4. OTHER TERMS**

Except as amended herein, all terms and conditions of the MSA as amended shall remain in full force and effect.

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\*\*\* Confidential treatment requested.

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**IN WITNESS WHEREOF**, the Parties hereto have caused this Amendment No. 3 to be executed as of the Amendment Effective Date by and through their duly authorized representatives.

**Hughes Network Systems, LLC**

By: /s/ Philip K. O'Brien

Title: V.P. Legal

Date: 03/30/2011

**Row 44, Inc.**

By: /s/ John LaValle

Title: COO & CFO

Date: 03/30/2011

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## AMENDMENT NO. 7 TO MASTER SERVICES AGREEMENT

***THIS AMENDMENT No. 7 (the "Amendment") to Master Services Agreement is entered into July \_\_\_\_, 2011 (the "Amendment Effective Date") by and between Hughes Network Systems, LLC ("HNS") located at 11717 Exploration Lane, Germantown MD 20876, and Row 44, Inc. ("Row 44" or "Customer") located at 4353 Park Terrace Drive, Westlake Village, CA 91361***

**WHEREAS**, Row 44 and HNS entered into a Master Services Agreement on or about December 28, 2007 (hereafter referred to as the "MSA") which agreement has been heretofore amended on a number of prior occasions; and

**WHEREAS**, Amendment No. 3 to the MSA provided, *inter alia*, that HNS would sell and Customer would purchase certain space segment capacity on the \*\*;

**WHEREAS**, Row 44 now desires to purchase and HNS desires to sell, certain additional space segment capacity on the \*\*\*, pursuant to the terms hereof; and

**WHEREAS**, the parties now desire to amend the terms of the MSA to cover the provision and purchase of such additional capacity.

**NOW THEREFORE**, for and in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Customer and HNS hereby agree as follows:

### **1. TERM OF THIS AMENDMENT**

The term of this Amendment ("Amendment No. 7 Term") and the term of Services provided pursuant to Amendment No. 3 to the MSA and hereunder will commence January 1, 2012 and remain in effect for a period of \*\*\*, unless terminated earlier as provided herein.

### **2. ADDITIONAL SATELLITE CAPACITY.**

Commencing January 1, 2012, the amount of satellite capacity to be provided by HNS to Customer, and the price for such capacity will be as specified in Section 1 to Attachment A appended hereto. The payment and other terms relating to such capacity shall be as specified in Section 2 to Attachment A.

### **3. OTHER TERMS**

Except as amended herein, all terms and conditions of the MSA as amended shall remain in full force and effect.

---

\*\*\* Confidential treatment requested.

---

**IN WITNESS WHEREOF**, the Parties hereto have caused this Amendment No. 7 to be executed as of the Amendment Effective Date by and through their duly authorized representatives.

**Hughes Network Systems, LLC**

By: /s/ Philip K. O'Brien

Title: V.P. Legal

Date: 09/29/2011

**Row 44, Inc.**

By: /s/ John LaValle

Title: COO & CFO

Date: 07/29/2011

---

**ATTACHMENT A**

**1. SPACE SEGMENT ON \*\*\***

Commencing on January 1, 2012, the amount of capacity to be provided by HNS to Customer will be as specified below:

\*\*\*

**2. PAYMENT and other TERMS**

**A. Space Segment Pricing:**

\*\*\*

**B. Additional Terms:**

\*\*\*

**C. Year 1 Space Segment Payment Schedule**

\*\*\*

**Year 2 Space Segment Payment Schedule**

\*\*\*

**Year 3 Space Segment Payment Schedule**

\*\*\*

In the event that Customer determines that it is not able to utilize the space segment capacity specified above, Customer may provide HNS with written notice of such inability \*\*\*. Upon receipt of such notice from Customer, HNS will attempt to remarket the relevant unused capacity to third parties. Further, to the extent HNS is successful in such remarketing efforts, HNS will relieve Customer of its payment obligation hereunder. Customer acknowledges, however, if Customer does return any space segment capacity to HNS for remarketing, HNS makes no guarantee or representation that this capacity will be available later, should Customer's requirements change.

\*\*\*

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\*\*\* Confidential treatment requested.

---

## AMENDMENT NO. 8 TO MASTER SERVICES AGREEMENT

THIS AMENDMENT No. 8 (the "Amendment") to Master Services Agreement is made effective August 3, 2011 (the "Amendment Effective Date") by and between Hughes Network Systems, LLC ("HNS") located at 11717 Exploration Lane, Germantown MD 20876, and Row 44, Inc. ("Row 44" or "Customer") located at **4353 Park Terrace Drive Westlake Village, CA 91361**

**WHEREAS**, Row 44 and HNS entered into a Master Services Agreement on or about December 28, 2007 (hereafter referred to as the "MSA") which agreement has been heretofore amended on a number of prior occasions; and

**WHEREAS**, Row 44 now desires to purchase and HNS desires to sell, certain additional satellite capacity in North America; and

**WHEREAS**, the parties now desire to amend the terms of the MSA to cover the provision and purchase of the additional satellite capacity herein described.

**NOW THEREFORE**, for and in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Row 44 and HNS hereby agree as follows:

### **1. ADDITIONAL CAPACITY**

Commencing August 1, 2011, the amount of satellite capacity to be provided by HNS on both the \*\*\* and the \*\*\* will be increased by \*\*\*, to the price levels listed below. For the sake of clarity, the table below also include the pricing and technical parameters for \*\*\*,

\*\*\*

Note: The values listed above for percent of Bandwidth may need to be slightly changed depending upon transponder power performance.

### **III. Payments for Services**

Row44 will be required to make payments for the charges listed above before the end of the last day of the month prior to the month for which services are to be provided.

In the event that any payment is not received by the due date, HNS may, at its option, immediately terminate services as of the first day of the next following month. \*\*\*

Should HNS terminate service, HNS will terminate Row44 related space segment agreements with \*\*\* and HNS makes no representation about its ability to re-secure space segment or restart services at a later date.

---

\*\*\* Confidential treatment requested.

---



**4. OTHER TERMS**

Except as amended herein, all terms and conditions of the MSA as amended shall remain in full force and effect.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Amendment No. 8 to be executed as of the Amendment Effective Date by and through their duly authorized representatives.

**Hughes Network Systems, LLC**

By: /s/ Philip K. O'Brien

Title: V.P. Legal

Date: 08/03/2011

**Row 44, Inc.**

By: /s/ John Guidon

Title: C.E.O.

Date: 08/03/2011

---

## AMENDMENT NO. 9 TO MASTER SERVICES AGREEMENT

THIS AMENDMENT No. 9 (the "Amendment") to Master Services Agreement is entered into August \_\_\_\_, 2011 (the "Amendment Effective Date") by and between Hughes Network Systems, LLC ("HNS") located at 11717 Exploration Lane, Germantown MD 20876, and Row 44, Inc. ("Row 44" or "Customer") located at **4353 Park Terrace Drive Westlake Village, CA 91361**

**WHEREAS**, Row 44 and HNS entered into a Master Services Agreement on or about December 28, 2007 (hereafter referred to as the "MSA") which agreement has been heretofore amended on a number of prior occasions; and

**WHEREAS**, Row 44 now desires to purchase and HNS desires to sell, certain additional satellite capacity in North America; and

**WHEREAS**, the parties now desire to amend the terms of the MSA to cover the provision and purchase of the additional satellite capacity herein described.

**NOW THEREFORE**, for and in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Row 44 and HNS hereby agree as follows:

### **1. ADDITIONAL CAPACITY**

Commencing September 19, 2011, the amount of outroute satellite capacity to be provided by HNS on \*\*\* will be increased by \*\*\*. Commencing on September 29, 2011, the amount of satellite capacity to be provided by HNS on \*\*\* to the price levels listed below.

\*\*\*

Note: The values listed above for percent of Bandwidth may need to be slightly changed depending upon transponder power performance.

### **III. Payments for Services**

Row44 will be required to make payments for the charges listed above before the end of the last day of the month prior to the month for which services are to be provided.

The payment due September 30, 2011 will include the pro-rated services for the month of September plus the payment due for October services. The payment due September 30, 2011 is \*\*\* calculated as follows:

\*\*\*

\*\*\*

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\*\*\* Confidential treatment requested.

---

In the event that any payment is not received by the due date, HNS may, at its option, immediately terminate services as of the first day of the next following month. \*\*\*

Should HNS terminate service, HNS will terminate Row44 related space segment agreements with \*\*\* and HNS makes no representation about its ability to re-secure space segment or restart services at a later date.

4. OTHER TERMS

Except as amended herein, all terms and conditions of the MSA as amended shall remain in full force and effect.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Amendment No. 8 to be executed as of the Amendment Effective Date by and through their duly authorized representatives.

**Hughes Network Systems, LLC**

By: /s/ Philip K. O'Brien

Title: V.P. Legal

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

**Row 44, Inc.**

By: /s/ John Guidon

Title: C.E.O.

Date: 09/07/2011

\_\_\_\_\_  
\*\*\* Confidential treatment requested.

\_\_\_\_\_

## AMENDMENT #10 TO MASTER SERVICES AGREEMENT

THIS AMENDMENT No. 10 (the "Amendment") to Master Services Agreement is entered into December \_\_\_\_, 2011 (the "Amendment Effective Date") by and between Hughes Network Systems, LLC ("HNS") located at 11717 Exploration Lane, Germantown MD 20876, and Row 44, Inc. ("Row 44" or "Customer") located at **4353 Park Terrace Drive Westlake Village, CA 91361**

**WHEREAS**, Row 44 and HNS entered into a Master Services Agreement on or about December 28, 2007 (hereafter referred to as the "MSA") which agreement has been heretofore amended on a number of prior occasions; and

**WHEREAS**, Row 44 now desires to purchase and HNS desires to sell, certain additional satellite capacity in North America; and

**WHEREAS**, the parties now desire to amend the terms of the MSA to cover the provision and purchase of the additional satellite capacity herein described.

**NOW THEREFORE**, for and in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Row 44 and HNS hereby agree as follows:

### **1. ADDITIONAL CAPACITY**

Commencing December 9, 2011, the amount of satellite capacity to be provided by HNS on \*\*\* will be increased by \*\*\*. In addition, the amount \*\*\*. This table also lists the amount of satellite capacity, on the other satellites utilized by Customer, as well as the applicable \*\*\*.

\*\*\*

### **2. PAYMENT FOR CAPACITY**

Row44 will be required to make payments for the charges listed above before the end of the last day of the month prior to the month for which services are to be provided.

The payment due December 31, 2011 will include the pro-rated services increased capacity on \*\*\* plus the payment due for January services. Thus, the payment due January 31, 2012 is \*\*\*, calculated as follows:

\*\*\*

In the event that any payment is not received by the due date, HNS may, at its option, immediately terminate services as of the first day of the next following month. \*\*\*

---

\*\*\* Confidential treatment requested.

---

Should HNS terminate service, HNS will terminate Row44 related space segment agreements with \*\*\* and HNS makes no representation about its ability to re-secure space segment or restart services at a later date.

3. OTHER TERMS

Except as amended herein, all terms and conditions of the MSA as amended shall remain in full force and effect.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Amendment No. 8 to be executed as of the Amendment Effective Date by and through their duly authorized representatives.

**Hughes Network Systems, LLC**

By: /s/ Philip K. O'Brien

Title: V.P. Legal

Date: 12/19/2011

**Row 44, Inc.**

By: /s/ John Guidon

Title: COO & CFO

Date: 12/19/2011

\_\_\_\_\_  
\*\*\* Confidential treatment requested.

\_\_\_\_\_

## AMENDMENT #11 TO MASTER SERVICES AGREEMENT

THIS AMENDMENT No. 11 (the "Amendment") to Master Services Agreement is entered into January \_\_\_\_, 2012 (the "Amendment Effective Date") by and between Hughes Network Systems, LLC ("HNS") located at 11717 Exploration Lane, Germantown MD 20876, and Row 44, Inc. ("Row 44" or "Customer") located at **4353 Park Terrace Drive Westlake Village, CA 91361**

**WHEREAS**, Row 44 and HNS entered into a Master Services Agreement on or about December 28, 2007 (hereafter referred to as the "MSA") which agreement has been heretofore amended on a number of prior occasions; and

**WHEREAS**, Row 44 now desires to purchase and HNS desires to sell, certain additional satellite capacity in North America; and

**WHEREAS**, the parties now desire to amend the terms of the MSA to cover the provision and purchase of the additional satellite capacity herein described.

**NOW THEREFORE**, for and in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Row 44 and HNS hereby agree as follows:

### **1. ADDITIONAL CAPACITY**

Commencing January 26, 2012, the amount of satellite capacity to be provided by HNS on the \*\*\* will be increased to provide \*\*\*. In addition, commencing February 21, 2012, the amount of satellite capacity to be provided by HNS on \*\*\* will be increased to provide \*\*\* and \*\*\*. Finally, commencing March 20, 2012, the amount of satellite capacity to be provided by HNS on \*\*\* will be increased to provide \*\*\*. The table below sets forth the amount of capacity to be provided on \*\*\* once all the additional capacity has been provided. This table also lists the applicable \*\*\*.

\*\*\*

---

\*\*\* Confidential treatment requested.

---

## **2. PAYMENT FOR CAPACITY**

Row44 will be required to make payments for the charges listed above before the end of the last day of the month prior to the month for which services are to be provided.

The payment due January 31, 2012 will include the pro-rated services increased capacity on \*\*\* plus the payment due for February services. Thus, the payment due January 31, 2012 is \*\*\*, calculated as follows:

\*\*\*

The payment due February 29, 2012 will include the pro-rated services increased capacity on \*\*\* plus the payment due for March services. Thus, the payment due February 29, 2012 is \*\*\*, calculated as follows:

\*\*\*

The payment due March 31, 2012 will include the pro-rated services increased capacity on \*\*\* plus the payment due for April services. Thus, the payment due March 31, 2012 is \*\*\*, calculated as follows:

\*\*\*

In the event that any payment is not received by the due date, HNS may, at its option, immediately terminate services as of the first day of the next following month. \*\*\*

Should HNS terminate service, HNS will terminate Row44 related space segment agreements with \*\*\* and HNS makes no representation about its ability to re-secure space segment or restart services at a later date.

---

\*\*\* Confidential treatment requested.

---

**3. OTHER TERMS**

Except as amended herein, all terms and conditions of the MSA as amended shall remain in full force and effect.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Amendment No. 11 to be executed as of the Amendment Effective Date by and through their duly authorized representatives.

**Hughes Network Systems, LLC**

By: /s/ Philip K. O'Brien

Title: V.P. Legal

Date: 01/23/2012

**Row 44, Inc.**

By: /s/ John LaValle

Title: COO & CFO

Date: 01/20/2012

---



## **AMENDMENT #12 TO MASTER SERVICES AGREEMENT**

THIS AMENDMENT No. 12 (the "Amendment") to Master Services Agreement is entered into June \_\_\_\_, 2012 (the "Amendment Effective Date") by and between Hughes Network Systems, LLC ("HNS") located at 11717 Exploration Lane, Germantown MD 20876, and Row 44, Inc. ("Row 44" or "Customer") located at **4353 Park Terrace Drive Westlake Village, CA 91361**

**WHEREAS**, Row 44 and HNS entered into a Master Services Agreement on or about December 28, 2007 (hereafter referred to as the "MSA") which agreement has been heretofore amended on a number of prior occasions; and

**WHEREAS**, Row 44 now desires to purchase and HNS desires to sell, certain additional satellite capacity in North America; and

\*\*\*

\*\*\*

**WHEREAS**, the parties now desire to amend the terms of the MSA to cover these revisions.

**NOW THEREFORE**, for and in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Row 44 and HNS hereby agree as follows:

### **1. BACKGROUND**

The initial term of the MSA is to expire on or about December 28, 2012. The parties now desire to extend the term of services to be provided pursuant to the MSA through December 31, 2015. \*\*\*

### **2. TERM OF AGREEMENT**

The parties now agree that the term of services to be provided pursuant to this MSA (i.e., space segment services and Hub operations, maintenance and technical support services), shall be extended through December 31, 2015. Therefore, the term for any satellite space segment capacity previously acquired by Customer under the MSA and any previously executed amendments, as well as the term for any capacity to be provided pursuant to this Amendment and any subsequent amendments, shall continue through December 31, 2015.

### **3. EXCLUSIVITY**

\*\*\*

\_\_\_\_\_  
\*\*\* Confidential treatment requested.

---

#### **4. ADDITIONAL CAPACITY**

Currently, Customer has satellite capacity on \*\*\*. The total amount of capacity currently being provided by HNS to Customer on each of these satellites is set forth in the table below. Customer now wants to increase the amount of capacity to be provided on each of these \*\*\* satellites. The increase in capacity will be accomplished in a series of steps over the next few months, such that the total amount of increased capacity, along with the dates by which such capacity will be provided, will be as set forth in the table below.

\*\*\*

The parties contemplate that increases in capacity will be completed in steps over several months where the amount of outroute and inroute capacity being provided is increased over time. In order to effect these increases, the following process will be used. Customer will provide written notice to HNS listing the details of the requested increase at least 30 days in advance of the time Customer is requesting that such capacity be made available. The details to be provided by Customer will include the name of the satellite, the amount of the requested increase in outroute capacity, the amount of the requested increase in inroute capacity, and such as information as may be reasonably required. Upon receipt of this information, HNS will provide a response to Customer indicating whether or not it will be able to effect such increase in accordance with the Customer's request. If HNS has notified Customer that it can accommodate Customer's request, this confirmation notice will then be deemed to be Customer's firm commitment to acquire the increased capacity in accordance with the agreed schedule. In the event that HNS is not able to accommodate Customer's request, HNS will so notify Customer, including the reasons why it is not able to fulfill the Customer's request. Customer may then re-request the increase in capacity and this process will be repeated.

#### **5. PRICING AND DISCOUNTS**

Subject to the terms hereof, and except as provided below, the price for the services to be provided pursuant to the MSA will continue to be as specified therein; \*\*\*. The current charge of \*\*\* for Hub operations, maintenance and technical support services shall be reduced to a base price \*\*\* and \*\*\*. In respect of the price for satellite space segment capacity, Customer acknowledges that the number of megahertz for which charges will apply will equal the greater of (i) the actual number of megahertz used, or (ii) in the case of outroute utilization, the amount of "power equivalent bandwidth" actually used. In addition, the amount of the increase in the Hub operations, maintenance and technical support services price to account for the additional Hub equipment is \*\*\*.

Notwithstanding the foregoing, the parties are currently negotiating the terms of an agreement whereby HNS would extend certain discounts on the Services to be provided hereunder in consideration of Customer granting HNS the right to acquire equity in the Customer. The amount of the discount has been agreed to be \*\*\*. Thus, the "after discount" price for the various service elements will be as specified in the table below:

\*\*\*

These discounts will be applied in accordance with the following schedule:

---

\*\*\* Confidential treatment requested.

---

\*\*\*

The parties further agree that the invoices for Services to be provided pursuant to the MSA will reflect both the “pre-discount” and “after discount” prices. Finally, the parties agree that that the discounts herein contemplated will be applied in accordance with the table above even though the terms of the Discounts for Equity agreement have not yet been finalized; provided, however, that if such terms have not been finalized by September 1, 2012, such discounts will be suspended until such time as the final agreement between the parties has been executed.

Payment for services shall be made on the last day of the month prior to the month in which the services are to be rendered. In the event that any payment is not received by the due date, HNS may, at its option, immediately terminate services as of the first day of the next following month.

Should HNS terminate service, HNS will terminate Row44 related space segment agreements with \*\*\* and HNS makes no representation about its ability to re-secure space segment or restart services at a later date.

## **6. OTHER TERMS**

Except as amended herein, all terms and conditions of the MSA as amended shall remain in full force and effect.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Amendment No. 12 to be executed as of the Amendment Effective Date by and through their duly authorized representatives.

### **Hughes Network Systems, LLC**

By: /s/ Philip K. O'Brien

Title: V.P. Legal

Date: 09/11/12

### **Row 44, Inc.**

By: Michael Pigott

Title: VP Legal & GC

Date: 09/11/2012

\_\_\_\_\_  
\*\*\* Confidential treatment requested.

---

## AMENDMENT NO. 13 TO MASTER SERVICES AGREEMENT

THIS AMENDMENT No. 13 (the "Amendment") to Master Services Agreement is entered into January 18, 2013 (the "Amendment Effective Date") by and between Hughes Network Systems, LLC ("HNS") located at 11717 Exploration Lane, Germantown MD 20876, and Row 44, Inc. ("Row 44" or "Customer") located at **4353 Park Terrace Drive Westlake Village, CA 91361**.

**WHEREAS**, Row 44 and HNS entered into a Master Services Agreement on or about December 28, 2007 (hereafter referred to as the "MSA") which agreement has been heretofore amended on twelve prior occasions; and

**WHEREAS**, Row 44 now desires to purchase and HNS desires to sell, certain services enabling the provision of transatlantic aeronautic services, which services are substantially similar to the services provided pursuant to the MSA, as previously amended; and

**WHEREAS**, the parties now desire to amend the terms of the MSA to cover the provision and purchase of the services herein described; the delivery dates for space segment and other services contained in this MSA will be as specified in Section 3 below.

**NOW THEREFORE**, for and in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Row 44 and HNS hereby agree as follows:

### **1. BACKGROUND**

HNS currently provides Equipment and Services to Customer which enables Customer to provide an Internet access services to passengers on commercial aircraft in North America and certain parts of Europe (which airborne Internet access service is hereafter referred to as the "Aero-Service"). Customer now desires to enable the provision of an Aero-Service for transatlantic aircraft. This Amendment sets forth a description of the space segment to be provided by HNS to enable these Aero-Services, as well as certain other services to be provided by HNS which are required for these Services.

### **2. TERM OF SERVICES UNDER THIS AMENDMENT**

The term of the Services to be provided hereunder will continue through the term of the MSA; i.e., the term will continue through December 31, 2015.

### **3. SATELLITE CAPACITY, RELATED SERVICES AND ASSOCIATED PRICING**

Customer will purchase and HNS will sell, certain satellite capacity on the \*<sup>\*\*\*</sup>. A description of this capacity, as well as the prices therefor, is set forth in the table below.

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<sup>\*\*\*</sup> Confidential treatment requested.

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A. \*\*\* Capacity:

\*\*\*

\*The outroute symbol rate in the case where the outroute and \*\*\* inroutes occupy \*\*\* of bandwidth will be set to the highest symbol rate supported by the available power and link budget.

\*\*\*

B. Related Services

\*\*\*

**4. SATELLITE CONTOURS**

A description of the satellite coverage for the \*\*\* is set forth in Attachment I to this Amendment.

**5. LICENSES**

Customer will be responsible for securing any required licenses or authorizations to enable the provision of the \*\*\*.

**6. OTHER TERMS**

Except as amended herein, all terms and conditions of the MSA as amended shall remain in full force and effect.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Amendment No. 3 to be executed as of the Amendment Effective Date by and through their duly authorized representatives.

**Hughes Network Systems, LLC**

**Row 44, Inc.**

By: /s/ Patrick K. O'Brien  
Title: V.P. Legal  
Date: 01/27/13

By: /s/ Illegible  
Title: CTO  
Date: 01/18/13

\_\_\_\_\_  
\*\*\* Confidential treatment requested.

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## ATTACHMENT I

This Attachment includes a description of the coverage to be provided by the \*\*\*.

\*\*\* Space Segment

\*\*\*

---

\*\*\* Confidential treatment requested.

---

STRICTLY CONFIDENTIAL

CONFIDENTIAL TREATMENT REQUESTED FOR PORTIONS OF THIS DOCUMENT. PORTIONS FOR WHICH CONFIDENTIAL TREATMENT IS REQUESTED HAVE BEEN MARKED WITH THREE ASTERISKS [\*\*\*] AND A FOOTNOTE INDICATING "CONFIDENTIAL TREATMENT REQUESTED". MATERIAL OMITTED HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

DATED \*\*\*

AGREEMENT

BETWEEN

**Cathay Pacific Airways Limited**  
AND  
**Hong Kong Dragon Airlines Limited**

AND

**Inflight Productions Limited**

For the Supply of

Programming and Production Services  
For Inflight  
Entertainment

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\*\*\* Confidential treatment requested.

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\*\*\* Confidential treatment requested.

**THIS AGREEMENT** is dated \*\*\* and is made:

**BETWEEN**

- (1) **CATHAY PACIFIC AIRWAYS LIMITED**, a company incorporated under the laws of Hong Kong, with its place of business at Cathay City, 8 Scenic Road, Hong Kong International Airport, Lantau, Hong Kong (hereinafter referred to as "**Cathay**"),
- (2) **HONG KONG DRAGON AIRLINES LIMITED**, a company incorporated under the laws of Hong Kong, with its place of business at Dragonair House, 11 Tung Fai Road, Hong Kong International Airport, Lantau, Hong Kong (hereinafter referred to as "**Dragonair**") (with Cathay and Dragonair together referred to as "**the Airline**")
- (3) **INFLIGHT PRODUCTIONS LIMITED**, a company incorporated under the laws of United Kingdom, with its place of business at 15 Stukeley Street, London, WC2B 5LT, United Kingdom (hereinafter referred to as "**IFP**"),

(together the "**Parties**" and each a "**Party**" as the case may be).

**BACKGROUND**

- (A) The Airline wishes to appoint IFP to provide inflight programming services for Audio, Western Movies and Western Short Feature Programmes on the Airlines' Aircraft including but not limited to the following:
- (i) For Audio programming, the services include, but are not limited to, negotiation of Mechanical Royalties and Presenter fees, account management, industry expertise and technical processes such as programming, editing, duplication, encoding, quality control, labelling etc. and delivery;
  - (ii) For video programming of Western Movies and Western Short Features, the services include, but are not limited to, negotiation of License Fees, account management, industry expertise and technical processes such as programming, editing, encoding, subtitling, quality control, labelling, etc. and delivery;
- (B) IFP has considerable expertise in the above areas and has represented to Airline that it is well qualified to be appointed hereunder. The Parties wish to enter into this Agreement to set out the terms on which IFP will provide the Services to the Airline.

**BY WHICH IT IS AGREED as follows:-**

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 Unless the context otherwise requires in this Agreement, the following expressions have the following meanings:-

<b>"AOD"</b>	means audio on demand and shall comprise of Music Albums and Audio Programmes, offered to passengers on Aircraft equipped with an AVOD system, which are accessed using AOD functions such as fast forward, rewind and pause;
<b>"AVOD"</b>	means audio and video on demand and means Cathay's digital system using video and audio compression to supply Programmes to passengers when requested;

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\*\*\* Confidential treatment requested.

<b>"Agreement"</b>	means this agreement and any and all schedules, appendices and exhibits attached to it or incorporated in it by reference, as varied from time to time in accordance with its terms;
<b>"Aircraft"</b>	means all aircraft whether video cassette based ( <b>Non-AVOD Aircraft</b> ) or AVOD equipped ( <b>AVOD Aircraft</b> ) operated by the Airline, during the Term of this Agreement;
<b>"Asian Movies"</b>	means featured film which is shown in Asian language including but not limited to Cantonese, Mandarin, Japanese, Korean and Hindi;
<b>"Asian Short Features"</b>	means short features programme which is shown in Asian language including but not limited to Cantonese, Mandarin, Japanese and Hindi;
<b>"Audio"</b>	means audio programmes that include Radio Channel, Music Albums and Boarding Music, refer to programme specification in Schedule 1;
<b>"Boarding Music"</b>	means the music played on board Aircraft prior to take off and landing;
<b>"Business Partners"</b>	means any other supplier, sub-contractor, consultant, agent, licensor, either future or existing, nominated by the Airline;
<b>"BOP"</b>	means the Airlines' Budget Operating Plan circulated annually between August and October each year detailing flights and routes scheduled for the following year. It is a guideline document only and subject to change;
<b>"COs"</b>	mean the CDs which are used on non-AVOD Aircraft incorporating the Radio Channel Programmes;
<b>"Digital Media"</b>	means Programmes in the form of an encoded compression file rather than a video cassette or CDs;
<b>"Distributor"</b>	means the distributor from whom a Programme is licensed and who owns the right to License and distribute the Programme for airline use;
<b>"Duplication"</b>	means the act of making cassette copies from the Master for video programmes and the act of making copies from the Intermaster for audio programmes;
<b>"Effective Date"</b>	means *** (April on board cycle);
<b>"Encoding"</b>	means the process of transforming the Programme into a digitally compressed file ;
<b>"Exhibition"</b>	means the estimated number of flights on which the Programmes will be shown, otherwise known as screenings, which are calculated from the Airline's BOP during each annual budget process;

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<b>"Exhibition Period"</b>	means the time period during which the Airline is authorised to exhibit the Programmes on board the Aircraft.
<b>"Flashcard"</b>	means the proprietary card containing digital storage used to transfer music and speech onto aircraft IFE Systems;
<b>"IFE"</b>	means the Airline's inflight entertainment programmes;
<b>"Interactive Screens"</b>	means the screens, which show information regarding the Programmes to help passengers navigate and use the AVOD system in order to arrive at the desired Programme choice;
<b>"Intermaster"</b>	means digitally encoded CD combining two or more Radio Programmes, used to duplicate CDs for onboard use;
<b>"Key Performance Indicators"</b>	means a set of agreed parameters by which the Airline measures the performance of IFP, refer to Schedule 5 for details;
<b>"License"</b>	means an agreement given by a Distributor to permit the use of the Programmes on the Aircraft;
<b>"License Fee"</b>	means the amount negotiated by IFP, and paid by the Airline, that permits the Airline to play the contracted Programmes;
<b>"Management Fee"</b>	means the annual fees agreed between the Parties for IFP to carry out the Services;
<b>"Mechanical Royalties"</b>	means those royalties and fees required to copy musical works from one medium to another during the recording and duplication process;
<b>"Master"</b>	means the original master copy of a Programme Licensed from the Distributor;
<b>"MPAA"</b>	means the Movie Pictures Association of America;
<b>"Music Albums"</b>	means a selection of music albums which form Cathay's Audio-on-Demand library and are updated regularly as required by Cathay;
<b>"Performance Reviews"</b>	means the review which will be conducted twice a year whereby the Airline will review IFP's performance against the agreed Key Performance Indicators.
<b>"Presenter"</b>	means the professional radio presenter or artist employed to work specifically on the Airline's account;
<b>"Programmes"</b>	means programmes to be supplied by IFP under terms and conditions of this Agreement. These programmes include all Western Movies, Western Short Features Programmes and all Audio programmes.

<b>"Programming Costs"</b>	means the total cost incurred in compiling the Audio Programmes based on an hourly rate and time in the audio studio and on a computer edit facility;
<b>"Public Performance Rights"</b>	means the right to perform music on board the Aircraft including that contained in Audio, Western Movies and Western Short Features;
<b>"Personnel"</b>	mean IFP's personnel who will provide the Services to the Airline during the Term of the Agreement;
<b>"Radio Channel"</b>	means the channels under which Audio Programmes compiled by IFP are offered to all passengers on board an Aircraft;
<b>"Services"</b>	mean the supply of all required services for inflight programming for Audio, Western Movies and Western Short Features Programmes for Airline by IFP hereunder including the services specified in <b>Clause 4</b> of this Agreement;
<b>"Service Costs"</b>	has the meaning ascribed to it in <b>Clause 6</b> ;
<b>"Sting"</b>	means airline, channel or genre promotional material;
<b>"Sub-load Ticket"</b>	means a ticket issued by the Airline to IFP for meetings in Hong Kong, which is not a confirmed ticket but a stand-by ticket and has the same boarding priority as if IFP's Personnel were an Airline employee travelling on business;
<b>"Technical Costs"</b>	mean the total of technical costs including editing, subtitling, encoding, duplication, quality control and labelling costs;
<b>"Term"</b>	has the meaning ascribed to it in <b>Clause 3</b> ;
<b>"Western Movies"</b>	means featured films which is shown in English and selected European languages including Italian, French, German and Dutch, refer to programme specifications in Schedule 1; and
<b>"Western Short Features"</b>	means short features programme which is shown in English, refer to programme specifications in Schedule 1.

1.2 In this Agreement, unless the context otherwise requires:-

- 1.2.1 references to Clauses and Schedules are to the clauses of and schedules to this Agreement;
- 1.2.2 Clause headings and the table of contents are for convenience only and have no legal effect;
- 1.2.3 references to (or to a specified provision of) this Agreement or any other document are to this Agreement, that document or that provision as in force for the time being and as amended, varied or supplemented in accordance with its terms;
- 1.2.4 references to (or to a specified provision of) any Ordinance or enactment are to that Ordinance or enactment or that provision as amended, modified, extended, re-enacted, consolidated or replaced and in force for the time being;

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- 1.2.5 words importing the singular include the plural and vice versa;
- 1.2.6 words importing one gender include any other gender;
- 1.2.7 references to persons includes bodies corporate, firms or unincorporated associations; and
- 1.2.8 the Schedule(s) form(s) part of this Agreement and references to this Agreement include the Schedule(s).

## 2. PROVISION OF SERVICES

- 2.1 IFP agrees to continue to provide the Services and the Airline hereby agrees to accept the provision of such Services from IFP, on and subject to the terms set out in this Agreement.
- 2.2 The Parties hereby agree that as consideration for the provision of such Services by IFP, the Airline shall pay for such Services in the manner provided for in **Clause 6**.

## 3. TERM

- 3.1 The parties acknowledge that IFP have been providing the Services to the Airline since \*\*\*, and this Agreement shall be deemed to have commenced as of \*\*\* and shall continue to be in force until \*\*\* ('Initial Term'), unless either Party terminates this Agreement in accordance with **Clause 16** or until such date as the Parties otherwise agree in writing (the "**Term**").

## 4. IFP'S OBLIGATIONS

- 4.1 Account Servicing
  - 4.1.1 IFP warrants that all Personnel involved in the performance of the Services will be of high caliber and suitably skilled and experienced to perform properly the tasks assigned to them. IFP must provide dedicated account management available to deal with all operational and financial issues and available at time zone permissible hours to deal with requests made by the Airline.
- 4.2 For Audio Programming:
  - 4.2.1 Programming
    - (a) IFP shall supply the Airline with a varied selection of Audio Programmes as specified in **SCHEDULE 1 - PROGRAMME SPECIFICATIONS** for each agreed Exhibition Period.
    - (b) IFP shall be responsible for suggesting a selection of Audio Programmes to match the Airline's demographics issued to IFP from time to time and the guideline document detailed in **SCHEDULE 2 - PROGRAMMING GUIDELINES** for each agreed Exhibition Period. The said programming guidelines may be updated from time to time upon mutual agreement of the Parties.
    - (c) IFP shall ensure that each Audio Programme is consistent throughout and features songs and artists, which are relevant to the title of the Radio Channel or the Music Album category.
    - (d) The Airline shall retain the right to amend the number of Audio Programmes, Radio Channels, Music Album categories, frequency and general programme specification during the period of the Agreement. However, if the current specification changes substantially then the Parties agree to review the Management Fee.

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#### 4.2.2 Royalties and Presenters

- (a) IFP will negotiate all Presenter fees, and shall ensure that all fees are competitive and favourable to the Airline.
- (b) IFP shall use best endeavours to ensure that no Presenter used on any of the Radio Channels shall work in the same capacity for a direct competitor of the Airline without prior permission of the Airline, such permission not to be unreasonably withheld.
- (c) IFP shall be responsible for clearing Mechanical Royalties for the Audio Programmes and obtaining permission for it and/or Airline to copy, duplicate, store on IFE equipment, record and use the Audio Programmes on the Airlines' Aircraft as anticipated hereunder including in respect of all copyright works comprised in the Audio Programmes including in all music, lyrics, songs and sound recordings and for paying all Mechanical Royalties and other fees due to the copyright owner or the relevant royalty body in the country where the Programmes are produced or as required. In the UK, the rights are held by PPL (Phonographic Performance Ltd) representing record companies and MCPS (Mechanical Copyright Protection Society) representing composers, authors and publishers. Mechanical Royalties are also payable to equivalent agencies in locations where the Programme is produced outside the UK;
- (d) IFP will advise the Airline in advance of the Presenters and Mechanical Royalties fees negotiated on the Airline's behalf. IFP warrants that it will use best endeavours to negotiate favourable terms for the Airline and will provide the Airline with realistic indicative pricing during the annual budget process for approval by the Airline. IFP will not agree to or commit to any Presenter Fees or Mechanical Royalties that are greater than as stipulated in the annual budget without Airlines' consent.
- (e) IFP hereby warrants that it will secure all rights required for Airline to copy and load Audio Programmes onto its Aircraft and for the same to be used in AOD format or otherwise and will be solely liable for any claims by any rights holder in any territory.

#### 4.2.3 Technical & Logistics

##### (a) Editing

- i) IFP shall be responsible for editing Audio in accordance with the requirements of the Airline. Editing will generally involve IFP editing the Audio Programme to combine and mix music and speech content to the agreed duration, to include advertisements and other materials as requested by the Airline and to remove any material detailed in **SCHEDULE 2 PROGRAMMING GUIDELINES**.
- ii) IFP shall indemnify the Airline for any loss or damage arising or suffered due to errors or negligence in terms of editing, such as incorrect Stings or incorrectly placed advertisements. The total of such liability shall be limited to the total cost of Duplication and editing for the particular Programme(s) in question. IFP will not be liable under this clause if the error or negligence is the result of another third party.

##### (b) Duplication and Encoding

- i) IFP shall arrange Duplication of all Audio Programmes in CD format, Encoding of the Programme in Digital Media format and/or Duplication of the Boarding Music in Flashcard format according to specifications required by the Airline.
- ii) IFP will use best endeavours to recycle Boarding Music Flashcards where possible.

- iii) IFP warrants that all Duplication and Encoding of Audio Programmes shall be to the technical standard specified by the manufacturers of the IFE equipment selected for installation by the Airline on its Aircraft and shall otherwise be undertaken to best industry standards. The technical standard and format of the CDs, Digital Media and Flashcards supplied to the Airline shall comply with the technical requirements of the Airlines' equipment and any other technical requirements specified by the Airlines' designated engineers or representatives and shall otherwise be of merchantable quality and fit for purpose.

(c) Quality Control and Labelling

- i) IFP shall be responsible for all quality control and labelling of all CDs in accordance with the label list issued by the Airline. IFP acknowledges that quality control and correct labelling is of the utmost importance and IFP shall be responsible for loss and damage suffered by the Airline due to incorrect labelling or poor quality control procedures. Should there be any mistakes in labelling or quality control, IFP will be responsible for rectifying the situation at their own cost.

(d) Delivery

- i) IFP shall arrange for the delivery of the required number of CDs, the Digital Media and the Flashcards containing the Audio Programmes for each Exhibition Period to the delivery addresses set out in **SCHEDULE 3 - CONTACT AND DELIVERY** or such address as is otherwise specified by the Airline no later than the date of the agreed monthly timeline prior to the commencement of each Exhibition Period.
- ii) Time of delivery shall be of the essence. In case of late delivery Airline may at its discretion choose to accept a payment equal to the total value of all the Programming Costs and Technical Costs arising under this Agreement for that particular month or such pro-rata payment as the parties shall agree, as full compensation for such late delivery.

4.3 For Video Programming (Western Movies and Western Short Features):

4.3.1 Programming

- (a) IFP shall supply the Airline with a varied selection of Western Movies and Western Short Features Programmes as specified in **SCHEDULE 1 - PROGRAMME SPECIFICATIONS** for each agreed Exhibition Period.
- (b) IFP shall be responsible for suggesting a selection of Western Movies and Western Short Features Programmes to match the Airline's demographics issued to IFP from time to time and the guideline document detailed in **SCHEDULE 2 - PROGRAMMING GUIDELINES** for each agreed Exhibition Period. The said programming guidelines may be updated from time to time upon mutual agreement of the Parties.
- (c) The Airline shall retain the right to amend the number of Western Movies and Western Short Features Programmes, channels, frequency and general programme specification during the period of the Agreement. However, if the current specification changes substantially then the Parties agree to review the Management Fee.

4.3.2 Licensing

- (a) IFP will negotiate License Fees with Distributors based on the Exhibitions and commitments agreed with the Airline during the annual budget process.



- (b) IFP shall obtain Licenses for the Western Movies and Western Short Features Programmes from Distributors, subject to the rights held by each Distributor. Such License shall set forth the Western Movies and Western Short Features Programme title, Exhibition Period and the length (in number of minutes) of the Programme.
- (c) IFP will advise the Airline in advance of any License Fee and any other fees payable for exhibition of the Western Movies and Western Short Features Programmes negotiated on the Airline's behalf, where such License Fees may exceed the amount agreed in the annual budget. IFP warrants that it will use best endeavours to negotiate favourable terms for the Airline and will provide the Airline with realistic indicative pricing during the annual budget process for approval by the Airline. IFP will not agree or commit to any Licence Fees or other fees that are greater than as stipulated in the budget, without Airlines' consent.
- (d) At the request of the Airline, IFP will license Western Movies and Western Short Features Programmes, in dual language format whether dubbed or subtitled. Any additional costs will be agreed in advance with the Airline during the annual budget process.
- (e) If a language, whether dubbed or subtitled, is created specifically for the Airline, dependant on the revenue of the booking to the Distributor, the Airline may have to bear the Technical Costs of the relevant Programme, for example, the encoding of language. IFP will advise the cost in writing to the Airline for approval prior to the booking being placed in the event that the costs are outside the scope of the budget.

#### 4.3.3 Technical & Logistics

- (a) Following approval of the Western Movies and Western Short Features Programmes as detailed in **Clause 10**,
  - i) IFP shall arrange Duplication of the relevant Programmes in cassette format (VHS, V8 or Hi-8) according to the tape quantity required by the Airline; and/or
  - ii) IFP shall arrange Encoding of the relevant Programmes in Digital Media according to the standard required by the Airline,

IFP shall ensure that all such Duplication and Encoding is permitted under the relevant Licences.

#### (b) Editing

- i) IFP shall be responsible for arranging of Editing all Western Movies and Western Short Features Programmes according to the requirements of the Airline. Editing will generally involve the Distributor's designated laboratories in Hollywood or IFP editing the Programme to include advertisements, the Airline's logos, channel Stings, warning boards, and other materials as requested by the Airline and removing sensitive scenes as outlined in the guidelines detailed in **SCHEDULE 2- PROGRAMMING GUIDELINES. -**
- ii) IFP shall indemnify the Airline for any loss or damage arising or suffered due to errors or negligence in terms of editing, such as incorrect Stings or incorrectly placed advertisements. The total of such liability shall be limited to the total cost of Duplication and editing for the particular Programme(s) in question. IFP will not be liable under this clause if the error or negligence is the result of another third party.

#### (c) Subtitling

- i) IFP shall arrange subtitling of all Western Movies and Western Short Features Programmes where required by the Airline.

(d) Duplication and Encoding

- i) IFP warrants that all Duplication and Encoding of all Western Movies and Western Short Features Programmes shall be to the technical standard specified by the manufacturers of the IFE equipment selected for installation by the Airline on its Aircraft and shall otherwise be undertaken to best industry standards. The technical standard and format of the cassette and the Digital Media supplied to the Airline shall comply with the technical requirements of the Airlines' equipment and any other technical requirements specified by the Airlines' designated engineers or representatives and shall otherwise be of merchantable quality fit for purpose.
- ii) IFP shall be responsible for the Encoding of advertisements and shall be required to coordinate with the Airline's nominated Business Partners in order to ensure that the advertisements are encoded correctly and according to the timelines agreed between the Parties.

(e) Quality Control and Labelling

- i) IFP shall be responsible for all quality control and the labelling of all Western Movies and Western Short Features Programmes in accordance with the label list issued by the Airline.
- ii) IFP acknowledge that quality control and correct labelling is of the utmost importance and IFP shall be responsible for loss and damage suffered by the Airline due to incorrect labelling or poor quality control procedures, unless due to reasons attributable to the Airline.
- iii) Should there be any mistakes in labelling or quality control, IFP will be responsible for rectifying the situation at their own cost.

(f) Delivery

- i) IFP shall arrange for the delivery of the required number of cassettes and the Digital Media containing the Western Movies and Western Short Features Programmes for each Exhibition Period to the address set out in **SCHEDULE 3 - CONTACT AND DELIVERY** or such other address as is otherwise specified by Airline no later than the date of the agreed monthly timeline prior to the commencement of each Exhibition Period.
- ii) Time of delivery shall be of the essence. In case of late delivery Airline may at its discretion choose to accept a payment equal to the total value of the License Fees and Technical Costs arising under this Agreement for that particular month or such pro-rata payment as the parties shall agree, as full compensation for such late delivery.

(g) Tape Destruction for Western Movies

- i) IFP shall be responsible for the destruction and degaussing of all Western Movie Programme cassettes returned by the Airline to IFP or IFP's nominated subcontractor.
- ii) IFP warrants that it is solely liable for the performance of any sub-contractor appointed to perform this activity and that any sub-contractor used will follow the guidelines set out by the Distributors and the MPAA when destroying and degaussing the cassettes.

4.4 Third Parties

- 4.4.1 IFP shall as required by Airline supply the Airlines' nominated Business Partners with full details of the Programmes, including photographs, inclusion in the Airlines' inflight entertainment guides, the Interactive Screens of the IFE system, onboard advertising and the Airlines' websites in accordance with a timetable to be agreed by the Parties from time to time.

- 4.4.2 IFP will provide or contract with strategic third parties in order to provide the equipment, materials, technology, software, goods and personnel which are required by IFP to ensure that it fulfills its obligations hereunder.
- 4.4.3 IFP warrants that when contracting with third parties such as Distributors and Presenters, commitments made in any agreements with such parties shall not exceed the commitments including timelines agreed with the Airline. The Airline will not be liable for any liabilities arising or incurred by IFP relating to IFP contracting with third parties beyond the parameters agreed with and scope of authority provided by Airline.
- 4.5 IFP hereby undertakes with the Airline that it shall at all times during the continuance of this Agreement:-
  - 4.5.1 provide the Services in accordance with the terms of this Agreement, to the highest business standards, and in an efficient and competent manner with due and professional skill and care;
  - 4.5.2 comply with all applicable laws, ordinances, regulations and relevant standards in the performance of the Services;
  - 4.5.3 all physical items and media supplied hereunder including COs, cassettes and the like will be provided to specification and will be of merchantable quality and fit for purpose.
- 4.6 In the event that IFP fails to provide the Services or the Services do not conform to the standards or specifications set out in this Agreement, the Airline, without prejudice to any other right it may have, shall be entitled to:-
  - 4.6.1 request IFP to, at the cost and expense of FP, to redeliver any Services which are deficient or non-conforming;
  - 4.6.2 request that IFP carry out relevant repairs or rectification of the relevant Services at such place as reasonably requested by the Airline;
  - 4.6.3 carry out the repairs or rectification of the relevant Services itself or by others and hold IFP accountable therefor; and/or
  - 4.6.4 withhold all or part of the payment of the Service Costs until the Services in question are satisfactorily provided or corrected or where the Service Costs have been paid, request IFP to refund the Service Costs on a pro rata basis in respect of the Services in question.
- 4.7 Upon notification by the Airline under **Clause 4.6** of any deficiency in or non-compliance of the Services, IFP shall promptly take such action as may be required by the Airline pursuant to **Clause 4.6**.
- 4.8 In the event that in the Airline's opinion, IFP has failed to satisfactorily carry out the actions specified in any of **Clauses 4.6.1 to 4.6.4** as required by the Airline, the Airline shall be entitled to: -
  - 4.8.1 refuse to accept any Services or any further performance of IFP without liability;
  - 4.8.2 engage any person to provide the Services and require IFP to bear the full cost thereof; and/or
  - 4.8.3 terminate this Agreement and treat itself as discharged by IFP's breach.
- 5. AIRLINE OBLIGATION**
  - 5.1 Programming
    - 5.1.1 In the event that the Airline procures programmes through sources other adherence to technical specification, copyrights and all other associated exhibition rights and fees in relation to such programmes.

5.2 Information

- 5.2.1 The Airline will provide details of the BOP by no later than October each year of this Agreement in order for IFP to calculate the required flight levels for movie License Fees and the required quantities of Cassettes, CDs, Intermasters and Flashcards for the following year's budget.
- 5.2.2 The Airline will at times to be agreed advise IFP of the required quantity and format of the cassettes, CDs, Flashcards, Digital Media for each Exhibition Period.
- 5.2.3 The Airline shall agree to keep IFP informed as to the technical specification of equipment installed on each Aircraft, and the relevant specification for each applicable IFE system. The Airline shall give IFP notice of any change or addition in specification in accordance with the monthly timeline.
- 5.2.4 The Airline shall agree to provide updated retrofit plans, demographics and available survey results to IFP; however, IFP must proactively request information of this nature in order to provide the Services.
- 5.2.5 The Airline shall notify IFP of the labelling requirements and packaging requirements in preparation for shipment.

5.3 Advertising & Promotional Material

- 5.3.1 The Airline or its appointed agents shall supply written details to IFP of any sponsorship, advertising, airline logos etc to be included in the Programmes in accordance with the monthly timeline. Such details shall include the name of each sponsor or advertiser, the duration of the advertisement and any special instructions pertaining to the placing of the advertisement.
- 5.3.2 The Airline or its appointed agents shall arrange for the delivery to IFP of the advertisements required for insertion in accordance with the monthly timeline. Such advertisements shall normally be delivered on Betacam SP together with a review copy on VHS.
- 5.3.3 In the event that the Airline chooses to use promotional material of the Programmes, it must use the promotional material supplied by the Distributors and comply with all written instructions supplied with such promotional material. The Airline agrees not to modify such material in any way and to use the promotional material solely for the Airline's inflight entertainment guides, the Interactive Screens of the IFE system, onboard advertising and the Airlines' websites. It is the responsibility of the Airline to obtain permission for any other use of the promotional materials of the Programmes.

5.4 Video Cassettes, CDs and Digital Media

- 5.4.1 The Airline shall use its reasonable endeavours to ensure that the video cassettes, CDs or Digital Media incorporating Programmes remain in Cathay's or Dragonair's possession and control (as the case may be) for the authorised Exhibition Period.
- 5.4.2 The Airline will use reasonable endeavours to prevent damage to or loss, theft, conversion or destruction of any cassette, CDs or Digital Media incorporating the Programmes. The Airline will notify IFP in writing of any such damage, theft, loss conversion or destruction and will cooperate with IFP and or the Distributor in any reasonable attempt to recover such cassettes, CDs or Digital Media.

- 5.4.3 The Airline shall undertake not to duplicate, copy, edit, exhibit, promote or sell any of the cassettes, CDs or Digital Media other than the permitted use of the Programmes on flights operated by the Airline and excepting material that is the property of the Airline.
- 5.4.4 At the conclusion of the agreed Exhibition Period for a Programme, the Airline shall within forty five (45) days of the end of the Exhibition Period;
- (a) Return the movie cassettes to the address detailed in **SCHEDULE 3 - CONTACT AND DELIVERY** for IFP to arrange destruction of the cassettes; and
- (b) erase all Digital Media from the Aircraft's digital servers.

5.5 Music Royalties Licenses

- 5.5.1 The Airline shall make all necessary payments for any and all rights, Licenses and other clearances for the performance of music contained in the soundtrack of the Programmes or advertisement that may be applicable by Public Performance Rights regulations in the Airlines' country of registration.

**6. SERVICE COSTS**

- 6.1 In consideration of the Services to be rendered by IFP under this Agreement, the Airline shall pay to IFP the fees specified below (the "Service Costs"). The detailed budget is included in **SCHEDULE 4- BUDGET FOR \*\*\***.

6.2 For Audio Programming

6.2.1 Management Fee

- (a) The annual Management Fee for Audio has been agreed by the parties and will be reviewed annually pursuant to **Clause 11** or as otherwise agreed by the parties and will be paid in equal instalments on a monthly basis. The Management Fee comprises a labour cost, overhead cost and a profit margin and these costs will be taken into account in fixing any adjustment to the Management Fee.
- (b) Labour Cost:
- i) should include costs of in-house labour working directly on the Airlines' account, for example, Personnel involved in account servicing, programming, logistics support, etc. Labour costs related to technical processes, such as editing, Encoding, Duplication, quality control and labelling should not be included in any assessment of labour costs for the purposes of assessing the Management Fee;
- ii) should reflect actual salary cost and include all staff benefits, insurance, pension, healthcare, tax, and other benefits; and
- iii) will be calculated based on the estimated man-days required and man-day rates of each of IFP's Personnel involved in the provision of the Services.
- (c) Overhead Cost:
- i) should include all non-labour related operating costs, including rent, rates, labour cost related to support services such as finance, I.T., and other like costs required for the provision of the Services. Overhead costs related to technical processes should not be included and they should be covered by the rates of technical services; and
- ii) should be presented as a percentage of the labour cost, namely, \*\*\* for this Agreement.

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(d) Profit Margin:

- i) should be calculated as a percentage of total of the labour cost and overhead cost, namely, \*\*\* for this Agreement.]
- (e) The agreed annual Management Fee for Audio is fixed and firm for the duration of this Agreement, unless agreed otherwise between the parties taking into account any adjustment in labour costs and overhead costs.

6.2.2 Programming Cost

- (a) Programming Cost shall include the hourly rates for programming in a studio and using a computer edit facility, but does not include the cost of the producers.
- (b) Programming Cost shall be agreed during the annual budget meetings and will be discussed on a Programme by Programme basis showing a detailed breakdown of the hours spent using studio and computer for each Audio Programme. It will also include the Programming Costs related to AOD Music Albums and Boarding Music.
- (c) The agreed rate for programming in studio is \*\*\* for Radio Channels produced in Hong Kong, \*\*\* for Radio Channels produced in Singapore and \*\*\* for Radio Channels produced in London and Los Angeles. The agreed rate for programming using a computer edit facility is \*\*\*.

6.2.3 Presenter Cost

- (a) IFP will use best endeavours to provide competitive prices for costs of Presenters and will ensure that such costs charged to the Airline shall not exceed those agreed between the Parties during the annual budget review process.
- (b) Presenter costs will be charged to the Airline at cost with no mark up or commission whatsoever and will be subject to review on an annual basis.

6.2.4 Mechanical Royalties

- (a) IFP shall be responsible for using best efforts to understand the relevant royalty laws and negotiating favourable Mechanical Royalties on behalf of the Airline. The current agreement is \*\*\* of the cost related to music production (Management Fee and Programming Cost), CD Duplication and Encoding.
- (b) Mechanical Royalties will be charged to the Airline at cost with no mark up.

6.2.5 Technical Costs

- (a) All Technical Costs of whatever nature will be charged to the Airline at cost, with no additional mark up or commission. All Technical Costs will be subject to review on an annual basis and shall not exceed costs stipulated in the annual budget unless agreed by Airline.
- (b) Duplication Cost
  - i) For Cathay, 6 CDs are used to contain the 22 Radio Channels and the agreed unit cost is \*\*\*. Intermasters are used for the Duplication of the Radio Channels and the agreed unit cost is \*\*\*. Flashcards are used for the Duplication of Boarding Music and the agreed unit cost \*\*\*.
  - ii) For Dragonair, 4 CDs are used to contain 16 Radio Channels and the agreed unit cost is \*\*\* per CD. Intermasters are used for the Duplication of the Radio Channels and the agreed unit cost is \*\*\*. Flashcards and Cassettes are used for the Duplication of Boarding Music and the agreed unit cost is \*\*\* for Flashcard and \*\*\* for cassette.

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- iii) Costs relating to Duplication includes costs for quality checking/labelling and all associated Duplication costs.
  - iv) Duplication costs charged to the Airline will remain fixed and firm for the duration of this Agreement unless subject to a decrease due to efficiencies in working practice. Duplication costs may not exceed the costs stipulated for Duplication in the annual budget unless agreed by Airline.
- (c) Encoding Cost for Cathay
- i) The agreed encoding rate is \*\*\* per minute for encoding of Radio Channels, \*\*\* per minute for encoding of Boarding Music in Flashcard for Panasonic System, and \*\*\* per minute for encoding of Boarding Music in CD Rom for KID System.
  - ii) The Cost of Encoding includes costs for quality checking and all associated Encoding costs.
  - iii) Encoding costs charged to the Airline will remain fixed and firm for the duration of this Agreement unless subject to a decrease due to efficiencies in working practice. Encoding costs may not exceed the costs stipulated for Encoding in the annual budget unless agreed by the Airline.

### 6.3 For Video Programming

#### 6.3.1 Management Fee

- (a) The annual Management Fee for video Programmes has been agreed by the parties and will be reviewed annually pursuant to **Clause 11** or as otherwise agreed and will be paid in equal instalments on a monthly basis. The Management Fee comprises labour cost<sup>1</sup> overhead cost and a profit margin and these costs will be taken into account in fixing any adjustment to the Management Fee.
- (b) Labour Costs:
  - i) should include costs of in-house labour working directly on the Airline's account<sup>1</sup> for example<sup>1</sup> Personnel involved in account servicing, programming, logistics support, etc. Labour costs related to technical processes, such as editing, Encoding, Duplication, quality control and labelling should not be included in the labour costs for the purposes of assessing the Management Fee;
  - ii) should reflect actual salary cost and include all staff benefit<sup>1</sup> insurance, pension, healthcare <sup>1</sup> tax <sup>1</sup> and other benefits; and
  - iii) will be calculated to each category, Western Movies and Western Short Features<sup>1</sup> based on the estimated man-days required and man-day rates of each of IFP's Personnel involved in the provision of the Services for each category.
- (c) Overhead Costs:
  - i) should include all non-labour related operating costs, including rent, rates, labour cost related to support services such as finance, I.T., and other like costs required for the provision of the Services. Overhead costs related to technical processes should not be included and they should be covered by the rates of technical services; and
  - ii) should be presented as a percentage of the Labour Cost, namely/\*\*\* for this Agreement.
- (d) Profit Margin:
  - i) should be calculated as a percentage of total of the labour cost and overhead cost namely<sup>1</sup> \*\*\* for this Agreement.

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\*\*\* Confidential treatment requested.

- (e) The agreed annual Management Fee for video is fixed and firm for the duration of this Agreement, unless agreed otherwise between the parties, taking into account any adjustment in labour costs and overhead costs.

#### 6.3.2 License Fees

- (a) In all circumstances, IFP will use best endeavours to negotiate favourable and continuously improving rates and terms with Distributors and will pass on any reduction in price to the Airline. IFP will on request provide the Airline the details of terms negotiated with Distributors including copies of relevant agreements.
- (b) The Parties will jointly agree the necessary commitments to be made with individual Distributors.
- (c) License Fees will be charged to the Airline at cost with no mark up or commission whatsoever and will be subject to review on an annual basis.

#### 6.3.3 Technical Costs

- (a) All Technical Costs of whatever nature will be charged to the Airline at cost, with no additional mark up or commission. All Technical Costs will be subject to review on an annual basis and shall not exceed the costs stipulated in the annual budget unless otherwise agreed.
- (b) In the event that the same programme is used for both Cathay and Dragonair, the Technical Costs should be equally shared between Cathay and Dragonair.
- (c) Master Cost
  - i) For Western Movies, the master costs are included in the cost of License Fees;
  - ii) For Western Short Features, the master cost is charged by the Distributors and the budgeted master cost is \*\*\* for 30-minute Programmes and \*\*\* for 60-minute Programmes. IFP will ensure that the Master costs charged to the Airline shall not exceed those agreed between the Parties during the annual budget review process. Any increase in budgeted costs must be agreed in advance by Airline.
- (d) Insertion Fee for Western Movie Programmes
  - i) The insertion fee refers to the cost to insert advertisements, channel Stings, and warning boards into the Programmes.
  - ii) IFP will use best endeavours to provide competitive prices for insertion fees and will ensure that the insertion fees charged to the Airline shall not exceed those agreed between the Parties during the annual budget review process. The budgeted insertion fee is \*\*\* per movie and this may not be increased unless the Airline provides approval in advance.
- (e) Editing Cost for Western Short Feature Programmes
  - i) The Editing refers to the process to insert advertisements, channel stings, warning boards to the Programmes and removal of sensitive scenes from the Programmes.
  - ii) Editing Cost is calculated based on the hourly rates of \*\*\*, the number of edit hours required and the cost of betacam SP tape for each cassette length, as agreed between the Parties during the annual budget review process. The agreed unit editing cost is \*\*\* for 135-minute programme and \*\*\* for 60-min programme and \*\*\* for 60-minute programme shown on AVOD system only.

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- iii) The hourly rates of \*\*\* for Editing will remain fixed and firm for the duration of this Agreement unless subject to a decrease due to efficiencies in working practice.
- iv) Editing costs may not exceed the costs stipulated in the annual budget unless agreed by the parties.

## (f) Subtitling Cost

- i) IFP will use best endeavours to provide competitive prices for subtitling costs and will ensure that the subtitling cost charged to the Airline shall not exceed those agreed between the Parties during the annual budget review process. The budgeted subtitling cost is \*\*\* for 30-minute programme and \*\*\* for 50- minute programme and these may not be increased unless the Airline provides approval in advance.

## (g) Duplication Cost

- i) Duplication for Western Movies is performed by the Distributor's designated laboratories in Hollywood. IFP will use best endeavours to provide competitive prices for Duplication and will ensure that the Duplication rates charged to the Airline shall not exceed those agreed between the Parties during the annual budget review process. The lock-up cost and applicable tax of \*\*\* will be added to the Duplication cost. The budgeted Duplication rates are:

	VHS Tape	V8 or Hi-8 Tape
For Cathay:		
120-minute	***	***
Kids Movies	***	***
For Dragonair:		
120-minute	***	***
Kids Movies	***	***

- ii) Duplication for Western Short Features is performed by IFP. The agreed duplication rates are:

	VHS Tape	V8 or Hi-8 Tape
For Cathay:		
135-minute	***	***
60-minute	***	***
For Dragonair:		
130-minute	***	***
80-minute	***	***
60-minute	***	***
30-minute	***	***

- iii) Duplication cost charged to the Airline will remain fixed and firm for the duration of this Agreement unless subject to a decrease due to efficiencies in working practice. For the avoidance of doubt Duplication costs may not exceed the costs stipulated for Duplication in the annual budget unless agreed in advance by Airline.

## (h) Encoding Cost

- i) Encoding for Western Movies is performed by the Distributor's designated laboratories in Hollywood. IFP will use best endeavours to provide competitive prices for Encoding and will ensure that the Encoding rates charged to the Airline shall not exceed those agreed between the Parties during the annual budget review process. The budgeted Encoding rate is \*\*\* for recall fee, \*\*\* per minute for single language, \*\*\* per minute for dual language, \*\*\* per minute for adding a second language to a recall file and \*\*\* for cost of encryption and output.

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- ii) Encoding for Western Short Features and advertisements is performed by IFP. The agreed encoding rate is \*\*\* per minute for single language and dual language. Encoding Cost charged to the Airline will remain fixed and firm for the duration of this Agreement unless subject to a decrease due to efficiencies in working practice.
- iii) If the Digital Media of a Western Movie is available in IFP's library, IFP will offer the Airline a recall rate of \*\*\* per minute.
- iv) For the avoidance of doubt Encoding costs may not exceed the costs stipulated for Encoding in the annual budget unless agreed in advance by Airline.

(i) Cost of Quality Control, Labelling and Destruction

- i) For Western Movies, IFP will use best endeavours to provide competitive prices for quality control, labelling and destruction and will ensure that the costs charged to the Airline shall not exceed those agreed between the Parties during the annual budget review process. The agreed unit price per cassette is \*\*\*.
- ii) For Western Short Features, the costs of Quality Control and Labelling are covered by the Duplication Cost and Encoding Cost while destruction of cassette is performed by the Airline.

6.4 Other Costs

- 6.4.1 The cost of providing all Services hereunder (other than as specified above as being the subject of specific fees and charges) including the cost of co-ordinating, managing and sending promotional materials to the relevant parties, for the Interactive Screens will be covered by the Management Fee for Audio and video.
- 6.4.2 IFP will send master cassettes and other material to Hong Kong or IFP's London office via the Airline's designated courier company, who will invoice the Airline directly.
- 6.4.3 If IFP incur costs over budget in providing Services and such increase in costs are not agreed in advance by Airline, then IFP shall be responsible for such costs.

**7. SHARING OF COST SAVING**

7.1 The Airline agrees to share a portion of the cost savings achieved by IFP through the negotiation of the License Fees for Western Movies and Western Short Features as an incentive to IFP to optimize License Fees in favour of the Airline.

7.2 For Western Movies:

7.2.1 For the period of \*\*\*

- (a) The saving in License Fees has been calculated based on rates proposed in the IFP response to the RFP minus the actual spend on License Fees (excluding the deal with \*\*\*); and
- (b) The Airline has shared with \*\*\* of the saving achieved which was \*\*\*.

7.2.2 For the year of \*\*\*

- (a) The saving in License Fees shall be calculated based on a target reduction of \*\*\* (or another amount to be mutually agreed) from the rates agreed in the annual budget minus the actual spend on License Fees; and
- (b) The Airline will share with IFP \*\*\* of the saving achieved or \*\*\* whichever is lower provided that the IFP scores an average of \*\*\* or higher on the Key Performance Indicators during the two Performance Reviews per year.

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7.3 For Western Short Features:

7.3.1 For the period of \*\*\*

- (a) The saving in License Fees has been calculated based on rates proposed in the IFP response to the RFP minus the actual spend on License Fees (excluding the deal with \*\*\*); and
- (b) The Airline has shared with IFP \*\*\* of the saving achieved which was \*\*\*.

7.3.2 For the year of \*\*\*

- (a) The saving in License Fees shall be calculated based on a target reduction of \*\*\* (or another amount to be mutually agreed) from the rates agreed in the annual budget minus the actual spend on License Fees; and
- (b) The Airline will share with IFP \*\*\* of the saving achieved or \*\*\* whichever is lower provided that the IFP scores an average of \*\*\* or higher on the Key Performance Indicators during the two Performance Reviews per year.

**8. PAYMENT SCHEDULE, INVOICING AND REPORTING**

- 8.1 IFP shall issue invoices in US Dollar or UK Pounds to the Airline the month prior to the Exhibition Period concerned, i.e. the invoice will be received by the Airline on the 1st day of the month prior to the Exhibition Period in question. For example, the Airline will receive invoices for January play cycle by 1st December.
- 8.2 Encoding fees will be charged as per the budgeted amount using an average for each title based on the number of languages required. A reconciliation against actual will take place on a quarterly basis and a credit or invoice will be issued for the difference.
- 8.3 Quotations for any additional requirements not detailed in the annual budget must be sent in advance to the Manager Inflight Communication and Entertainment of the Airline for approval. Only expenses that have been pre-approved by the Airline will be payable by the Airline.
- 8.4 Amounts payable by the Airline under this Agreement shall absent dispute be paid in full within forty five (45) days of the end of the month after the receipt by the Airline of the relevant invoice from IFP. All monthly invoices from IFP shall be addressed for the attention of the Airline's Manager Inflight Communication and Entertainment.
- 8.5 A summary report of the expenses will be provided to the Airline twice a year. The Parties will agree the format for such report.
- 8.6 If any withholding, deduction or retention is required by law to be made by the Airline in respect of any payments made to IFP under this Agreement, IFP shall not be entitled to be paid or reimbursed the amount of such withholding, deduction or retention or to be paid an extra amount to ensure that it receives the payment it would have received if such withholding, deduction or retention were not made.

**9. CANCELLATION**

- 9.1 The Airline may require IFP to change, reject, cancel or stop any and all bookings, or previously agreed Programmes, and IFP shall in such circumstances take all possible steps to comply, provided that IFP can do so within its contractual obligations to Distributors, and other suppliers, as such obligations have been entered into in accordance with the authority provided by Airline. IFP shall be fully responsible for any liabilities or costs incurred due to IFP entering into contracts with Distributors which provide for commitments greater than that agreed to by Airline. If Airline changes, cancels or stops any previously agreed bookings, it will pay IFP reasonable costs of work completed to date relating to the bookings in question, based on the terms of **Clause 6**. In the event of this occurrence, IFP will provide supporting documentation needed to determine the amount of payment and will use best endeavours to mitigate the cost to the Airline. IFP shall not be entitled to any such payment if Airlines' changed, cancelled or cessation of a booking is due to a breach by IFP on its obligation hereunder.

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- 9.2 In the event that a Programme agreed to by the Parties as detailed in **Clause 10** subsequently becomes unavailable by the Distributor, then IFP will use best endeavours to ensure that any additional costs incurred by the Airline from any third party or Business Partners as a result of such late change in a Programme title are covered by the Distributor. Such costs may include but are not limited to costs related to integration, Interactive Screen changes, translation and will be covered by the Distributor in terms of a credit payment or reduction in future licence fees from the Distributor in question.
- 10. APPROVALPROCESS**
- 10.1 IFP shall provide the Airline with a selection of recommendations for each Programme including a synopsis of the content for video Programmes and a line up of proposed tracks and artists for audio Programmes according to the monthly programming timeline.
- 10.1.1 For Western Movie Programmes, it is approximately nine (9) weeks prior to the first day of the scheduled Exhibition Period.
- 10.1.2 For Western Short Feature Programmes, it is approximately fifteen (15) weeks prior to the first day of the scheduled Exhibition Period.
- 10.1.3 For Audio Programmes, it is approximately thirteen (13) weeks prior to the first day of the scheduled Exhibition Period.
- 10.2 The Airline shall confirm the Programmes to be produced or licensed according to the monthly programming timeline.
- 10.2.1 For Western Movie Programmes, it is approximately eight (8) weeks prior to the first day of the scheduled Exhibition Period.
- 10.2.2 For Western Short Feature Programmes, it is approximately fourteen (14) weeks prior to the first day of the scheduled Exhibition Period.
- 10.2.3 For Audio Programmes, it is approximately twelve (12) weeks prior to the first day of the scheduled Exhibition Period.
- 10.3 The following procedures should be followed for the approval process:
- 10.3.1 In the event of a notification by the Airline that any of the Programmes proposed in **Clause 10.1** for approval are unsuitable for any reason and rejected by the Airline, IFP shall arrange for alternative Programmes to be suggested for immediate consideration by the Airline.
- 10.3.2 The process described in **Clause 10.3.1** shall be repeated until such time as the Airline has approved the suggested Programme line up for the Exhibition Period in question and such process shall be undertaken in accordance with a timetable as may be agreed by the Parties. Once approved by the Airline, the Airline shall be liable for any additional costs incurred by IFP in implementing any further changes or amendments to the Programme(s) as requested by the Airline.
- 10.4 The Airline's written approval of the Programmes will be IFP's authority to proceed. The Airline will endeavour to provide approvals within the time period detailed in **Clause 10.2**.
- 10.5 Any reference in this Agreement to the Airline's written approval shall mean written approval by representatives of the Airline who are authorised to approve IFP's work and whose names are set out below:

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"Authorised Person" of the Airline

Manager, Product

Manager Inflight Communication & Entertainment

- 10.6 Any reference in this Agreement to Airline's written approval regarding commercial and contractual issues shall mean written approval by representatives of the Airline who are authorised to approve IFP's commercial and contractual issues and whose names are set out below:

"Authorised Person" of the Airline Manager

Purchasing, Marketing & Product Assistant

Purchasing Manager - Marketing

- 10.7 Any change to the foregoing authorised persons during the term of this Agreement will be notified in writing by the Airline to IFP.

- 10.8 For the purposes of this Agreement "written approval" shall include approval signified by:

10.8.1 fax on the Airline's notepaper bearing the signature of an Authorised Person;

10.8.2 oral approval given by an Authorised Person provided this is in circumstances where time does not permit written approval and is subsequently supported by written confirmation within 24 hours; and

10.8.3 e-mail emanating from the personal e-mail address of an Authorised Person.

- 10.9 Where approvals or consents are required from Airline, Cathay has the authority to provide the same on behalf of itself and Dragonair, and IFP shall only obtain such approvals or consents from Cathay accordingly.

- 10.10 Where an obligation is owed to IFP hereunder by Airline, such obligation shall be satisfied by either Cathay or Dragonair performing or undertaking the obligation.

## 11. BUDGET PROCESS AND MEETINGS

### 11.1 Budget Process

11.1.1 In September every year the Parties will jointly determine the annual costs for all aspects of the Services for the following year. \*\*\* Budget is included in **SCHEDULE 4 - BUDGET FOR \*\*\***.

11.1.2 IFP will be responsible for drafting the budget, and providing indicative pricing for annual costs for all aspects of the Services.

11.1.3 The Parties will jointly calculate the required number of Exhibitions, number of cassettes and COs to be used for the following year's budget using the information provided by the Airline.

### 11.2 Meetings

11.2.1 Throughout the year, the Parties will be expected to meet on a regular basis in order to conduct performance reviews, discuss strategy, analyse passenger feedback and survey results, decide themes and finalise budgets and commercial issues.

11.2.2 In order to conduct such meetings, if such meetings are to be held in Hong Kong, the Airline will provide Sub-load Tickets to relevant IFP Personnel, as deemed necessary. The issuance of tickets will be at the sole discretion of the Manager Inflight Communication and Entertainment of the Airline. At all times IFP's employees must adhere to the Airline's Sub-load travel policy issued to IFP from time to time.

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- 11.2.3 On a bi-annual basis (twice every year), the Parties will conduct a Performance Review whereby the Airline will score IFP's performance against a set of predetermined Key Performance Indicators while IFP will give feedback on the Airline's performance. The Key Performance Indicators and the Airline feedback form are detailed in **SCHEDULE 5 - KEY PERFORMANCE INDICATORS**.

## **12. BUSINESS PARTNERS**

- 12.1 IFP shall co-operate fully with all the Airline's suppliers who have been appointed to provide the Airline's IFE services. IFP shall endeavour to ensure that all aspects of the Services are correctly integrated where necessary with other work, services, materials, processes and equipment supplied or operated by the Airline's Business Partners in fulfilment of the Services and in meeting the deadlines laid down by the Airline or the Airline's Business Partners. The Airline will ensure that its Business Partners who have been appointed to provide services that are relevant to this Agreement cooperate with IFP as reasonably necessary for IFP to perform the Services under this Agreement.
- 12.2 IFP warrants that it will use best endeavours to work co-operatively with all nominated Business Partners of the Airline to ensure that attention to detail, timelines, minimisation of additional costs and on time delivery are ensured for the Services.

## **13. INTELLECTUAL PROPERTY RIGHTS**

- 13.1 The Airline retains all Intellectual Property Rights in all specifications, documents and reports supplied to IFP by the Airline in connection with this Agreement and the Services.
- 13.2 IFP will be responsible for obtaining and warrants that it will obtain all copyright permissions and Exhibition rights and all other similar rights and permissions relating to the Programmes required to enable the Airline to use the Programmes on all Aircraft as anticipated hereunder, including all rights to duplicate, load and for passengers to use such Programmes and associated copyright works and all charges, fees, or royalties chargeable for the exercise of the above rights and liabilities shall be borne by IFP.
- 13.3 IFP further warrants that the Exhibitions of the Programmes (including any foreign language sound track and/or subtitles) and reproduction or use of the Programmes will not infringe the copyright, performing rights, moral rights or any other rights of any third party whatsoever and that the Programmes will not be obscene or defamatory.
- 13.4 Ownership and all copyright and all other intellectual property rights in the Programmes shall be retained at all times by the original Distributors, suppliers or copyright owners.
- 13.5 All rights, title and interest in material, such as airline logos, fillers or advertisements which are inserted in Programmes exclusively for the - Airline (including all Intellectual Property Rights therein) shall vest in and/or remain the property of the Airline or the third party supplier of such material (as the case may be).
- 13.6 For the purposes of this Clause, "Intellectual Property Rights" means patents, trademarks, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, know-how, trade or business names and other similar rights or obligations whether registrable or not in any country.
- 13.7 The parties acknowledge that Airline will be responsible for paying any royalties due to Phonographic Performance (South East Asia) Ltd and CASH in respect of Public Performance Rights and the performance of music and sound recordings on Aircraft.

#### **14. INSURANCE**

- 14.1 Without limiting any obligation of IFP hereunder, it is agreed that IFP shall effect and maintain at its own expense at all times for the duration of this Agreement the following policies of insurance:-
- 14.1.1 Workers' Compensation and Employers' Liability Insurance with a limit of liability of not less than \*\*\* covering all claims and liabilities in respect of the death of or injury to any person employed by, or who is deemed to be a worker of IFP or any sub-contractor of IFP in connection with the provision of the Services;
  - 14.1.2 Insurance covering general third party liability with a limit of liability of not less than \*\*\*; and
  - 14.1.3 such other insurance as reasonably requested by the Airline in writing from time to time.
- 14.2 IFP shall:-
- 14.2.1 observe and perform all terms and conditions of such insurance and pay all deductibles;
  - 14.2.2 on request provide the Airline with the certificates or policies of the insurances, other details of the insurance and evidence of currency and premium payment; and
  - 14.2.3 ensure that all insurance arranged by IFP are effected with reputable financially secure insurers approved by the Airline and that all insurance is on terms acceptable to the Airline.
- 14.3 If IFP fails to take out any of the insurance required under this Clause, the Airline may at its sole discretion take out and maintain such insurances and deduct the costs from any moneys due to IFP or treat the failure to insure as a material breach under this Agreement.

#### **15. REPRESENTATIONS AND WARRANTIES**

- 15.1 Each Party represents and warrants to other Party as follows:-
- 15.1.1 it is a company or corporation duly incorporated under the laws of the place of its incorporation and has the corporate power and authority to accept the terms of this Agreement and to perform its obligations under it; and
  - 15.1.2 its entry into this Agreement has been duly and validly authorised and all requisite corporate action has been taken in order to make such entry valid and binding upon it in accordance with the terms of this Agreement.

#### **16. TERMINATION**

- 16.1 Either Party may terminate this Agreement by giving to the other Party no less than \*\*\* notice in writing after the Initial Term.
- 16.2 Either Party may terminate this Agreement with immediate effect by sending a written notice to the other Party if:
- 16.2.1 that other Party commits a material breach of its obligations under this Agreement and, in the case of a breach capable of remedy as determined under **Clause 16.3**, such breach is not remedied within fourteen (14) days of that other Party being specifically required to do so;
  - 16.2.2 a receiver, manager, administrator or like person takes possession or is appointed of the whole or any part of the undertaking or property of that other Party;

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- 16.2.3 an order is made by a Court for the winding-up of that other Party or a resolution is passed by the shareholders of that other Party for its winding-up, except for the purposes of amalgamation or reconstruction in such manner that the resulting company is bound by and assumes the obligations imposed on that other Party by this Agreement;
  - 16.2.4 that other Party ceases to pay its debts or becomes unable to pay its debts;
  - 16.2.5 anything having a similar effect with any of the events referred to in **Clauses 16.2.2 to 16.2.4** inclusive under the law of any jurisdiction occurs in relation to that other Party;
  - 16.2.6 that other Party disposes of the whole or any substantial part of its undertaking or assets; or
  - 16.2.7 that other Party ceases or threatens to cease to carry on all or any substantial part of its business.
- 16.3 For the purposes of **Clause 16.2.1**, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects to the sole satisfaction of the other Party, other than as to the time of performance, provided that time of performance is not of the essence.
- 16.4 The termination of this Agreement shall be without prejudice to any rights, obligations and liabilities of any Party which have accrued at the time of termination.
- 16.5 Upon any termination of this Agreement (howsoever occasioned), IFP shall forthwith deliver up to the Airline all copies of any information and data supplied to IFP hereunder and shall certify to the Airline that no copies of such information or data have been retained.
- 17. INDEMNITY BY IFP**
- 17.1 IFP shall indemnify on demand and hold harmless the Airline and its employees, directors, agents and officers from and against any and all costs, damages, expenses, losses, claims or liability incurred by it (including all costs and expenses which the Airline may incur in defending any proceedings) arising out of or in connection with (directly or indirectly) this Agreement, including but not limited to:-
- 17.1.1 any breach of any terms of this Agreement or the performance of the Services by IFP;
  - 17.1.2 any breach of any warranty or undertaking given by IFP or implied by applicable law in relation to the Services or the provision of the Services;
  - 17.1.3 any negligent or wrongful act or omission of IFP or its employees, directors, agents or officers;
  - 17.1.4 any disputes, claims or proceedings brought by a third party alleging that the Services (or the provision thereof) or the Programmes and/or associated materials provided by IFP hereunder or the copying or use thereof infringe any patent, copyright, design right, trademark or other intellectual property rights of any other person; and/or
  - 17.1.5 any non-compliance of the Services with the specifications set out in SCHEDULE 1- PROGRAMME SPECIFICATIONS.**
- except to the extent that such costs, damages, expenses, losses, claims or liability are due to the gross negligence or wilful misconduct of the Airline or its employees, directors, agents or officers.
- 17.2 This indemnity shall survive termination of this Agreement.



**18. ENTIRE AGREEMENT**

- 18.1 This Agreement supersedes any agreements made or existing between the Parties before or simultaneously with this Agreement in respect of the provision of services similar to the Services (all of which shall be deemed to have been terminated by mutual consent with effect from the commencement date of this Agreement but without prejudice to the rights and liabilities of the Parties accrued before such date), and constitutes the entire understanding between the Parties in relation to the subject matter of this Agreement.

**19. REMEDIES CUMULATIVE**

- 19.1 The rights of the Parties under this Agreement are cumulative and do not exclude or restrict any other rights (except as otherwise provided in the Agreement).

**20. NO WAIVER**

- 20.1 No delay or failure by either Party to exercise any of its powers, rights or remedies under this Agreement shall operate as a waiver of them, nor shall any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them. No provision of this Agreement and no breach of any provision of this Agreement shall be waived, altered or modified except by written instrument. No waiver of any breach shall affect or alter this Agreement, but each and every provision of this Agreement shall continue in full force and effect with respect to any other breach then existing or subsequent breach of any provision.

**21. SEVERANCE**

- 21.1 If any provision of this Agreement is not or ceases to be legal, valid, binding and enforceable under the law of any jurisdiction, neither the legality, validity, binding effect or enforceability of the remaining provisions under that law nor the legality, validity, binding effect or enforceability of that provision under the law of any other jurisdiction shall be affected.

**22. AMENDMENT**

- 22.1 No amendment to this Agreement will be effective unless in writing and executed by all the Parties.

**23. CONFIDENTIALITY**

- 23.1 Each Party shall treat as confidential all confidential information obtained from the other pursuant to this Agreement and shall not divulge such information to any person (except to such party's own employees and then only to those employees who need to know the same) and shall not use the information for any purpose other than for which it was provided without the other Party's prior written consent. This clause shall not extend to information (i) which was rightfully in consent. This clause shall not extend to information (i) which was rightfully in the possession of such Party prior to the commencement of negotiations leading to this Agreement, (ii) which is already public knowledge or becomes so at a future date (otherwise than in breach of this clause), (iii) which is trivial or obvious, (iv) which is required to be disclosed to comply with any court order or stock exchange requirement, or (v) where disclosure is required by law. Each Party shall ensure that its employees are aware of and comply with the provisions of this clause. If IFP appoints any sub-contractor then IFP may disclose confidential information to such subcontractors, subject to Airline's prior consent, which shall not be unreasonably withheld, and such sub-contractors or assignees agreeing to the same confidentiality terms as contained herein.
- 23.2 The provisions of this Clause **23** shall survive the expiration or termination of this Agreement.

- 23.3 In particular during and after termination of this Agreement IFP acknowledges its responsibility to treat in complete confidence all the demographic, marketing and sales information and statistics relating to the Airlines' business which Airline may supply IFP in the course of this Agreement.

**24. ADVERTISING**

- 24.1 Neither IFP or its affiliates nor any of its employees, agents or subcontractors shall mention the name of the Airline in any advertisement, public relations exercise or promotional material relating to or arising out of this Agreement without the prior written permission of the Airline. Such permission shall not be unreasonably withheld.

**25. ASSIGNMENT**

- 25.1 No Party may assign or subcontract any of the rights or obligations of that Party under this Agreement without the prior written consent of other Party to this Agreement. Such consents shall not be unreasonably conditioned, withheld or delayed except that the Airline may assign or sub-contract the whole or any part of its rights or obligations to any of its subsidiaries or affiliates.
- 25.2 In the event of the Airline consenting to any sub-contracting of the whole or any part of this Agreement, IFP undertakes and warrants to the Airline as follows:
- 25.2.1 that any agreement between IFP and such a sub-contractor shall be in the same form as the relevant parts of this Agreement and without limitation the agreement with a subcontractor shall include provisions regarding confidentiality and liability for loss, termination, force majeure, damage, negligence and infringement to intellectual property rights where appropriate;
- 25.2.2 that the sub-contractor shall comply with its obligations under such Agreement so as to ensure that all the obligations of IFP under this Agreement are fully performed and IFP shall be responsible for all liabilities, acts and omissions of any subcontractor; and
- 25.2.3 that if it subcontracts any part of the Services, that its subcontractors shall be fully experienced, properly qualified and properly organised, equipped and financed to undertake such subcontracted Services.
- 25.3 If in the course of providing the Services during the Term of this Agreement IFP decides to use the services of any company in which IFP has a material financial interest, IFP will declare this and before commissioning such services obtain the consent of the Airline thereto.

**26. EXPENSES**

- 26.1 Each of the Parties is responsible for that Party's own legal and other expenses incurred in the negotiation, preparation and completion of this Agreement.

**27. FORCE MAJEURE**

- 27.1 In this Agreement, "**force majeure**" shall mean any cause preventing a Party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the Party so prevented, including without limitation, strikes, lock-out or other industrial disputes (whether involving the workforce of the Party so prevented or of any other Party), act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, or storm.

- 27.2 If a Party is prevented or delayed in the performance of any of its obligations under this Agreement by force majeure, that Party shall immediately serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to force majeure, and shall, subject to service of such notice and to performance of its obligation under **Clause 27.4**, have no liability in respect of the performance of such of its obligations as are prevented by the force majeure events during the continuation of such events, and for such time after they cease as is necessary for that Party, using all reasonable endeavours, to recommence its affected operations in order for it to perform its obligations.
- 27.3 If a Party is prevented from performance of its obligations for a continuous period in excess of three (3) months, the other Party may terminate this Agreement immediately on service of written notice upon the Party so prevented, in which case no Party shall have any liability to any other except that rights and liabilities which accrued prior to such termination shall not be affected.
- 27.4 The Party claiming to be prevented or delayed in the performance of any of its obligations under this Agreement by reason of force majeure shall use all reasonable endeavours to bring the force majeure event to a close or to find a solution by which the Agreement may be performed despite the continuance of the force majeure event.

## **28. AUDIT**

- 28.1 In respect of all expenditure and costs which is incurred by IFP hereunder and which is reimbursable by the Airline under this Agreement, IFP shall maintain such accounts and records (the 'Records') as are reasonably necessary for the purpose of enabling the Airline to conduct an audit of that expenditure.
- 28.2 IFP will allow the Airline, by its own personnel or by a professionally qualified independent auditor, access to all the Records during the term of this Agreement and for 12 months afterwards on not less than 10 days written notice at any time during normal business hours for the purposes of auditing or otherwise inspecting them, provided that in the absence of exceptional circumstances IFP shall not be obliged to allow such access or inspection more than once during any 6 month period.
- 28.3 Should any audit or inspection of the Records by the Airline reveal that the Airline has been overcharged, IFP shall reimburse to the Airline the amount of the overcharge within 7 days and should the total overcharge for the year exceed HK\$100,000 then the Airline will also refund any professional costs related to the performance of the audit (i.e. the cost of the auditors).
- 28.4 IFP will afford to the Airline all reasonable assistance in the carrying out of such audit, whilst the Airline and its auditor will ensure that any information obtained in the course of the audit concerning IFP's business is kept in the strictest confidence and not used for any purpose other than the proper conduct of the audit.

## **29. RIGHT OF REPLACEMENT**

- 29.1 The Airline reserves the right to demand the replacement at any time by giving three (3) months' notice of any employee agent or subcontractor of IFP working on the Airline's account if in the opinion of the Airline the performance of such person is unsatisfactory. The Airline agrees to inform IFP in writing of the reasons and supporting evidence for the demand to replace such employee, agent or sub-contractor. If IFP receives such a demand it shall replace such person.
- 29.2 IFP warrants that the core team will remain as specified at the outset of this Agreement unless any of this core team leaves IFP. In such circumstances, IFP warrants that it will replace such personnel with personnel of the same or higher caliber and experience.

- 29.3 It is imperative that a dedicated account manager is appointed to work on the Airline account. Should the current account manager leave IFP for whatever reason, the Airline is entitled to review the resumes of any prospective candidates for this role and approve the appointment, since working with the account manager will be a critical factor in the success of the working relationship of the Parties.

**30. NO AGENCY OR PARTNERSHIP**

- 30.1 Nothing in this Agreement shall constitute or be deemed to constitute a partnership between the Parties hereto or constitute IFP as agents of the Airline for any purpose whatsoever and IFP shall have no authority or power to bind the Airline or to contract in the name of or create a liability against the Airline in any way or for any purpose. For the avoidance of doubt in all its contracts for third party goods or services, IFP shall act as principal at law.

**31. NOTICES**

- 31.1 Every notice or communication under this Agreement must be in writing and may, without prejudice to any other form of delivery, be delivered personally or sent by post or transmitted by fax or email.
- 31.1.1 In the case of posting, the envelope containing the notice or communication must be addressed to the intended recipient at the authorised address of that Party and must be properly stamped or have the proper postage prepaid for delivery by the most expeditious service available (which will be airmail if that service is available) and, in the case of a fax or email, the transmission must be sent to the intended recipient at the authorised number or address of that Party.
- 31.1.2 Subject to **Clause 31.2**, for the purpose of **Clause 31**, please refer to **SCHEDULE 3 - CONTACT AND DELIVERY DETAILS** for the authorised address, fax number and email of each Party.
- 31.2 No change in any of the particulars set out in **SCHEDULE 3 - CONTACT AND DELIVERY DETAILS** will be effective against a Party until it has been notified to that Party.
- 31.3 A notice or communication will be deemed to have been duly given and received:-
- 31.3.1 on personal delivery to an addressee or on a business day to a place for the receipt of letters at that addressee's authorised address; or
- 31.3.2 in the case of posting, where the addressee's authorised address is in the same country as the country of posting, at 10 a.m. (local time at the place where the address is located) on the second business day after the day of posting; or
- 31.3.3 in the case of posting, where the addressee's authorised address is not the same country as the country of posting, at 10 a.m. (local time at the place where that address is located) on the fifth business day after the day of posting; or -
- 31.3.4 in the case of a fax, on issue to the sender of an O.K. result confirmation report or, if the day of issue is not a business day, at 10 a.m. (local time where the authorised fax number of the intended recipient is located) on the next business day or
- 31.3.5 in the case of an email, when the sender receives acknowledgement from the address.
- 31.4 For the purpose of **Clause 31.3**, a "**business day**" means a day which is not a Saturday or a Sunday or a public holiday in the country of posting or transmission or in the country where the authorised address or fax number of the intended recipient is located and, where a notice is posted, which is not a day when there is a disruption of postal services in either country which prevents collection or delivery.

32. **SUCCESSORS**

32.1 This Agreement is binding on the successors of each Party.

33. **LAW AND JURISDICTION**

33.1 This Agreement is governed by and will be construed in accordance with Hong Kong law.

33.2 The parties submit to the non-exclusive jurisdiction of the Hong Kong courts and each Party waives any obligation to proceeding in Hong Kong on the grounds of venue or inconvenient forum.

IN WITNESS whereof the Parties hereto have caused this Agreement to be duly executed by their authorised representatives the day and year first above written

Signed for  
**CATHAY PACIFIC AIRWAYS LTD.** by:

/s/ Alex McGowan  
\_\_\_\_\_  
Alex McGowan  
Manager Product

Date: \*\*\*

Signed for  
**HONG KONG DRAGON AIRLINES LTD.**  
by its duly authorized agent:

/s/ Alex McGowan  
\_\_\_\_\_  
Alex McGowan  
Manager Product

Date: \*\*\*

Signed for  
**INFLIGHT PRODUCTIONS LTD.**  
by:

/s/ Joan Barker  
\_\_\_\_\_  
Joan Barker  
Sales & Marketing Director

Date: \*\*\*

\_\_\_\_\_  
\*\*\* Confidential treatment requested.

Witnessed by:

/s/ Eva Chan  
\_\_\_\_\_  
Eva Chan  
Assistant Purchasing Manager - Marketing

Date: \*\*\*

Witnessed by:

/s/ Eva Chan  
\_\_\_\_\_  
Eva Chan  
Assistant Purchasing Manager - Marketing

Date: \*\*\*

Witnessed by:

/s/ Janet Winstanley  
\_\_\_\_\_  
Janet Winstanley  
Client Services Manager

Date: \*\*\*

**SCHEDULE 1 -PROGRAMME SPECIFICATIONS****For Cathay:****Specification of Western Movies****1. Overall Strategy for Movies**

- (a) Cathay aims to present a diverse and interesting range of movies from Hollywood's blockbusters to popular Asian movies, from the hottest new releases to classic movies.
- (b) The selection includes new releases, popular blockbusters and internationally acclaimed art house movies in multiple languages catering to the Cathay's diverse demographic mix. The languages include English, Cantonese, Mandarin, Japanese, Korean, Hindi, French, Italian and German
- (c) Movies are only available on routes of over 2 hours 40 minutes flying time.
- (d) On regional aircraft, \*\*\* movies are offered each month on the Distributed Channels (\*\*\* on inbound flights and \*\*\* on outbound flights) in all classes.
- (e) On long-haul Aircraft equipped with Panasonic 3000 IFE system, \*\*\* movies are offered each month on the Distributed Channels (\*\*\* on inbound flights and \*\*\* on outbound flights) in Economy Class while \*\*\* movies are offered each month on the AVOD system in First and Business Class.
- (f) On long-haul Aircraft equipped with Panasonic eX2 IFE system, \*\*\* Movies on the AVOD system are offered in all classes.

**2. Movies Categories**

- (a) A total of 50 movies are offered each month under the following categories:

Categories	Quantity available each flight			Description
	Distributed Channel		AVOD	
	Regional aircraft	Long-haul aircraft		
New Release	***	***	***	Hollywood's hottest new blockbusters. (***) of them are updated every month.)
Re-View	***	***	***	Hit movies from the past few years. (***) of them are updated every month.)
Arthouse	***	***	***	The best independent films and arthouse movies. (***) of them are updated every month.)
Asia on Film	***	***	***	Quality Asian cinema selected from the best in the region. (***) of them are updated every month.)
Disney	***	***	***	A selection of Disney movies for the young ones aboard. (***) of them is updated every month.)
Your Favourites	***	***	***	Our selection of specially- themed movies. (***) of them are updated every month.)
Total	***	***	***	

\*\*\* Confidential treatment requested.

**3. Specification of Western Movies**

- (a) Please refer to the Video Channel Line-up for details.
- (b) The quantity of movies shown below is the total number of movies required every month for both inbound and outbound flights.

Categories	Quantity	Movie Code	Language	Subtitles
<b>For distributed channels of long-haul flights of all aircraft:</b>				
New Releases	***	0/B: A, C,E, G, I, K 1/B: B, D, F, H J L	English (+1)	Chinese
Re-View	***	0/B: M 1/B: N	English ( +1)	Chinese
Arthouse	***	0/B: O 1/B: p	Original	Chinese
Disney	***	0/B: Y, AA 1/B: Z, BB	English and Cantonese	N/A
<b>For distributed channels of long-haul flights of long-haul aircraft only:</b>				
Re-View	***	0/B: CC 1/B: DD	English (+1)	Chinese (optional)
Arthouse	***	0/B: EE 1/ B: FF	Original	Chinese (optional)
<b>For AVOD of long-haul flights of long-haul aircraft only:</b>				
Re-View	***	N/A	English (+1)	Chinese (optional)
Arthouse	***	N/A	Original	Chinese (optional)
Your Favourites	***	N/A	English (+1)	Chinese (optional)
<b>TOTAL</b>	<b>***</b>			

- (c) Remarks:
- "0/B" means outbound flight, "1/B" means inbound flight
- The following movies are held over from the previous month:
- \*\*\* movies from New Releases
  - \*\*\* movies from Disney
  - \*\*\* movies from Re-View in AVOD system
  - \*\*\* movies from Arthouse in AVOD system
  - \*\*\* movies from Your Favourites in AVOD system
- "English (+1)" means the movie should be in English and it is preferable to have audio soundtrack of an additional language, which can be French, German, Italian, Japanese or Korean.
- "Original" means the audio soundtrack should be in original language of the movie, e.g. English, French, German and Italian.
  - "Chinese (optional)" means it is preferable to have Chinese subtitles if it is available.
- (d) Other Requirements
- There should be at least one movie with each of the additional languages in the movie mix each month.
- For \*\*\* out of the \*\*\* movies held over in the New Release category, the choice of additional language should be different from the one shown in the previous month.

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\*\*\* Confidential treatment requested.



**Specification of Western Short Features****1. Overall Strategy for Short Features**

- (a) Popular TV programmes are acquired from around the world. The selection includes popular sitcoms, lifestyle, documentary and sport programmes in English, Cantonese, Mandarin, Japanese and Hindi.
- (b) As well as high rating shows, we also seek to include a variety of niche programming that has received critical acclaim.
- (c) A total of up to \*\*\* of Western Short Features is offered on Distributed Channels (\*\*\* on inbound flights and \*\*\* on outbound flights) in all classes of regional Aircraft and in Economy Class of long-haul Aircraft equipped with Panasonic 3000 IFE system.
- (d) Over \*\*\* of Western Short Features are shown on AVOD system each month in First and Business Class of long-haul Aircraft equipped with Panasonic 3000 IFE system and in all classes of long-haul Aircraft equipped with Panasonic eX2 IFE system.
- (e) On routes over 2 hours 40 minutes flying time, compilations of 135-minute short feature programmes are shown on repeating cycles. There are 8 TV channels on flights operated by regional Aircraft while there are 12 TV channels on flights operated by long-haul Aircraft.
- (f) On routes under 2 hours 40 minutes flying time, compilations of 50-minute short feature programmes are shown on repeating cycles. There are 20 TV channels on flights operated by regional Aircraft while there are 26 TV channels on flights operated by long-haul Aircraft.
- (g) All programmes, except those in the TV Series category (TV box sets) are updated monthly, while at least one box set is updated every month. For short features offered on the Disney Channel, 2 hours of the programming is updated every 3 months.
- (h) 50-minute and 135-minute programming blocks are combinations of 30-minute programmes and 50-minute programmes. The number of programmes selected in a programming block may vary depending on the actual runtime of the programmes included. Extra fillers may be required to fill up a 50-min. or 135-min. programming block.

**2. Short Features Categories**

- (a) Over 80 hours of short features are offered each month under the following categories:

Categories	Quantity	Description
HKTv	30 min x *** 50 min x *** ***	Cantonese programmes and variety shows
TV Asia	30 min x *** 60 min x ***	An entertaining selection of Asian short features

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Comedy	30 min x ***	Smash-hit comedies from all around the globe
E! Entertainment	30min x *** 60min x ***	Gossip, style news and celebrity interviews from Hollywood
Lifestyle & Reality	30 min x *** 60 min x ***	Must-watch international reality and lifestyle shows

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Categories	Quantity	Description
Drama	60 min x ***	Action, romance and more from the world's hottest dramas
Documentary	30 min x *** 60 min x ***	Riveting and thought-provoking documentaries
Discovery	60 min x ***	Exploring the history and mysteries of our planet
Disney Channel	30 min x ***	The most popular cartoons from the Disney Channel
Sport	30min x *** 60 min x ***	News, profiles and highlights from the sporting world
News & Sports	15 min x *** (Daily) 30 min x *** (Weekly) *** (1 Hour)	Daily news and coverage of major sporting events
TV Series (Box Sets)	30 min x *** 3 x 60 minx *** (21 hours)	Get hooked on box-sets of the hottest TV shows on the planet
<b>Total</b>	***	

(b) Remarks:

- TV Series is only available in the AVOD library. It consists of \*\*\* Drama box sets (\*\*\* x 60 min), \*\*\* Documentary box set (\*\*\* x 60 min) and \*\*\* Comedy box set (\*\*\* x 30 min). Drama and Documentary box sets are updated quarterly, while the Comedy box set is updated bi-monthly.

### 3. Channel Line-up for Distributed Channels

Category	No. of channels available on each flight			
	Flights over 2 hr. 40 min. (Long-haul flights)		Flights under 2 hr. 40 min. (Short-haul flights)	
	Regional Aircraft	Long-haul Aircraft	Regional Aircraft	Long-haul Aircraft
HKTv	***	***	***	***
TV Asia	***	***	***	***
Comedy	***	***	***	***
E! Entertainment	*** (Outbound)	***	***	***
Lifestyle & Reality	*** (Inbound)	***	***	***
Drama	*** (Inbound)	***	***	***
Documentary	*** (Outbound)	***	***	***

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Discovery	***	***	***	***
Disney Channel	***	***	***	***
Sport	***	***	***	***
News & Sports	***	***	***	***
<b>Total</b>	*** (Inbound) ***	*** (Inbound) ***	***	***
	(Outbound)	(Outbound)		

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\*\*\* Confidential treatment requested.

**4. Specification of Western Short Features**

- (a) Please refer to the Video Channel Line-up for details.
- (b) The quantity shown below is the total number of Western Short Features Programmes required every month for both inbound and outbound flights.

Categories	Quantity	Language	Subtitles
Comedy	30 min x ***	English	Chinese (5 hours)
E! Entertainment	30 min x *** 60 min x ***	English	N/A
Lifestyle & Reality	30 min x *** 60 min x ***	English	N/A
Drama	60 min x ***	English	Chinese (6 hours)
Documentary	30 min x *** min x ***	English	N/A
Discovery	60 min x ***	English	N/A
Disney Channel	30 min x ***	English and Cantonese	N/A
Sport	30 min x *** 60 min x ***	English	N/A
TV Series (Box Sets)	30 min x *** (Comedy) 3 x 60 min x *** (2 Drama, 1 Documentary) ***	English	N/A
<b>TOTAL</b>	***		

- (c) Remarks:
- Chinese subtitles are required for \*\*\* hours of programmes in the category of Comedy and \*\*\* hours of programmes in the category of Drama.
  - Drama and Documentary box sets are updated quarterly, while Comedy box set is updated bi-monthly.

**Technical Specification for Western Movies and Western Short Features**

- (a) Specification for Broadcast Channels
- NTSC system
  - VHS cassettes
  - Stereo
- (b) Specification for AVOD
- Encoding: MPEG 1 @ 352 x 240  
Constant bit rate  
Video bit rate @ 1.5 Mb/s
  - Audio bit rate @ 128kb/s  
NTSC @ 30 fps

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\*\*\* Confidential treatment requested.

**Specification of Audio****1. Overall Strategy for Audio**

- (a) Cathay strives to bring passengers the best audio entertainment in the sky. The music incorporates various genres and styles from all around the world. It is carefully chosen to suit all musical tastes. There are currently 22 broadcast radio channels in 9 different languages for passengers to select from. The programmes range from the latest pop and rock to classical, jazz, relaxation tips and interviews with the stars. They are available for passengers of all classes.
- (b) Audio on Demand (AOD) system with a CD library is available to passengers in First and Business Class on long-haul aircraft equipped with Panasonic 3000 IFE system and passengers in all classes on long-haul aircraft equipped with Panasonic eX2 IFE system. There is also a Juke Box function that allows passengers to compile their own song list.
- (c) There are currently 10 categories featuring approximately 150 CD albums from around the globe. 15 CDs are updated on a monthly basis. In addition to the CD library, 12 CDs are selected specifically for children.
- (d) Boarding music is produced every year and is played on all flights during take off and landing for passengers to relax and enjoy.

**2. Radio Channels**

- (a) There are a total of 22 customised radio channels available in all classes on all routes. All channels are broadcast in a repeating cycle of 120 minutes.

No.	Channel name	Description	Update frequency	Language
1	Hot:HK	Hosted programme with the greatest Cantonese pop from HK charts. Upbeat & Lively, targets passengers of 20s to 40s.	Monthly	Cantonese
2	A Musical Journey	Hosted programme with the most memorable tunes. Stories interweave between songs. Targets more mature passengers.	Monthly	Cantonese
3	Mandarin Zone	Hosted programme with latest Mandarin hits including artist interviews.	Monthly	Mandarin
4	Chinese All Time Hits	Hosted programme with the most memorable Chinese hits from the good old days.	Monthly	Cantonese
5	J-Pop	Hosted programme with the latest Japanese Pop music or New Enka.	Monthly	Japanese
6	Mumbai Beat	Hosted programme with a mix of Indian fusion, Bollywood remixes, Bollywood songs, ghazals and older film music.	Monthly	Indian
7	Philippine Soundwave	Hosted programme the latest and best from the Philippine music world.	Monthly	Tagalog
8	Classical Moods	Popular and familiar light classics from the great composers, uninterrupted. (No Presenter)	Monthly	N/A
9	Classical Choice	Hosted programme with a mix of favourite pieces from the lighter side of the classical-music repertoire, with works by a varied collection of composers.	Monthly	English
10	All Time Hits	Hosted programme with favourite hits from the 50s, 60s and 70s.	Monthly	English

No.	Channel name	Description	Update frequency	Language
11	Rewind	Hosted by programme with the 80's to 90's Q_top or rock show.	Monthly	English
12	Popzone	Hosted programme with the fastest moving, high-flying chart show direct from Planet Pop! All the latest tracks are here from some of the biggest stars in music today.	Monthly	English
13	Rock	Hosted programme with a selection of the best rock in the sky as he plays new and classic music from some of the world's greatest bands.	Monthly	English
14	Dancescape	Hosted programme with the DJ's personal selection, get in the beat or simply chill out to these tunes.	Monthly	English
15	Easy Moods	Hosted programme with a mellow mix of light contemporary love songs and ballads from a diverse group of artists.	Monthly	English
16	Jazz	Hosted programme with a collection of cool, laid-back jazz.	Monthly	English
17	Serenity	two hours of physical and mental relaxation, peaceful music, health and travel tips etc. (No presenter)	Bi-monthly	English
18	Music Special	Hosted programme with two hours of music and celebrity interviews.	Bi-monthly	English
19	J-Medley	Hosted programme with older pop songs and all time hits from 70s to early 2000s. This channel also includes some instrumental pieces, light jazz and well-known Enka.	Bi-monthly	Japanese
20	Korean Music Box	Hosted programme with music from the movies, TV and chart-topping artists of Korea.	Bi-monthly	Korean
21	Malay Hits	Hosted programme with the current Malaysian music. A big portion of the channel will spotlight the latest Malay pop songs, and there are also some more popular Indonesian pop songs.	Bi-monthly	Malay
22	Thai Mix	Hosted programme with a variety of Thai contemporary hits.	Bi-monthly	Thai

- (b) Each audio channel is 120 minutes in length and has approximately 26 tracks.
- (c) All channels, except 'Classical Moods' and "Serenity", are hosted with one presenter. (d) The presenters must be suitable for Cathay's demographics, and should not have strong accents.
- (e) There are currently no sponsored channels.
- (f) Jingles are sometimes used and are permitted. (g) Presenters usually make reference to Cathay.
- (h) Presenters may conduct interviews with celebrities or guests where appropriate.
- (i) Method of recording is flexible as long as the end product is suitable for inflight listening. They can be recorded either on computer or in studio.
- (j) 16 channels are updated every month while 6 channels are updated bi-monthly.

### 3. Audio on Demand (AOD) Library

- (a) The AOD Library is available to passengers in First and Business Class on long-haul aircraft equipped with Panasonic 3000 IFE system and passengers in all classes on long-haul aircraft equipped with Panasonic eX2 IFE system. There are currently 10 categories featuring up to 150 CD albums.

Genre	Description
All Time Hits	"Best of ...." compilations from major artists and specifically to feature officially released 'Greatest Hits' albums by international selling artists.
Classic Albums	Classic albums are generally considered to have stood the test of time, and remained popular throughout changing trends in recent music history, e.g. Hotel California of Eagles, Sgt. Pepper's Lonely Hearts Club Band of Beatles.
Rock & Pop	The biggest new releases and internationally renowned pop and rock performers, Western pop COs from the US and UK charts, e.g. Confessions On The Dance Floor of Madonna and X & Y of Coldplay.
Easy Listening	A cool and pop collection of contemporary easy listening ballads.
Country	A dedicated channel for 'Country' enthusiasts.
Jazz	A dedicated channel for 'Jazz' enthusiasts. Focus on internationally popular artists.
Soundtracks	Introduce classic musicals, soundtracks of movies like Grease, Saturday Night Fever etc.
Classical	Includes classical and opera music. Mostly well-known popular favourites with a few more challenging works.
Cantonese	Latest Cantonese pop albums, plus new releases of older artists (e.g. Greatest Hits releases). New albums of old songs including New and Best of, e.g. Tribute to Leslie Cheung.
Asian Selection	Primarily pop for Mandarin like Fish Leong, Stefanie Sun, old COs like Teresa Teng, Emil Chau; Korean e.g. BoA, Rain & Japanese including some old albums like The best of Pink Lady, New Enka e.g. Kiyoshi Hikawa; Japanese easy listening e.g. Ken Hirai & Rimi Natsukawa; and selections from other countries occasionally (Philippines, Hindi).

- (b) There is currently a CD library of approximately 150 COs.
- (c) There is a Juke Box function that allows passengers to compile their own song list. (d) 15 COs will be changed every month to ensure that the assortment is up-to-date.
- (e) The COs are divided into 10 categories and a minimum of five COs is required in each category.
- (f) In addition to the CD library, 12 COs are specially selected for children, aged from 3 to teen. COs in the Kids category are updated on ad hoc basis as agreed between the parties.

### 4. Boarding Music

- (a) Boarding music is played during take off and landing when the IFE system is switched off.
- (b) Flashcards (2 types: PCMCIA and Compact Flash) are used for boarding music.
- (c) 3 sets of boarding music are produced every year: 1st set is used in January, February, July and August, 2nd set is used in March, April, September and October and 3rd set is used in May, June, November and December.



- (d) Boarding music is 30 minutes long and can range from 3 to 7 tracks depending on the length of the track.
- (e) For existing Panasonic PRAM System, 6 flashcards are required per year, based on 2 duplications for each new variation of boarding music (i.e. 3 variations produced per year)
- (f) For Airbus A340-600 iPRAM System, 1 flashcard is needed per aircraft that holds ALL boarding music for a whole year. Under current practice, the flashcard is sourced locally by Cathay and Cathay's engineers programme the boarding music into the flashcards.
- (g) Requirements for boarding music: it should be non-intrusive, easy listening and reflect Cathay's branding.

### **Technical Specifications for Audio**

#### **1. Radio Channels**

- (a) One set of CDs is required for each aircraft and extra sets of CDs are required as buffer.
- (b) All CDs should contain mono tracks and there are no stereo tracks. On each CD, there should be 4 mono tracks.
- (c) For aircraft equipped with Panasonic eX2 !FE system, the "Radio Channels" will be run in AOD format. For all other aircraft, the "Radio Channels" will be run on CD format.
- (d) The update frequency and channels per track information are detailed below:

<b>CD no.</b>	<b>Channel no.</b>	<b>Current Categories</b>	<b>Programme Cycle</b>
CD 1 ex	4	Hot: HK	Monthly
	5	A Musical Journey	
	6	Mandarin Zone	
	7	Chinese All Time Hits	
CD 2 ex	8	J-Pop	Monthly
	9	Mumbai Beat	
	10	Philippine Soundwave	
	11	Classical Moods	
CD 3 ex	12	Classical Choice	Monthly
	13	All Time Hits	
	14	Rewind	
	15	Pop Zone	
CD 4 ex	16	Rock	Monthly
	17	Dancescape	
	18	Easy Moods	
	19	Jazz	
CD 5 ex	20	Serenity	Bi-monthly
	21	Music Special	
	22	J-Medley	
	23	Korean Music Box	
CD 6 ex	24	Malay Hits	Bi-monthly
	25	Thai Mix	

## 2. AOD specification

- (a) Audio Elementary Stream: AES
  - Layer 1 & 2 Audio (MP1MP2 NOT MP3)
  - Joint stereo/stereo/mono/dual
  - Bit rate @ 128 Kbs
  - Sample Rate @ 44.1KHz
- (b) Transport stream file format:
  - PAT PID = 0x00
  - PMT PID = 0x3F
  - PCR PID = 0x30
  - Video ES 1PID = 0x30
  - Audio ES 1PID=0x31
  - Audio ES 1PID = 0x32 OPTIONAL
  - Audio ES 1PID=0x33 OPTIONAL
  - Audio ES 1PID=0x34 OPTIONAL

## 3. Boarding Music specification

- (a) For the current Panasonic IFE System, PRAM is used. Model is RDA X7673-01 and RDAX7675-01 which supports 40MB PCMCIA flashcards. All flashcards need to be encoded by the Panasonic encoder. IFP is required to update the flashcards with the encoded contents
- (b) For Airbus A340-600 iPRAM System, the unit is integrated into the Airbus FAP unit which supports up to 256MB COMPACT FLASH flashcards. The contents are encoded in MP3 format and put on the flashcard via the KID Compiler tool. IFP is required to provide the content in a CD for Cathay to update it to the COMPACT FLASH flashcard on the aircraft.

**For Dragonair:****Specification of Western Movies****1. Overall Strategy for Movies**

- (a) Dragonair aims to present a diverse and interesting range of movies from Hollywood's blockbusters to popular Asian movies, with content free from controversial topics touching on political, racial, cultural and religious issues.
- (b) The selection includes new releases, popular blockbusters and Asian movies in multiple languages catering to the airline's diverse demographic mix.
- (c) Movies are only available on routes over 2 hours 40 minutes flying time.
- (d) \*\*\* movies are offered each month, \*\*\* are Hollywood movies, \*\*\* are Asian movies and \*\*\* are movies from Disney, i.e. \*\*\* movies on inbound flights and \*\*\* on outbound flights.
- (e) The Hollywood movies are shown on both mainscreen and personal TV while Asian movies and Disney movies are shown on personal TV only.
- (f) The Hollywood movies are updated on bi-weekly basis, the Asian movies are updated on monthly basis while the Disney movies are updated on quarterly basis.
- (g) For the movies shown on the Japanese routes, they are required to be duplicated with English and Japanese audio soundtracks to cater for the Japanese passengers. Chinese subtitles are required.
- (h) For Western movies, there is English soundtrack with appropriate Chinese subtitles. For Film Asia movies, there is original language soundtrack with Chinese and English subtitles.

**2. Movie Categories**

- (a) A total of \*\*\* movies, \*\*\* for inbound flights and \*\*\* for outbound flights, are offered each month under the following categories :

Categories	Description	Quantity Required
Blockbusters	Showcasing all the action from the biggest Hollywood blockbusters	***
Film Asia	Get ahead with this fine selection of the latest Asian movies	***
Disney	Disney movies for the kids and the whole family	***

**3. Specification of Western Movies**

- (a) Please refer to the Video Channel Line-up for details.
- (b) The quantity shown below is the total number of programmes required every month for both inbound and outbound flights.

Categories	Language	Subtitles	Update Frequency	Quantity per cycle
Blockbusters	English	Chinese	Bi-weekly	***
Disney	English and Cantonese	N/A	Quarterly	***

- (c) Chinese subtitles can be in Traditional Chinese or Simplified Chinese.

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\*\*\* Confidential treatment requested.

## Specification of Western Short Features

### 1. Overall Strategy for Short Features

- (a) In view of Dragonair's operating network, the majority of the routes have a flying time of under 2 hours and 40 minutes. As such, only short feature programmes will be broadcasted on these routes, resulting in a demand for a wide variety of quality short feature programmes in the genres of lifestyle, sports, documentary, popular sitcoms, business and entertainment, etc.
- (b) For routes less than 2 hours flying time, compilations of 60-minute short feature programmes are shown on repeating cycles. For routes between 2 hours and 2 hours 40 minutes, compilations of 80-minute programmes are shown. For routes over 2 hours 40 minutes flying time, movies and compilations of 135-minute are shown.
- (c) There is 1 main-screen channel on all classes of the A321 fleet. There are 5 PTV channels on First Class and 1 main-screen channel on Business and Economy class on the A33R fleet while there are 10 PTV channels on all classes of the A33A and A33L fleets.
- (d) All programmes are updated monthly except for those featured in the mainscreen that they are updated bi-weekly and programmes in Disney & Disney Channel that they are updated quarterly. The programming is different for inbound and outbound flights.
- (e) For 30-minute and 135-minute programming blocks, they are combination of 30-minute and 60-minute programmes. The number of programmes selected in a programming block may vary depending on the actual runtime of the programmes included. Extra fillers may be required to fill up an 80-minute or 135-minute programming block.
- (f) The 60-minute and 80-minute short feature programming blocks showing on main-screen of the A33R and A321 aircraft are updated bi-weekly and they will be shown on the channel of "On Air TV". The programmes shown on the main-screen channels cannot be repeated due to the lack of channel choices as well as the presence of frequent fliers on our regional flights.
- (g) The language requirements for Western short feature programmes should include a soundtrack in English with appropriate Chinese subtitles. For Asian short feature programmes, there should be original languages soundtrack (Cantonese, Mandarin or Japanese, etc.) with English subtitles.

### 2. Short Feature Categories

- (a) A total of \*\*\* hrs of programmes are offered each month under the following categories:

Categories	Description	Quantity per Month
Asian TV (Cantonese)	Lifestyle, travel, and variety shows, documentary, magazine programmes.	*** hrs
Asian TV (Mandarin)	Lifestyle, travel, and variety shows, documentary, magazine programmes. (Mandarin)	*** hrs
Comedy	Sitcoms, popular shows	*** hrs
Discovery	Documentaries about nature, science, history and culture.	*** hrs
Lifestyle	Technological trends, fashion, fine dining/cooking, travel, design (e.g. interior, architecture), modern living	*** hrs
Sports	Profiles, classic matches, documentaries from the world of sport	*** hrs
Drama	Dramatic, action, romantic TV hits from US & UK	*** hrs

\*\*\* Confidential treatment requested.

<b>Categories</b>	<b>Description</b>	<b>Quantity per Month</b>
Business	Current affairs, documentaries and profiles from a business perspective.	*** hrs
Ent-Magazine	Gossip, news and interviews from behind the scenes from Hollywood and beyond. Light- hearted Reality TV shows and contests.	*** hrs
Disney Channel	Animation and TV hits for the kids and the whole family (Disney)_	*** hrs

### 3. Specification of Western Short Features

- (a) Please refer to the Video Channel Line-up for details.
- (b) The quantity shown below is the total number of programmes required every month for both inbound and outbound flights.

<b>Categories</b>	<b>Language</b>	<b>Subtitles</b>	<b>Quantity per Month</b>
Comedy	English	Chinese	*** hrs
Discovery	English	Chinese	*** hrs
Lifestyle	English	Chinese	***hrs
Sports	English	Chinese	***hrs
Drama	English	Chinese	*** hrs
Business	English	Chinese	*** hrs
Ent-Magazine	English	Chinese	*** hrs
Disney Channel	Cantonese	N/A	*** hrs

- (c) Chinese subtitles can be in Traditional Chinese or Simplified Chinese.

### Technical Specification for Western Movies and Western Short Features

- (a) Specification for Broadcast Channels

- NTSC system
- VHS cassettes
- Hi-8 tapes
- Stereo broadcast

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\*\*\* Confidential treatment requested.

**Specification of Audio****1. Overall Strategy for Audio**

- (a) Tune in to On Air Radio, Dragonair's hip 16-channel selection of inflight airwaves for passengers of all cabin classes. With a wide range of premium audio entertainment showcasing the newest and best of East and West, timeless classics of rock and jazz, stirring orchestral performances and music from favourite movies, as well as soothing sounds and mellow melodies to relax with, the programming strategy of On Air Radio is simply to give the greatest choice of audio entertainment to Dragonair's passengers.
- (b) On Air Radio's 16-customised audio channels are available in all cabin classes on IFE-equipped aircraft. All channels are broadcast in a repeating cycle of 120 minutes. Of which, 4 channels are presented by DJs.

**2. Radio Channels**

- (a) There are a total of 16 customised radio channels available in all classes on all routes. All channels are broadcast in a repeating cycle of 120 minutes.

<b>No.</b>	<b>Channel name</b>	<b>Description</b>	<b>Update frequency</b>	<b>Language</b>
1	Canto Pop	Hosted Programme. Includes an artist feature segment which showcases three tracks from a single artist, plus a review of their musical history and sometimes an interview.	Monthly	Cantonese
2	Mandarin Pop	Hosted programme. The hottest stars from Hong Kong, Taiwan, Mainland China and Asia are featured in this jam-packed Mandarin pop show featuring all the latest hits!	Monthly	Mandarin
3	Chinese Gold	Hosted programme with the very best Chinese Gold hits including an hour each of Cantonese and Mandarin tracks, to take passengers on a musical journey through time!	Monthly	Cantonese & Mandarin
4	Pop Hits	Hosted programme. An up-tempo and fun mix of new and forthcoming releases plus some more established tracks from the international pop charts.	Monthly	English
5	Classical Moods	Popular and familiar light classics from the great composers, uninterrupted. (No presenter)	Monthly	N/A
6	Jazz	A collection of cool, laid-back jazz. (No presenter)	Monthly	English
7	Rewind	A programme of 80's to 90's pop or rock show. (No presenter)	Monthly	English
8	Easy Moods	A mellow mix of light contemporary love songs and ballads from a diverse group of artists. (No presenter)	Monthly	English
9	Rock	A selection of the best rock in the sky as we play new and classic music from some of the world's greatest bands. (No presenter)	Monthly	English
10	All Time Hits	A programme of favourite hits from the 50s, 60s and 70s. (No presenter)	Monthly	English

No.	Channel name	Description	Update frequency	Language
11	Dancescape	Get in the beat or simply chill out to these tunes. (No presenter)	Monthly	English
12	J-Pop	The latest Japanese Pop music or New Enka. (No presenter)	Monthly	Japanese
13	Korean Music Box	Music from the movies, TV and chart-topping artists of Korea. (No presenter)	Bi-monthly	Korean
14	Thai Mix	A variety of Thai contemporary hits. (No presenter)	Bi-monthly	Thai
15	Taiwanese Favourites	A great mix of current Taiwanese or Min Nan song, plus recent classics. The selection of music will have huge appeal to the target audience. (No presenter)	Bi-monthly	Taiwanese
16	Chinese Classical	An enchanting and captivating mix of traditional Chinese classical music played on traditional instruments, plus pieces composed by famous Chinese composers for western orchestras. (No presenter)	Bi-monthly	N/A

- (b) Each audio channel is 120 minutes in length and has approximately 26 tracks.
- (c) All channels, except 'Canto Pop', 'Mandarin Pop', 'Pop Hits' and 'Chinese Gold', are not hosted.
- (d) The presenters must be suitable for Dragonair's demographics, and should not have strong accents.
- (e) Jingles are sometimes used and are permitted.
- (f) Presenters usually make reference to Dragonair.
- (g) A monthly marketing message (i.e. related to promotions, latest news, selling of the Dragonair's brand) will be provided to the presenter on the 13th of each month, so that it will be included in each hosted channel's talks, for programmes to be run 2 months later.
- (h) Presenters may conduct interviews with celebrities or guests where appropriate.
- (i) Method of recording is flexible as long as the end product is suitable for inflight listening. They can be recorded either on computer or in studio.

### 3. Boarding Music

- (a) Boarding music is played on all flights during take off and landing for passengers to relax and enjoy. Dragonair commissioned local musician Johnny Yim to compose five exclusive tracks of ambient music representing five unique aspects of our region's cultures.
- (b) Dragonair commissioned the exclusive composition of the 5 instrumental music pieces for use as ambient music and/or any purposes as it desires.
- (c) Since the Masters for the boarding music have been produced, IFP is only required to update and encode the flashcards and cassettes according to this schedule.

### 4. Technical Specifications

- (a) Broadcast specifications

One set of CDs is required for each Aircraft in the Dragonair Fleet and extra sets of CDs are required as buffer.

- All CDs should contain mono tracks and there are no stereo tracks. On each CD, there should be 4 mono tracks.

## (b) Boarding Music Specifications

A combination of PRAM/BGM Reproducers that supports flashcards and cassette tapes is used across the Dragonair's fleet of A330, A321 and A320 aircraft. The models that support flashcards are RDAX7675-51 and RDAX7675-01. The models that support cassette tapes are RDAX7271KA01, RDAX7271ZZZZ and RDAX7271CX01.

- All flashcards and cassette tapes need to be encoded by the Panasonic encoder. IFP is required to update the flashcards and cassette tapes with the encoded contents
- There are 2 storage formats for the Boarding Music. Below is a summary of the BGM Source and storage formats of the respective aircraft:

**Fleet Boarding Music Source**

<b>A330</b>	<b>Flashcard</b>	<b>Cassette</b>	<b>A320</b>	<b>Flashcard</b>	<b>Cassette</b>	<b>A321</b>	<b>Flashcard</b>
HYA		Yes	HSD		Yes	HTD	Yes
HYB		Yes	HSE		Yes	HTE	Yes
HYD		Yes	HSF		Yes	HTF	Yes
HYE		Yes	HSG		Yes	HTG	Yes
HYF		Yes	HSH		Yes	HTH	Yes
HYG	Yes		HSI		Yes	HTI	Yes
HYH	Yes		HSJ		Yes		
HYI	Yes		HSK	Yes			
HYJ	Yes		HSL	Yes			
HYO	Yes		HSM	Yes			
HWF	Yes		HSN	Yes			
HWG	Yes						
<b>A330</b>	<b>Flashcard</b>	<b>Cassette</b>	<b>A320</b>	<b>Flashcard</b>	<b>Cassette</b>	<b>A321</b>	<b>Flashcard</b>
HWH	Yes						
HWI	Yes						
HWJ	Yes						
HWK	Yes						

No of cassette based a/c 12

No of flashcard based a/c 21

## (c) Boarding Music Update Schedules &amp; Process

- Cassette tape-based aircraft - In view of the durability of the cassettes and to pre-empt wear and tear, cassettes are updated on a bi-monthly basis, in each ODD month.
- Flashcard-based aircraft - As the boarding music is stored digitally in the system memory, the boarding music only needs to be updated whenever the actual boarding music is required for change.
- Due to the Panasonic IFE systems' proprietary encoding requirements, the boarding music update for flashcards and cassettes must be performed at a facility equipped with the relevant Panasonic encoder hardware and software.



1. For Western Movies, wherever possible, the theatrical (unedited) version is preferred.
2. For Western Short Features, only episode-based programmes should be considered and TV serial should not be selected as long as programme is offered as broadcast channels instead of AVOD.
3. Programmes selected must not contain the following scenes or elements, or the related scenes or elements must be edited out :
  - 3.1 Full frontal nudity
  - 3.2 Derogatory portrayal of China or Chinese citizens
  - 3.3 Possession / Satanism
  - 3.4 Active promotion of other airlines
  - 3.5 Explicit sex scene, including special sexual orientation
  - 3.6 Extremely strong language and swearing
  - 3.7 Extensive nudity
  - 3.8 Extreme violence, including extreme scenes of blood and gore
4. Attention must be brought to Cathay if programmes contain the following elements:
  - 4.1 Scenes or reference to aircraft crashes, hijacks, disasters, and hostage-taking
  - 4.2 Controversial political issues, including criticism of Communist doctrine or Government
  - 4.3 Religious content, including scenes disrespectful to sacred animals
  - 4.4 Containing explicit reference to Cathay Pacific or other airlines
5. For Western Movies, movie rating (e.g. R, PG-13) from terrestrial release must be provided for reference. Attention must be brought to the Airline if any NC-17 is recommended.
6. Applicable warnings and intensity levels must be indicated for each movie during title selection recommendation:
  - 6.1 Warnings
    - A: Strong adult themes - Including drug use, criminal acts, etc.
    - C: Aircraft incidents
    - L: Strong language
    - N: Nudity
    - P: Political themes
    - R: Religious content
    - S: Sexual content
    - V: Violence, blood or gore
  - 6.2 Intensity Levels
    - The Intensity levels of each warning should be indicated by High (H), Medium (M), or Low (L).
    - e.g. For a TV programme with a high intensity of strong language, medium violence, and low sexual content, the warnings should be indicated as followed: L (H), V (M), S (L)

**For Audio Programmes**

1. Audio content must not contain:
  - 1.1 Offensive swearing
  - 1.2 Religious criticism
  - 1.3 Controversial political issues
  - 1.4 Interviews should not be overtly promotional
  - 1.5 Reference to aircraft disasters or crashes
  - 1.6 Promotion of competitive airlines
  - 1.7 Derogatory portrayal of China or Chinese citizens
  - 1.8 Presenters or interviewees with language and dialect, which may be hard to follow, for example, Irish, Scottish, Afro-Caribbean.

**SCHEDULE 3 -CONTACT AND DELIVERY DETAILS**

**Contact Information of the Airline:**

8/F North Tower  
Cathay Pacific City  
8 Scenic Road  
Hong Kong International Airport  
Lantau, Hong Kong

Contact Person:  
Mr. Clement Au  
Manager Inflight Communication and Entertainment  
Tel: (852) 2747 5148  
Fax: (852) 2141 5148  
Email: Clement\_au@cathaypacific.com

Ms. Eva Chan  
Assistant Purchasing Manager - Marketing  
Tel: (852) 2747 4187  
Fax: (852) 21414187  
Email: eva\_chan@cathaypacific.com

**Contact Information of IFP:**

15 Stukeley Street  
London WC2B  
SLT United  
Kingdom

Contact Person:  
Ms. Janet Winstanley  
Client Services Manager  
Tel: (44) 20 7400 0733  
Fax: (44) 20 7400 0745  
Email: janet.winstanley@inflightproductions.com

**Delivery Address for Promotional Materials:**

ACP Magazines Asia Limited  
Suite 604-605  
625 King's Road  
North Point, Island East  
Hong Kong

Contact Person:  
Elisabeth Attwood  
Entertainment editor  
Tel: (852) 3921 7051  
Fax : (852) 39217099  
Email: eattwood@acpmagazines.com.hk

**Delivery Address for Video Cassettes:**

**For Cathay:**

Cathay Pacific Airways  
C/O HAECO  
2/F, 80 South Perimeter Road  
Hong Kong International Airport  
Lantau, Hong Kong

Contact Person:

Mr. Frankie Leung  
Tel: (852) 2787 6336  
Fax: (852) 2767 6852  
Email: ow.leung@haeco.com

**For Dragonair:**

Dragonair  
C/O Cabin Services of  
China Aircraft Services Ltd.  
4N505 Passenger Terminal Building  
1 Cheong Hong Road  
Hong Kong International Airport  
Lantau, Hong Kong

Contact Person:

Mr. Patrick Chan  
Tel: (852) 2261 2311  
Fax: (852) 2261 2312  
Email: patrick.chan@casl.com.hk

**Delivery Address for Audio COs:**

**For Cathay:**

Cathay Pacific Airways  
C/O HAECO  
2/F, 80 South Perimeter Road  
Hong Kong International Airport  
Lantau, Hong Kong

Contact Person:

Mr. Frankie Leung  
Tel: (852) 2787 6336  
Fax: (852) 2767 6852  
Email: ow.leung@haeco.com

**For Dragonair:**

Cathay Pacific Airways  
C/O HAECO  
2/F, 80 South Perimeter Road  
Hong Kong International Airport  
Lantau, Hong Kong

Contact Person:

Mr. Victor Kwan  
Tel: (852) 2767 6776  
Email: victor.kwan@haeco.com

**Delivery Address for Boarding Music Flashcard:**

Cathay Pacific Airways  
Product Department  
8/F North Tower  
Cathay City  
8 Scenic Road  
Hong Kong International Airport  
Lantau, Hong Kong

**For Cathay:**

Contact Person:  
Ms. Mimi Chan  
Tel: (852) 2747 5345  
Fax: (852) 2141 5345  
Email: mimi\_chan@cathaypacific.com

**For Dragonair:**

Contact Person  
Ms. Mun Wong  
Tel: (852) 2747 4133  
Fax: (852) 2141 4133  
Email: siu\_mun\_wong@cathaypacific.com

**Delivery Address for Digital Media for Media Integration for Cathay:**

Inflight Productions Limited  
15 Stukeley Street  
London WC2B  
SLT United  
Kingdom

Contact Person:  
Mr. Marc Fegredo  
AVOD Coordinator  
Tel: (44) 207 400 8582  
Fax: (44) 207 400 0707  
Email: marc.fegredo@inflightproductions.com

**Delivery Address for the Airline to return the cassette of Western Movies for destruction:**

Inflight Productions Inc  
Suite 201, 615 N Nash St.  
El Segundo, CA 90245  
USA

Contact Person:  
Ms. Sharon Engelenburg, Operations Manager  
Tel: (1) 310 414 6900 ext 114  
Email: sharon.engelenburg@inflightproductions.com

**SCHEDULE 4- BUDGET FOR \*\*\***

(To be inserted)

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\*\*\* Confidential treatment requested.

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**SCHEDULE 5- KEY PERFORMANCE INDICATORS**

(To be inserted)

**Key Performance Indicators - IFP Production Services****Evaluation Period:****Overview**

The Key Performance Indicators are a set of recognized parameters by which CX measures the service providers performance

**Frequency**

The basis of the Key performance indicators outlined in this document will be completed every 6 months as part of the Supplier Performance Evaluation Process. The reviews are likely to take place in July and January.

The KPI's will be evaluated on an annual basis to ensure they accurately reflect appropriate parameters for measurement.

**Scoring Panel**

In response to the evaluation process key members of CX who interface with the service provider on a regular basis will complete the evaluation sheet judging the service provider against each of the 6 constructs outlined and will give a score ranging from 1 - 5 as detailed below.

**Scoring Mechanism**

Each person scoring the performance of the service provider will enter a "1" under the appropriate score, I.e. 5, 4, 3, 2, or 1 for each statement. The KPI spreadsheet will automatically calculate the overall scores.

Totally Satisfied/Far exceeds expectations	<b>5</b>
Mostly Satisfied/Always meets but at times exceeds expectations	<b>4</b>
Somewhat Satisfied/meets expectations	<b>3</b>
Dissatisfied/below expectations	<b>2</b>
Fail	<b>1</b>

Comments will be provided during the review process for each of the 6 sections. Where a "1" or "2" has been awarded, specific comments related to that particular score will be detailed and shared with the service provider.



### 360 Degree Feedback

Supplier: Inflight Productions Limited

Duration: \_\_\_\_\_

The aim of 360 degree feedback is for the supplier to provide feedback on Cathay Pacific's performance. It should focus on ways in which an improvement in Cathay's way of working could help the supplier perform the role for which they have been appointed more efficiently. The feedback is meant to be constructive and will help identify areas for Cathay to focus in order to improve the working relationship and efficiency of the supplier.

Scores:

5: Excellent

4: Good

3: Average

2: Development Needed

1: Poor / Disappointing

Please underline and bold the score for the evaluation period, e.g. **2**.

<b><u>1. Communication</u></b>	<b>SCORE</b>
• Lines of communication are clearly defined and effective (i.e. work in practice)	1 2 3 4 5
• Levels of authority and decision making power are clearly understood.	1 2 3 4 5
• Role responsibilities within the IFE team and APD team are clearly set out and defined. (Does confusion arise as to who performs which role?)	1 2 3 4 5
• Important information told to one member of CX is disseminated to the correct people.	1 2 3 4 5
• A coherent message is given from all contact points within CX (are there conflicting messages?)	1 2 3 4 5
• Deadlines and timescales are clearly communicated	1 2 3 4 5
<b>Overall Score</b>	<b>12345</b>
<b>Comments</b>	
<b><u>2. Personnel and working relationship</u></b>	<b>SCORE</b>
• People are quick to respond to queries and emails.	1 2 3 4 5
• Approvals on programming suggestions are timely.	12345
• Cx personnel are easy to deal with, professional, yet helpful and approachable.	12345
• Cx personnel have adequate knowledge of IFE technical issues required to perform their role effectively?	12345

Schedule Sb - IFP Feedback to Cathay

<b>Overall Score</b>	<b>12345</b>
<b>Comments</b>	
<b>5. Information sharing</b> <ul style="list-style-type: none"> <li>The format and analysis of survey results and AVOD usage data is easy to understand and well presented.</li> <li>CX provides regular updates with regards information related to Cathay, such as new routes, new initiatives etc.</li> <li>Cx provides correct duplication volumes in sufficient time.</li> </ul>	<b>SCORE</b> 1 2 3 4 5 1 2 3 4 5 1 2 3 4 5
<b>Overall Score</b>	<b>1 2 3 4 5</b>
<b>Comments</b>	<b>12345</b>
<b>6. Third Parties</b> <ul style="list-style-type: none"> <li>Cx helps to ensure that third party suppliers integrate well.</li> <li>Cx understands the challenges of working with other third parties.</li> <li>Cx is effective at coordinating themes and ideas among all IFE suppliers.</li> <li>Cx helps to ensure that third party suppliers meet their deadlines.</li> </ul>	<b>SCORE</b> 1 2 3 4 5 1 2 3 4 5 1 2 3 4 5 1 2 3 4 5
<b>Overall Score</b>	<b>12345</b>
<b>Summary</b>	

#### Schedule 5b - IFP Feedback to Cathay

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AGREEMENT BETWEEN  
CATHAY PACIFIC AIRWAYS LIMITED, HONG KONG DRAGON AIRLINES LIMITED AND INFLIGHT PRODUCTIONS  
LIMITED

For the Supply of Programming and Production Services  
for Inflight Entertainment (Western Programmes)

AGREEMENT AMENDMENT

This AGREEMENT AMENDMENT ("Amendment") is dated \*\*\* and Is made between Cathay Pacific Airways Limited ("Cathay"), Hong Kong Dragon Airlines Limited ("Dragonair") and Inflight Productions Limited ("IFP") to amend the AGREEMENT ("Agreement") which was made on \*\*\*, as amended by Agreement Amendment which was made on \*\*\* and the extension notice letter which was made on \*\*\*.

RECITALS

The parties agree to extend the Term of the Agreement for \*\*\* months and the Term will be further renewed for another \*\*\* subject to Cathay's/Dragonair's discretion.

The definitions in the Agreement are incorporated by reference into this Amendment, and shall be deemed to have the same meanings as those ascribed to them in the Agreement unless otherwise set forth herein.

NOW, THEREFORE, the parties agree this Agreement Amendment to supersede the previous extension letter dated \*\*\* and to amend the Agreement as follows:

1. At the end of the Term of the Agreement at \*\*\*, the Term shall be extended for \*\*\*. Subject to written notice from Cathay to IFP at least three (3) months prior to the expiry of the Agreement, the Agreement shall be further extended for \*\*\*.
2. The Regional AVOD Movie License rates shall be reduced starting from \*\*\* till \*\*\*, as per the commercial proposal sent from IFP to Cathay on \*\*\*.

Distributor	LH/PTV Rate (average over 3 months)	Regional AVOD Rate (average over 3 months)
Disney	***	***
Paramount	***	***
Sony	***	***
Universal	***	***
Twentieth Century Fox	***	***
Warner Brothers	***	***
Cinco	***	***
EIM	***	***
Jaguar	***	***
TSI	***	***

3. The following Service Costs shall be amended starting from \*\*\* till \*\*\* as stated in \*\*\* commercial proposal:
  - 3.1 The Recall Fees shall be covered by \*\*\* for the New Release titles booked by Cathay within the first 3 months of release.
  - 3.2 The unit rate for VHS Duplication Cost shall be aligned to \*\*\* for all lengths up to 150 minutes at the Lab. Aero for both Cathay and Dragonair:

	VHS Tape
135-minute	***
90-minute	***
60-minute	***

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3.3 The unit rate for V8 Duplication Cost shall be aligned to \*\*\* at Lab. Aero for Dragonair:

	V8 Tape
135-mlnute	***
90-minute	***

3.4 The unit rate for BGM Flashcard Duplication Cost shall be reduced from \*\*\* for Dragonair.

4. All other terms and conditions of the Agreement shall remain In full force and effect.

IN WITNESS whereof the Parties hereto have caused this Agreement to be duly executed by their authorised representatives the day and year first above written.

Signed for  
**CATHAY PACIFIC AIRWAYS LTD.** by:

/s/ Gloria Chow-Vanderwell  
Name: Gloria Chow-Vanderwell  
Job Title: Product Manager  
Cathay Pacific Airways Ltd.

Date: \*\*\*

Signed for  
**HONG KONG DRAGON AIRLINES LTD.**  
by its duly authorized agent:

/s/ Gloria Chow-Vanderwell  
Name: Gloria Chow-Vanderwell  
Job Title: Product Manager  
Cathay Pacific Airways Ltd.

Date: \*\*\*

Signed for  
**INFLIGHT PRODUCTIONS LTD.**  
by:

/s/ Roberts G. Hamler  
Name: Roberts G. Hamler  
  
Job Title: CEO  
Inflight Productions Limited

Date: \*\*\*

\*\*\* Confidential treatment requested.

Witnessed by:

/s/ Penny Chan  
Name: Penny Chan  
Job Title: Assistant Purchasing Manager  
Cathay Pacific Airways Ltd.

Date: \*\*\*

Witnessed by:

/s/ Penny Chan  
Name: Penny Chan  
Job Title: Assistant Purchasing Manager  
Cathay Pacific Airways Ltd.

Date: \*\*\*

Witnessed by:

/s/ Suzi Hennessy  
Name: Suzi Hennessy  
  
Job Title: VP Operations  
Inflight Productions Limited

Date: \*\*\*

CONFIDENTIAL TREATMENT REQUESTED FOR PORTIONS OF THIS DOCUMENT. PORTIONS FOR WHICH CONFIDENTIAL TREATMENT IS REQUESTED HAVE BEEN MARKED WITH THREE ASTERISKS [\*\*\*] AND A FOOTNOTE INDICATING “CONFIDENTIAL TREATMENT REQUESTED”. MATERIAL OMITTED HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

**AMENDED AND RESTATED  
SUPPLY AND SERVICES AGREEMENT**

**by and between**

**ROW 44, INC.**

**and**

**SOUTHWEST AIRLINES CO.**

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**Exhibits:**

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Exhibit D – Entertainment Portal Service

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## AMENDED AND RESTATED AGREEMENT

THIS AMENDED AND RESTATED SUPPLY AND SERVICES AGREEMENT (this “**Agreement**”), effective as of February 1, 2013 (the “**Effective Date**”), is by and between Row 44, Inc., a Delaware corporation (“**Row 44**”), and Southwest Airlines Co., a Texas corporation (“**Southwest**”). Row 44 and Southwest are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**”. The Parties acknowledge and agree that it is the intention of the Parties to continue operating under the terms of the Supply Agreement (as defined below) and Services Agreement (as defined below) unmodified by this Agreement until the Effective Date in the event this Agreement is executed by both Parties prior to such date.

### RECITALS

WHEREAS, Row 44 has developed a satellite based broadband Internet system composed of System Software (as defined in Exhibit A), System Hardware (as defined in Exhibit A) and other components (collectively defined in Exhibit A as the “**Broadband System**” and each instance of such system referred to as a “**System Unit**”) for use on commercial aircraft;

WHEREAS, the Parties have executed that certain Supply Agreement, dated as of August 13, 2010 (as amended and modified from time to time in accordance with its terms, the “**Supply Agreement**”) pursuant to which Southwest purchases certain quantities of such System Units from Row 44;

WHEREAS, the Parties have also executed that certain Services Agreement, dated as of January 26, 2010 (as amended and modified from time to time in accordance with its terms, the “**Services Agreement**”) pursuant to which Row 44 provides to Southwest, among other services, the Wi-Fi Service in connection with Southwest’s and Southwest’s customers’ use of the Broadband System; and

WHEREAS, in accordance with Section 16.4 of the Supply Agreement and Section 10.4 of the Services Agreement, the Parties wish to amend and restate the Supply Agreement and Services Agreement as one agreement to read as set forth herein.

NOW, THEREFORE, in consideration of the agreements, representations, warranties, promises and covenants contained herein, and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Parties, intending to be legally bound, agree to the foregoing and as follows:

### ARTICLE 1.

#### DEFINITIONS

1.1 **Definitions.** Capitalized terms used in this Agreement, including in any Exhibits and/or other documents attached to or otherwise made a part of this Agreement, shall have the meanings ascribed to them in Exhibit A attached hereto or shall be otherwise defined in the context in which they are used and shall have the meanings ascribed to them therein. All defined terms include the plural as well as the singular.

1.2 **Captions, References and Construction.** Captions, titles and headings to articles and sections of this Agreement are inserted for convenience of reference only and are not intended to affect the interpretation or construction of this Agreement. Any reference herein to a particular Section or Article number (e.g., "Section 2") shall be deemed a reference to all Sections of this Agreement that bear sub numbers to the number of the referenced Section or Article (e.g., Sections 2.1, 2.1.1, etc.). The terms "this Agreement", "herein", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular article, section or other portion hereof. Unless otherwise specified, "days" means calendar days. Any use of the term "including" in this Agreement shall be construed as if followed by the phrase "without limitation" or "but not limited to".

1.3 **Financial Terms.** All financial and accounting terms not otherwise defined in this Agreement, whether capitalized or not, will have the meanings assigned to them in accordance with GAAP.

## ARTICLE 2.

### SUPPLY

#### 2.1 **Deliverables, Acceptance.**

2.1.1 **Deliverables.** Row 44 shall ensure that each Deliverable under this Agreement, and components thereof, when delivered to Southwest, conforms to the Specifications. Each shipment of a System Unit shall contain the quality control certificates and other documentation as are set forth on Exhibit B.

2.1.2 **Acceptance.** "Acceptance" for each applicable Deliverable under this Agreement, or components thereof, shall occur only when: (a) Row 44 has provided to Southwest such Deliverable, or components thereof, and Row 44 has completed all tasks required to be completed by Row 44 that are identified by the Parties as a pre-condition to Southwest's acceptance; (b) such Deliverable, or components thereof, have passed the Southwest required receiving inspection in accordance with its Maintenance Procedures Manual (MPM) or equivalent (c) to the extent requested by Southwest, Row 44 has corrected, to Southwest's satisfaction, all Defects identified by the Parties during the receiving inspection of such Deliverable, or components thereof. Notwithstanding the foregoing, Acceptance of a Deliverable shall take place no more than \*\*\* after delivery of such Deliverable, or components thereof, to Southwest unless one of the criteria listed in this Section 2.1.2 is not achieved and Southwest provides notice to Row 44 of the same.

2.1.3 **Failure to Achieve Acceptance.** In the event Acceptance is not achieved within \*\*\* following delivery of a Deliverable, or components thereof, to Southwest, Southwest shall be entitled, at its election to \*\*\*

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#### 2.1.4 Supply Agreements. \*\*\*

2.1.5 **Direct Negotiations.** Southwest may negotiate directly with Vendors for on-going maintenance service agreements. Row 44 shall provide all required contact information and reasonably cooperate in providing background information as requested except where providing that information may violate existing agreements.

#### 2.1.6 Specifications.

2.1.6.1 **Changes by Row 44.** Row 44 may from time to time propose changes to the Specifications or a System Unit or a component thereof, including, as applicable, to update such System Unit or component thereof for features, performance, reliability or improved safety, and Row 44 shall propose any changes to the Specifications or a System Unit or a component thereof required to cause such System Unit or component thereof to comply with applicable Law. Before making a decision to proceed with any such change in Specifications or any material change in the System Units (i.e., a change that affects the form, fit or function of such System Unit) or manufacturing process, such change must first be discussed with Southwest to enable a thorough assessment of its impact, including potential unexpected or unintended ramifications. If such change is ultimately deemed necessary or advisable by Row 44 and agreed to in writing by Southwest, such consent to not be unreasonably withheld or delayed, Row 44 may make such change \*\*\* If Row 44 determines to make changes to System Units or a component thereof for its other customers, including, as applicable, to update such System Unit or component thereof for features, performance, reliability or improved safety, Row 44 shall promptly notify Southwest of such changes and make such changes available to Southwest at the same time as any other Row 44 customer. All such changes will be subject to the acceptance process set forth in Section 2.1.2 and Section 2.1.3. Notwithstanding the foregoing, and for the avoidance of doubt, except as necessary to cause a System Unit or component thereof to comply with applicable Law, the Parties acknowledge and agree that the foregoing is not intended to provide a guarantee to Southwest that the System Units will be upgraded at no cost to Southwest to incorporate new or improved functionality developed in the future. Nothing in this Section shall be interpreted to in any way diminish the hardware reliability standards in Exhibit B, or any of the service levels set forth in Exhibits D, E, and F.

2.1.6.2 **Change Requests by Southwest.** At any time and from time to time during the Term, Southwest may request an update to the Specifications or a System Unit or a component thereof. Following receipt of such request, Row 44 shall notify Southwest whether such update is technically feasible and the estimated costs of implementing such update. If the update, in Row 44's reasonable opinion is technically feasible, Southwest may request that Row 44 update the Specifications or a System Unit or a component thereof accordingly and the costs of the development of such update shall be paid by (a) Row 44, if Row 44 makes such proposed update available to System Units of other customers of Row 44 at no charge, or (b) Southwest, if Row 44 does not make such proposed update available to System Units of other customers of Row 44 or if Row 44 charges other customers for the proposed update, in which case Southwest shall pay no more than the amount charged such other customers. If the update is not technically feasible, Row 44 shall provide written notice thereof to Southwest, and the Parties shall use commercially reasonable efforts to develop a technically feasible solution that addresses Southwest's request. If Southwest proposes an update to the Specifications or a System Unit or a component thereof that is custom-tailored to Southwest, then Southwest may request that Row 44 not make such update available to System Units of other customers of Row 44, in which case the costs of the development of such update shall be paid by Southwest and Row 44 shall not make any such updates available to System Units of other customers of Row 44.

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## **2.2 Regulatory Activities.**

**2.2.1 Regulatory Activities.** Subject to, and in accordance with, the terms and conditions of this Agreement and the requirements of all applicable Laws, Row 44, at its sole cost and expense, shall (a) take all actions necessary and file all Regulatory Filings with respect to the Broadband System required to allow Southwest to use the Broadband System to provide wireless Internet connectivity on the Designated Aircraft in \*\*\*, (b) respond in a timely fashion to requests for data and information from Regulatory Authorities with respect to the Broadband System; and (c) meet with officials of Regulatory Authorities at such times as may be requested by such Regulatory Authorities with respect to the Broadband System (“**Regulatory Activities**”). Row 44 shall keep Southwest timely informed of all material events and developments occurring in the course of the Regulatory Activities, including scheduled Row 44 regulatory strategy discussions and meetings with Regulatory Authorities relating to the Broadband System.

**2.2.2 Row 44/Southwest Mutual Assistance.** Upon written request from either party, the other party shall use commercially reasonable efforts to assist the requesting party in connection with any meetings and operator specific documentation with Regulatory Authorities related to the Broadband System.

**2.2.3 Provision of Regulatory Information to Southwest.** Row 44 shall use commercially reasonable efforts to assist Southwest in connection with its conduct of all of its Regulatory Activities, including by (a) providing Southwest with copies of the relevant sections of any United States regulatory filings for the Broadband System filed by or on behalf of, and controlled by, Row 44 as necessary for Southwest to make Regulatory Filings for the Broadband System and (b) supplying or granting Southwest the right to reference any reasonably requested data controlled by Row 44 that is necessary and required by applicable Laws to allow Southwest to meet its Regulatory Filing obligations. Southwest will have a right of access, a right of reference and the right to use and incorporate all information provided to it pursuant to this Section 2.2.3 solely to support its Regulatory Activities and in connection with Southwest’s use of the Broadband System and in accordance with the terms of this Agreement.

**2.2.4 Governmental Inspections and Inquiries.** Row 44 will advise Southwest promptly after it first has Knowledge thereof, but in no event later than \*\*\* after Row 44 first has Knowledge thereof, of any planned Regulatory Authority visit to the facilities of Row 44 or its Affiliates or subcontractors where System Units or components thereof are produced, stored or handled or any written or oral inquiries by a Regulatory Authority concerning such facilities, the procedures of Row 44 or its Affiliates or subcontractors for the production, storage or handling of the System Units or components thereof, or the use of the Broadband System. If a Regulatory Authority makes an unannounced or unplanned visit, or if Row 44 does not have at least \*\*\* of the visit, Row 44 will inform Southwest of the visit as soon as reasonably practicable after it first has Knowledge thereof, but in no event later than \*\*\* after Row 44 has Knowledge of the visit. Row 44 shall cause all of its contractual agreements with its subcontractors to include a requirement that each such subcontractor shall provide to Row 44 advance notice of any planned Regulatory Authority visit, and notice as soon as reasonably practicable of any unannounced or unplanned Regulatory Authority visit, to such subcontractor’s facilities relating to the production or operation of the System Units or components thereof or that is generally applicable to production of commercial aviation equipment. If a visit by a Regulatory Authority relates to the production or operation of System Units or components thereof or is generally applicable to production of commercial aviation equipment, Row 44 will furnish to Southwest (a) minutes of the inspection generated by Row 44 promptly following such inspection and (b) any report or correspondence provided by Row 44, or any Affiliate or subcontractor of Row 44, or their respective representatives, as the case may be, to the Regulatory Authority or issued by or provided by the Regulatory Authority to Row 44, or any Affiliate or subcontractor of Row 44, or any of their respective representatives, as the case may be, in connection with such visit or inquiry as soon as reasonably practicable thereafter. Row 44 shall enter into agreements with each of its subcontractors that require such subcontractors to provide the notices and other materials and information contemplated by this Section 2.2.4.

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2.2.5 **Southwest Participation Right.** Southwest will have the right, at its option, upon written request at any time, to participate in any and all of Row 44's material regulatory strategy discussions and material meetings with Regulatory Authorities relating to the Broadband System. Row 44 shall provide reasonable prior written notice to Southwest of any such meetings and copies of all material correspondence with regard thereto.

## 2.3 **Supply of Broadband System.**

2.3.1 **Purchase Orders.** Subject to the terms hereof, Southwest may submit requests for delivery of System Units using its standard purchase order ("**Purchase Order**") setting forth the number of System Units requested, and any additional instructions (provided the same are not in conflict with this Agreement). Each Purchase Order shall also include a mutually agreeable delivery schedule for the System Units subject to such Purchase Order. Row 44 shall deliver the System Units specified in each Purchase Order on or before the delivery date set forth therein. The terms and conditions of this Agreement shall be referenced in, apply to, and form a part of every Purchase Order, and shall supersede any printed terms and conditions on any Purchase Order or acknowledgement form. In the event of a conflict between the terms and conditions of this Agreement and the printed terms and conditions of any Purchase Order or acknowledgement form, the terms and conditions of this Agreement shall control. All Purchase Orders shall be governed by this Agreement whether or not expressly noted on such Purchase Orders. Row 44 agrees to reference Purchase Order numbers on all packing slips, freight bills, invoices and other documents submitted to Southwest related to Row 44's performance hereunder.

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2.3.2 **Delivery by Row 44.** Row 44 shall provide to Southwest those quantities of System Units as set forth on Southwest's applicable Purchase Order. Row 44 shall (a) deliver the System Units \*\*\* to Southwest's designated facility, (b) arrange delivery of the System Units pursuant to Southwest's written instructions and (c) deliver all System Units by the dates set forth in the applicable Purchase Order or otherwise agreed upon by the Parties in writing (whether hereunder or otherwise); \*\*\* Time is of the essence with respect to all delivery dates set forth herein and in each applicable Purchase Order. The satellite antenna assembly component of the System Units will be shipped to Southwest in a re-usable \*\*\* container, which containers shall at all times remain the property of Row 44, and be returned to Row 44, at its expense, in order to be reused for later shipments of satellite antenna assemblies to customers of Row 44, including Southwest.

2.3.3 **Failure to Deliver.** \*\*\*

2.3.4 **Hardware Reliability.** With respect to Line Removal Units ("***LRU***") Row 44 shall use commercially reasonable efforts to meet the reliability standards outlined in Exhibit B as measured by Southwest's FAA approved maintenance program. Should any unit fall below the reliability standard, Row 44 shall \*\*\*

2.3.5 **Spares.** Southwest shall maintain an inventory of spare System Unit components pursuant to the reliability standards and turn time standards in Exhibit B and in the quantities as agreed upon by the Parties for System Unit components. Orders for spare System Unit components shall be subject to the same Purchase Order terms as set forth herein; provided, that, Row 44 shall use its best efforts to expedite delivery of an order to replace an un-repairable component or to supplement the spare pool. Spare pricing shall be as set forth on Exhibit B-2.

2.3.6 **Obsolescence Program.** Row 44 shall maintain an obsolescence program throughout the term of the Agreement in accordance with this Section. Row 44 will use commercially reasonable efforts to require all Vendors to develop and implement obsolescence requirements such that Vendors will provide obsolescence notices to Row 44 \*\*\* prior to the planned obsolescence of an LRU or critical system subcomponent (that is not immediately replaced with a future technology revision at comparable or better performance and backwards compatibility). Row 44 will immediately notify Southwest as soon as a pending obsolescence event is known to Row 44. Subject to the foregoing, Row 44 will coordinate with the Vendor and Southwest to establish an obsolescence implementation plan which includes \*\*\*. Row 44 will use diligent efforts to minimize cost and operational impact of any LRU or critical system subcomponent obsolescence.

2.4 **Inspection Rights.** Southwest will have the right on reasonable prior notice to conduct reasonable inspections of the facilities of Row 44 and its Affiliates and Vendors where System Units are produced, stored or handled and to audit the procedures of Row 44 and its Affiliates and Vendors for the production, storage and handling of the System Units or components thereof for purposes of quality control. All such inspection requests shall be copied to Row 44 and Row 44 shall have the right to jointly participate in such inspections. Row 44 shall enter into agreements with each of its Vendors permitting Southwest to inspect the facilities and audit the procedures of such subcontractors pursuant to this Section 2.4.1.

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2.5 **Technical Assistance.** Upon request by Southwest, Row 44 shall provide technical assistance to Southwest in connection with Southwest's installation and maintenance of the System Units on its aircraft. \*\*\* For any installation, Row 44 agrees to provide remote technical assistance at its expense. Notwithstanding the foregoing, in the event third party engineering or DER support is required with respect to an installation, the \*\*\*.

## 2.6 **System Software License.**

2.6.1 **License.** Row 44 hereby grants to Southwest a non-exclusive, perpetual, worldwide license to use the System Software, including any third party software embedded therein, in the manner specified in this Agreement in connection with the use of the applicable component of the System Unit in which the System Software is included as part of the Broadband System. Open source software made by Row 44 shall be subject to the applicable open source software license as set forth on Exhibit B-2 hereto.

2.6.1.1 Documentation. Row 44 hereby grants to Southwest a non-exclusive, perpetual, worldwide license to use the Documentation in conjunction with Southwest's use of the System Software and the Broadband System.

2.6.1.2 Right to Copy. Southwest may make copies of the Documentation for purposes of using or maintaining the System Units; provided, that all such Documentation is subject to the confidentiality provisions of this Agreement.

2.6.2 **Escrow.** Row 44 shall maintain all technical data with respect to STCs for the System Units, and the System Software and its associated Documentation in escrow in accordance with the following terms:

2.6.2.1 No later than \*\*\*, Row 44 agrees to place in escrow the source code for all System Software and the technical data with respect to the STCs for the System Units and related materials, with Southwest as the beneficiary of such escrow. Iron Mountain will serve as escrow agent (the "**Escrow Agent**"), and Row 44 will provide a copy of the applicable escrow agreement to Southwest promptly after its execution. The escrowed materials shall be current as of the date placed in escrow with updates to be provided at reasonable intervals, but not less than every six months during the Term and with the release of a material modification to the System Software. Upon the occurrence of one of the following conditions, the Escrow Agent shall be authorized to release the escrowed materials to Southwest:

\*\*\*

Row 44 represents, warrants, and covenants that (a) the materials deposited with the Escrow Agent at all times constitute a complete and correct set of the source code for the System Software as well as any corrections, enhancements, or other revisions to which Southwest is entitled under this Agreement, and (b) the materials deposited with the Escrow Agent are and shall be sufficient for trained computer programmers of general proficiency to maintain and support the System Software without further assistance from Row 44.

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Upon release of the escrowed materials, the materials subject to the escrow above are hereby subject to a \*\*\* license to use such materials solely in connection with the use and maintenance of the applicable component of the System Unit in which such software is embedded. Row 44 agrees that Southwest shall have all of the benefits of a licensee as set forth in 11 U.S.C. § 365(n), with respect to all licenses granted under this Agreement.

### ARTICLE 3.

#### THE SERVICES

3.1 **Subscription; Commissioning; Additional Features.** Pursuant to the terms and conditions contained herein, Row 44 hereby agrees to provide, and Southwest hereby agrees to purchase, the Wi-Fi Service, the Operational Data Service, the Entertainment Portal Service, the Additional Included Services, Television Service, VOD Only Solution (subject to the terms of this Agreement), and the Elected Services (if any), related to the satellite and Internet backhaul connectivity to be purchased by Southwest from Row 44 pursuant to the terms contained herein (collectively, the “**Services**”) for use in connection with each System Unit installed on a Commissioned Aircraft. As part of the installation process for System Units on Southwest’s aircraft, each such aircraft shall undergo the service commissioning procedure set forth in Exhibit C (the “**Commissioning Procedure**”). After Southwest has completed the Commissioning Procedure, each such aircraft shall be operational for use in connection with the Wi-Fi Service and other services to be provided hereunder (each a “**Commissioned Aircraft**”) unless Southwest provides notice to Row 44 that such aircraft is not operational for maintenance, scheduling or other reasons, in which case such aircraft shall not be considered a Commissioned Aircraft. Row 44 may make additional commissioning and/or maintenance services available to Southwest from time to time during the Term, which shall be subject to the fees and costs associated therewith as the Parties mutually agree in writing.

#### 3.2 **Wi-Fi Service.**

##### 3.2.1 **Calculation of Wi-Fi Service Fees.**

3.2.1.1 Wi-Fi Fee. \*\*\*

3.2.1.2 Subscription Fee. \*\*\*

3.2.1.3 Wi-Fi Service Subsidy. Beginning on \*\*\*, Row 44 shall subsidize the cost of “free-to-the-passenger” access to the Wi-Fi Service by the following amounts per year: (i) \*\*\* for calendar year \*\*\* ; (ii) \*\*\* for calendar year \*\*\* ; and (iii) \*\*\* for each of calendar years \*\*\*, \*\*\*, \*\*\* and \*\*\* (the “**Wi-Fi Subsidy**”). The Subsidy will be accounted for on a monthly pro-rata basis, *provided* that any accrual shortfall will be accounted for and payable to Southwest in the last month of the applicable calendar year.

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3.2.1.4 No Net Revenue Split. For avoidance of doubt, amounts charged for the Wi-Fi Service are not subject to Net Revenue Split.

3.2.1.5 \*\*\*

3.2.2 **Passenger Charges and Offerings.** Southwest will determine the passenger charges, if any, for the Wi-Fi Service and any other services provided to its passengers by or for Row 44. \*\*\* Southwest shall provide reasonable advance notice to Row 44 prior to making offers of \*\*\*in order for Southwest and Row 44 to coordinate authentication and logistics regarding implementing the same.

3.3 **Additional Included Services.** \*\*\* Row 44 shall provide the following services to Southwest (the “**Additional Included Services**”):

3.3.1 **Network Operations and Maintenance.** During the Term, Row 44 shall maintain a network operations center that monitors the functionality and performance of System Units and performance of the Wi-Fi Service on Commissioned Aircraft on a 24/7 basis. Row 44 shall also maintain during the Term a 24/7 technical support phone number/e-mail for technical support inquiries from Southwest regarding operation of the Wi-Fi Service.

3.3.2 **Training.** In connection with the operation of the Wi-Fi Service, Row 44 will provide comprehensive training in the operation and functionality of the Wi-Fi Service (in accordance with Southwest’s requests with respect to scheduling and frequency) to Southwest’s employees who will operate the Wi-Fi Service on board the Commissioned Aircraft. Row 44 will also provide comprehensive training related to the functionality and use of any third party billing service provider that Row 44 offers as part of its service offering. Such training will include written training materials and be provided in-person, by remote video conference or teleconference, in Southwest’s discretion, and on a “train the trainer” basis.

3.3.3 **Reports.** Row 44 shall provide Southwest regular reports and access to a reporting web service with respect to such reports and information as Row 44 generally collects or makes available to its customers and that Southwest reasonably requests regarding the performance and use of the Wi-Fi Services by Southwest’s customers including, but not limited to information by flight, purchases by device type, aircraft availability, customer usage time, and data usage.

3.3.4 **Legal Process Compliance.** During the Term, Row 44 shall comply with, and shall ensure that the Services comply with, the Communications Assistance for Law Enforcement Act and such similar Laws or agreements impacting Row 44 and/or the Services. Except to the extent prohibited under applicable Law, Row 44 shall keep Southwest informed of all compliance actions taken by Row 44 in support of such technical compliance, and, upon request from Row 44, Southwest shall provide reasonably requested cooperation to Row 44 to support such compliance.

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3.3.5 **Coordination with Regulatory Authorities; Maintenance of Licenses and Permits**. Row 44 shall coordinate with the FCC, the FAA and other Regulatory Authorities and maintain all licenses, permits, and other Regulatory Approvals as necessary for (i) Row 44's performance of this Agreement and (ii) Southwest's and its customers' use of the Broadband System in accordance with the terms herein.

3.3.6 **Privacy and Security**. Row 44 shall comply with the privacy and data security obligations set forth in Exhibit J. Row 44 shall not sell or otherwise provide web analytics data to any third party and shall only use such data for Row 44 financing and internal activities and in connection with providing its Services to Southwest pursuant to the terms of this Agreement.

3.3.7 **Basic Web Analytics**. Row 44 shall provide Basic Web Analytics for any Internet content accessed, acquired or transmitted by Southwest or customers of Southwest via the Wi-Fi Service. Basic Web Analytics should include, but not limited to \*\*\*. Southwest, in its sole discretion, may supply Row 44 with tags to its in-house web analytics tools, and Row 44 agrees to apply those tags into its system and, if such tags report to a server under Row 44's control, include the results of such tags in Row 44's Basic Web Analytics reports. If such tags report to a server under Southwest's control, Southwest agrees to provide reports of the results of such tags to Row 44 only to the extent that (a) a Southwest tag replaces a standard Row 44 tag and (b) the tags provide results with respect to the Entertainment Portal; provided that (i) Southwest shall not be required to provide such reports more frequently than \*\*\* and (ii) \*\*\*, then Southwest shall not be required to provide such reports. For the avoidance of doubt, Southwest shall not be required pursuant to the immediately preceding sentence to provide any reports to Row 44 with respect to tag results from southwest.com.

### 3.4 **Entertainment Portal Service**.

3.4.1 **Provision of Service and Maintenance**. Row 44 shall develop and make the Entertainment Portal available to Southwest in accordance with the specifications set forth in Exhibit D ("**Entertainment Portal Service**"). Southwest shall have the right to approve the look and feel of the Entertainment Portal creative submitted by Row 44. Row 44 shall provide maintenance and support services in connection with the Entertainment Portal in accordance with the maintenance and support terms set forth in Exhibit D.

### 3.4.2 **Entertainment Portal** \*\*\*.

3.5 **Elected Services**. Pursuant to the terms and conditions set forth below, Row 44 shall provide the following services (the "**Elected Services**") as requested by Southwest in writing from time to time throughout the Term (or as specifically elected pursuant to this Agreement):

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3.5.1 **Billing Services.** \*\*\*

3.5.2 **Content Control and Filtering.** Row 44 shall provide content control and filtering services consistent with the content control and filtering services and procedures set forth on Exhibit G (the “**Content Control Services**”) for \*\*\*. For aircraft commissioned during the installation period, Content Control Services shall be invoiced\*\*\*. Thereafter, Row 44 shall invoice Southwest on an annual basis for Content Control Services for the total number of Commissioned Aircraft and Southwest shall pay the invoice within \*\*\* of receipt of a correct invoice. As of the Effective Date, Southwest elects to use the Content Control Services. Southwest shall have the right to terminate the Content Control Services at any time upon delivery of a notice of such cancellation to Row 44; provided that Southwest shall not be entitled to any refund for any remaining Content Control Service fees previously invoiced and paid.

3.5.3 **Advanced Web Analytics.** Subject to terms and requirements mutually agreed upon in writing between Southwest and Row 44, upon written request from Southwest, Row 44 shall implement advanced web analytics that provide information not included in Basic Web Analytics for any Internet content accessed, acquired or transmitted by Southwest or customers of Southwest via the Wi-Fi Service, all in such format and containing such detail and at such cost as mutually agreed upon in writing by Southwest and Row 44.

3.5.4 **Additional Work.** Any additional services not otherwise described herein and provided by Row 44 in connection with this Agreement shall be provided pursuant to a written, fully executed and mutually agreeable statement of work and purchase order covering, without limitation, pricing and payment terms, schedule and responsibilities for such work.

3.6 **Operational Data Service.** In addition to the Wi-Fi Service, Row 44 shall provide Southwest access to a wired or wireless operational data connection (the “Operational Data Service”). Subject to the service restrictions set forth herein, the Operational Data Service shall be implemented by Row 44 as a direct wired connection or separately addressed (SSID) Wi-Fi connection with substantially the same functionality as the Wi-Fi Service for use by Southwest solely to transmit operational data to and from Commissioned Aircraft. If Southwest anticipates transmitting more than an average of \*\*\* of data per flight (take-off and landing) measured daily across all flights, in a single transmission or series of transmissions, Southwest will provide reasonable advance notice to Row 44 of such anticipated transmission(s) and will reasonably cooperate with Row 44 regarding the timing and implementation of such transmission(s), subject to Southwest’s right to prioritize Operational Data Service over customer traffic usage at any time. If Southwest transmits more than \*\*\*, measured daily across all flights and averaged on a \*\*\*, such excess will be charged at \*\*\* for usage during periods the Wi-Fi Service is \*\*\* of Southwest and if Southwest transmits more than \*\*\*, measured daily across all flights and averaged on a \*\*\*, such excess will be charged at \*\*\* for usage during periods in which the Wi-Fi Service is \*\*\* of Southwest, each as measured on a per aircraft basis. Row 44 shall deliver Southwest a \*\*\* report on Operational Data Service, including total fleet wide usage and per aircraft usage, and, if applicable, accompanied by an invoice from Row 44 for amounts due hereunder, which invoice shall be due and payable within \*\*\* of receipt.

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### 3.7 Television Service.

3.7.1 **Provision of Television Service.** Row 44 shall provide the Television Service in accordance with the Service Levels on all of Southwest's aircraft equipped with the Wi-Fi Service and the Supplemental Television Hardware.

3.7.2 **Television Service Description.** The Television Service will be a Wi-Fi accessible, IPTV-based, live television service consisting of \*\*\* (the "Television Service"). The Television Service will be implemented and maintained in accordance with the terms of Exhibit E.

3.7.3 **Supplemental Television Hardware.** \*\*\*

3.7.4 **Television Service** \*\*\*.

3.7.5 **Changes and Updates.** All content selection included for the Television Service shall be mutually agreed upon by the Parties. VOD content shall be refreshed by Row 44 on a mutually agreed upon schedule during the Term and with the goal of always providing an up-to-date selection of content for Television Service users. During the Term, Row 44 will work to always provide a line-up of live television content that appeals to the widest potential audience of users of the Television Service.

3.7.6 **Termination of Television Service.** Following \*\*\*, in the event the (i) Television Service take rate is below \*\*\* for a period of \*\*\* or (ii) Row 44 fails to meet the to-be-agreed upon Service Level for the Television Service for a period of \*\*\*, then, for a period of \*\*\* after the occurrence of either such condition, Southwest may elect to cancel the Television Service upon \*\*\* prior written notice to Row 44. For the avoidance of doubt, the actual date of cancellation of the Television Service will be \*\*\* after the foregoing notice is delivered to Row 44 no matter when that delivery occurs during the \*\*\*evaluation period.

3.7.7 **Television Service Free Options.** Upon at least three (3) months prior written notice to Row 44, Southwest shall have the option to offer the Television Service on a "free-to-all-passengers" basis for the remainder of the Term.

3.7.7.1 \*\*\*

3.7.7.2 \*\*\*

3.7.7.3 *provided, however*, that with respect to each of the foregoing options, the provisions of Section 3.7.4.2 (related to Special Television Content) and Section 3.7.4.3 (related to advertisements) shall remain in effect. Southwest may additionally offer the Television Service on a free promotional (not to all passengers) basis at the existing per passenger price.

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\*\*\* Confidential treatment requested.

3.8 **VOD Only Solution.** \*\*\*

3.9 \*\*\*

**ARTICLE 4.**

**AGREEMENTS AND ACKNOWLEDGEMENTS**

**4.1 Southwest Responsibilities.**

4.1.1 **Out, On, Off, In (OOOI) Data.** OOOI data from Commissioned Aircraft will be provided to Row 44 electronically in real time to support aircraft performance tracking for aircraft in operational service.

4.1.2 **Terms of Service; Privacy Policy.** The Services will be provided to Southwest's customers subject to terms of service and a privacy policy prepared (and updated as needed) by Row 44 and approved by Southwest. Southwest shall use Row 44's Entertainment Portal Service landing page or develop and maintain a landing page (the "**Landing Page**") as the first accessible web page when a customer accesses the Wi-Fi Service. The Landing Page will provide an opportunity for each customer to accept the terms of service (including terms for applicable laws for CALEA, etc.) and disclose Southwest's privacy policy.

4.1.3 **No Modification of System Units.** Southwest acknowledges and agrees that the configuration and performance of the System Units are critical to the ability for Row 44 to provide the Wi-Fi Service. Therefore, during the Term, Southwest shall not modify or alter the configuration of the System Units without prior notice to Row 44.

**4.2 Row 44 Responsibilities.**

4.2.1 \*\*\*

4.2.2 **Technology and Product Enhancements.** During the Term, Row 44 agrees to (a) use commercially reasonable efforts to improve and enhance the Services on an ongoing basis so that the Services at all times during the Term represent a leading Internet and Internet based entertainment services system for use on commercial aircraft, (b) provide Southwest a product roadmap (and periodic updates thereto) outlining expected improvements and enhancements of Row 44's products and services and expansions to Row 44's coverage areas, including future capabilities of the Services and equipment updates, and (c) meet and confer with Southwest on at least \*\*\* basis regarding the foregoing.

If Southwest, in its sole but reasonable discretion, determines that the Services do not represent a leading Internet system then active and in service for use on commercial aircraft, including consideration of all features then provided by Row 44's system, then Southwest may provide written notice to Row 44 of the same. Thereafter, for a period of \*\*\*, the Parties shall meet and confer in good faith regarding improvements to the Row 44 system to make it a leading Internet system and/or the implementation of the alternative leading Internet service technology and features on Southwest's fleet, including a reasonable timeline for each of the foregoing. After such meet and confer period, Southwest may choose, in its sole discretion, to adopt the improvements offered by Row 44 or continue with the current Service.

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\*\*\* Confidential treatment requested.

In the implementation of any agreed upon improvements or alternative technology, Row 44 agrees: (i) to fund the R&D associated with any such item and (ii) to sell all associated hardware to Southwest at Row 44's cost. In addition, if the alternative technology implemented results in a modified cost structure for Row 44's provision of the Services, then the Parties shall implement a proportional adjustment to the prices paid to Row 44 described herein.

If following the foregoing, Southwest reasonably determines that Row 44 is unable or unwilling to implement a feature set that results in a leading Internet system, Southwest may terminate the Agreement without penalty upon \*\*\* prior written notice to Row 44.

**4.2.3 Third Party Subcontractors.** Row 44 shall obtain Southwest's prior written consent, which Southwest may withhold in its sole discretion, before entering into new agreements with, or materially amending or extending existing agreements with, or otherwise engaging, any subcontractors (including Affiliates of Row 44) that may supply any part of the Deliverables or Services to Southwest. At Southwest's request, Row 44 shall provide information regarding the subcontractors' qualifications and a listing of Row 44's subcontractors' key personnel including, if requested by Southwest, resumes of proposed subcontractor personnel. Row 44 shall remain directly responsible to Southwest for its subcontractors and shall indemnify Southwest for the actions or omissions of its subcontractors under the terms and conditions specified in ARTICLE 7.

**4.2.4 Records.** Row 44 shall maintain books of account and records, in accordance with its standard practices and procedures, of all transactions arising in connection with its obligations pursuant to this Agreement for a period of five years from the expiration or earlier termination of this Agreement. Row 44 shall keep and maintain complete and accurate books and records with respect to Row 44's operations, including information necessary to permit calculation and verification of amounts due hereunder.

**4.2.5 Network Maintenance.** Exhibit H describes Row 44's network as of the Effective Date. Row 44 will \*\*\*

### **4.3 Other Agreements and Acknowledgements.**

**4.3.1 Network Security; Prohibited Actions.** Southwest will not engage in, or knowingly permit customers of Southwest to engage in, any of the following activities: (a) any course of action that is intended to or does materially compromise the performance, security or integrity of the servers, computer systems, satellites or any other devices or software connected directly or indirectly to the network comprising the Service; (b) any material increase in traffic levels for malicious or illegal purposes that causes a substantial degradation of performance or denial of service to Row 44 or other customers of Row 44; (c) tampering, hacking or other intrusion or unauthorized access to any system controlled by Row 44 or through which network access is dependent; or (d) the infringement of the legal rights of other network users (including other users of the Service or the Internet), service providers and content providers, except to the extent the Service itself is the cause of the infringement. In the event Southwest or any customer of Southwest undertakes any of the above activities, Row 44 shall, in the event the continuance of such activity is reasonably likely to affect the operation of the Broadband System (including the access controls built into the Broadband System) or Row 44's network, be authorized to disable access to the Services (including for a particular aircraft or customer of Southwest) until such activity ceases; provided, however, that any disabling of Services will be limited to that reasonably required to protect the Broadband System operations in the applicable circumstance. Notwithstanding the foregoing, Row 44 shall be under no obligation to monitor the content Southwest or customers of Southwest transmit using the Services, except as may be required by applicable Law. Southwest may not resell or redistribute (whether for a fee or otherwise) the Services provided by Row 44, or any portion thereof, except for the sale of access to the Services from Southwest to Southwest's passengers.

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\*\*\* Confidential treatment requested.

#### **4.3.2 Intellectual Property Ownership.**

4.3.2.1 Southwest Information and Materials. All information, materials and technology, including computer software, provided to Row 44 by Southwest in connection with the Service, including modifications, changes and derivatives thereto whether or not created as part of the services provided hereunder (the “**Southwest Materials**”) are and shall remain the property of Southwest or its licensors, which shall retain all Intellectual Property Rights therein. Row 44 obtains no right, title, or interest therein, except that during the Term Row 44 may use the Southwest Materials for the sole, exclusive and limited purpose of performing the services in connection with the Service in compliance with the terms and conditions of this Agreement. Row 44 shall comply with the terms of any license or other agreement applicable to such Southwest Material. All Southwest Materials shall be subject to the confidentiality provisions of this Agreement. Row 44 shall not encumber the Southwest Materials in any way, and promptly shall return to Southwest any and all Southwest Materials in Row 44’s possession or control upon Southwest’s request and, in any event, upon termination or expiration of this Agreement. For clarity, as between the Parties, Row 44 will own the Intellectual Property Rights in the Row 44 Materials (a) owned by Row 44 prior to the August 13, 2010 or (b) independently created or acquired by Row 44 after August 13, 2010 provided such materials do not constitute a derivative work of or misappropriate or infringe upon any Southwest Materials, Southwest Intellectual Property Rights or Southwest Confidential Information.

4.3.2.2 Row 44 Information and Materials. All information, materials and technology, including computer software, provided to Southwest by Row 44 in connection with the Service, including modifications, changes and derivatives thereto whether or not created as part of the services provided hereunder (the “**Row 44 Materials**”) are and shall remain the property of Row 44 or its licensors, which shall retain all Intellectual Property Rights therein. Southwest obtains no right, title, or interest therein, except that during the Term Southwest may use the Row 44 Materials for the sole, exclusive and limited purpose of performing its obligations in connection with the Service in compliance with the terms and conditions of this Agreement. Southwest shall comply with the terms of any license or other agreement applicable to such Row 44 Material. All Row 44 Materials shall be subject to the confidentiality provisions of this Agreement

#### 4.3.3 Audits.

4.3.3.1 Compliance Audits. Within \*\*\* following a written request from a Party (an “**Auditing Party**”), the other Party (the “**Responding Party**”) shall provide the Auditing Party, such Auditing Party’s auditors (including internal audit staff and external auditors), inspectors, regulators and other reasonably designated representatives as such Auditing Party may from time to time designate in writing (collectively, the “**Auditors**”), with access to, at reasonable times, data and records relating to the Services for purposes of verifying compliance with this Agreement. The Responding Party shall provide any reasonable assistance that the Auditing Party may reasonably require with respect to such audits. All financial and non-financial transactions resulting from this Agreement shall be documented by Row 44 and subject to audit by the Southwest Auditors. Row 44 and Southwest shall meet to review each audit report promptly and to agree upon an appropriate and effective manner in which to respond to the deficiencies identified and changes recommended by such audit report. Notwithstanding the foregoing, Southwest acknowledges and agrees that the documents and data provided to Southwest shall be subject to reasonable redaction in support of Row 44’s confidentiality obligations and compliance with applicable Law. Each Party shall be responsible for any costs associated with the exercise of its audits rights set forth herein.

4.3.3.2 . Fee and Net Revenue Split Audits. Upon notice from Southwest, Row 44 shall provide the Southwest Auditors with access to such financial books and records and supporting documentation as may be reasonably requested by Southwest’s Auditors. Southwest’s Auditors may audit Row 44’s charges and/or payments to Southwest to determine if such charges and/or payments are accurate and in accordance with this Agreement. If, as a result of such audit, Southwest determines that Row 44 has overcharged or underpaid Southwest, Southwest shall notify Row 44 of the amount of such overcharge or underpayment and Row 44 shall (in addition to any and all other remedies that may be available to Southwest) promptly pay to Southwest the amount of the overcharge or amounts owed due to underpayment, plus interest, calculated from the date of receipt by Row 44 of the overcharged or underpaid amount until the date of payment to Southwest. In addition to Southwest’s rights set forth in this Section 4.3.3.2, in the event any such audit reveals an overcharge or underpayment to Southwest in excess of \*\*\* or more, Row 44 shall (in addition to any and all other remedies that may be available to Southwest) reimburse Southwest for the cost of such audit.

### ARTICLE 5.

#### REPRESENTATIONS, WARRANTIES AND COVENANTS

##### 5.1 By Row 44:

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\*\*\* Confidential treatment requested.



5.1.1 **Performance of the Services.** Row 44 represents and warrants to Southwest that Row 44 has the skills, resources and expertise to provide and shall provide all Services in accordance with the terms and conditions of this Agreement. Without limiting the generality of the foregoing, Row 44 represents and warrants to Southwest that: (a) all Services provided under this Agreement shall be provided in a timely, professional and workmanlike manner consistent with the highest industry standards of quality and integrity; provided, however, that where this Agreement specifies a particular standard or criteria for performance, this warranty is not intended to and does not diminish that standard or criteria for performance; and (b) other than the applicable fees set forth herein, no additional cost or expense shall be required of Southwest in order for Row 44 to be able to provide the Services as required under this Agreement.

5.1.2 \*\*\*

5.1.3 **System Hardware.** Except for Row 44's (or its Vendors) right to receive payment for such System Unit (or component, as applicable), Row 44 represents and warrants to Southwest that each System Unit shall be provided to Southwest free and clear of all liens and encumbrances and when initially provided to Southwest shall be provided in new condition and shall not have been previously refurbished or reconditioned. This warranty shall survive the expiration or termination of this Agreement. \*\*\*

5.1.4 **No Violation of Laws.** Row 44 represents and warrants to Southwest that Row 44, the Broadband System, and each System Unit is not, and covenants that none of them shall be and, to the extent applicable, Southwest's use of the Broadband System (in conformance with the terms of this Agreement and the other agreements entered into between the Parties in connection with the Broadband System) and each System Unit, shall not be, in violation of any Laws, and Row 44 has not failed, and shall not fail, to obtain any licenses, permits, franchises or other governmental authorizations necessary for the performance of this Agreement, ownership of its properties or the conduct of its business, which violation or failure, either individually or in the aggregate, might adversely affect its business, properties or financial condition, the consummation of the transactions contemplated by this Agreement, or the performance of its obligations hereunder. This warranty shall survive the expiration or termination of this Agreement.

5.1.5 **Disabling Code.** Row 44 represents and warrants to Southwest that the Broadband System, including the System Software, does not contain any virus, worm, trap door, back door, timer, clock, counter or other limiting routine, instruction or design that would erase data or programming or otherwise cause any of the Deliverables to become inoperable or incapable of being used in the full manner for which it was designed and created (collectively, a "**Disabling Code**"); provided, that, Disabling Code shall not include (a) features of the Broadband System designed to allow Row 44 to operate its service, including providing network traffic management, (b) features of the Broadband System that allow Southwest to deactivate or modify features of the Broadband System and (c) features of the Broadband System required by Row 44's applicable regulatory licenses, agreements or applicable Law. In the event a Disabling Code is identified, Row 44 shall take all steps necessary, at no additional cost or expense to Southwest, to: (i) restore and/or reconstruct any and all Confidential Information and data lost by Southwest as a result of such Disabling Code; (ii) furnish to Southwest new Deliverables without the presence of Disabling Codes; and (iii) at the request of Southwest, install and implement such new Deliverables. This warranty shall survive any expiration or termination of this Agreement until Southwest discontinues its use of the applicable Deliverables.

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\*\*\* Confidential treatment requested.

5.1.6 **Legal and Corporate Authority.** Row 44 represents and warrants to Southwest that: (a) Row 44 is a Delaware corporation, and is qualified and registered to transact business in all locations where the failure to be so qualified would have a material adverse effect on the performance of its obligations hereunder; (b) Row 44 has all necessary corporate rights, powers and authority to enter into and perform this Agreement, and the execution, delivery and performance of this Agreement by Row 44 have been duly authorized by all necessary corporate action; (c) as of the Effective Date, the execution and performance of this Agreement by Row 44 does not violate any Law and does not breach any agreement, covenant, court order, judgment or decree to which Row 44 is a party or by which it is bound; and (d) Row 44 has, and promises that it shall maintain in effect, all governmental licenses and permits necessary for it to provide the Services contemplated by this Agreement. These warranties shall survive the expiration or termination of this Agreement.

5.1.7 **Litigation.** Row 44 represents and warrants to Southwest that there is no action, suit, claim, investigation or proceeding pending, or to Row 44's Knowledge, threatened in writing, by or affecting Row 44 or the Services which, if adversely decided, might adversely affect: (a) Row 44's ability to enter into this Agreement; (b) Row 44's performance of its obligations herein; or (c) except as previously disclosed to Southwest in writing, Southwest's or its customers' use of the Services or Broadband System. At all times during the Term, Row 44 shall promptly notify Southwest of any action, suit, claim, investigation or proceeding initiated by or against Row 44 that may adversely affect Row 44's ability to perform under this Agreement or Southwest's use of the Services, including where amounts in dispute may result in a material adverse change in the financial condition of Row 44.

5.1.8 \*\*\*

5.1.9 **Notification.** Row 44 agrees that it shall notify Southwest promptly in writing of the breach or existence of circumstances that could reasonably be expected to result in a breach of any of its representations, warranties or covenants in this Agreement.

## 5.2 **By Southwest:**

5.2.1 **Legal and Corporate Authority.** Southwest represents and warrants to Row 44 that: (a) Southwest is a Texas corporation, and is qualified and registered to transact business in all locations where the failure to be so qualified would have a material adverse effect on the performance of its obligations hereunder; (b) Southwest has all necessary corporate rights, powers and authority to enter into and perform this Agreement, and the execution, delivery and performance of this Agreement by Southwest have been duly authorized by all necessary corporate action; and (c) as of the Effective Date, the execution and performance of this Agreement by Southwest does not violate any Law and does not breach any agreement, covenant, court order, judgment or decree to which Southwest is a party or by which it is bound. These warranties shall survive the expiration or termination of this Agreement.

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\*\*\* Confidential treatment requested.

## ARTICLE 6.

### PRICING AND PAYMENT

#### 6.1 **System Units.**

6.1.1 **System Unit Cost.** Southwest shall pay Row 44 for each System Unit Accepted by Southwest in accordance with the pricing terms agreed to by the Parties as set forth in Exhibit B attached hereto. The charges specified in this Agreement are the total charges for the Deliverables provided to Southwest under this Agreement, and no other fees, costs or expenses may be charged to Southwest except as set forth herein. Row 44 shall have the right to increase pricing for System Units \*\*\* The Parties agree to meet and confer regularly during the Term regarding updates to the System Units and components thereof that may facilitate a decrease in the cost and related prices of the System Units and components thereof. \*\*\*

#### 6.2 **Services.** \*\*\*

#### 6.3 **Invoice and Payment.**

6.3.1 **Merchant of Record.** Unless sold directly by Southwest or otherwise agreed hereunder, Row 44 shall be the merchant of record for the Services.

6.3.2 **Accounting.** Within \*\*\* Row 44 shall calculate the \*\*\* received by Row 44 as well as any fees owed by and to Southwest hereunder, and submit to Southwest: (i) a report for the applicable period detailing the use of the Services and the features included therein, and the System Units purchased by Southwest, in a form to be mutually agreed upon by the parties, (ii) a summary of the calculation of \*\*\* for the applicable period in a format to be mutually agreed upon by the parties, and (iii) either a \*\*\* for \*\*\* for said period, or \*\*\* for \*\*\* for such period, all in accordance with this Agreement. \*\*\*

6.3.3 All payments shall be in United States Dollars and made by wire transfer to such account(s) as designated by Southwest and Row 44 from time to time during the Term. Each party agrees that the respective fees set forth in this Agreement are exclusive of all surcharges and taxes, except for taxes based solely on the net income of a party or its respective business franchise.

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\*\*\* Confidential treatment requested.

6.3.4 Row 44 shall invoice Southwest for System Units (and any overage of fees due to Row 44 in excess of payments due to Southwest), with the invoices being sent to the following address:

Southwest Airlines Co.

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6.3.5 Except as otherwise provided herein, Southwest shall pay each correct invoice for the purchase of System Hardware or Supplemental Television Hardware within \*\*\* following Southwest's receipt of such invoice (provided that such items have been delivered). Except as otherwise provided herein, Southwest shall pay each correct invoice for all other fees owed hereunder within \*\*\* following Southwest's receipt of such invoice (provided that the Services there under have been performed).

6.3.6 All payments shall be in United States Dollars and made by wire transfer to such account(s) as designated by Row 44 from time to time during the Term. Southwest acknowledges that the prices set forth in this Agreement are exclusive of all applicable fees, surcharges and taxes with respect to the Hardware and Services, except for taxes based solely on the net income of Row 44 or its business franchise.

#### 6.4 **Taxes.**

6.4.1 **Row 44 Tax Withholding** Where Row 44 is the merchant of record, Row 44 shall pay and agrees to indemnify and hold Southwest harmless from any taxes (except for taxes based on net income or capital or any franchise taxes, excess profit taxes or other taxes levied on Southwest's business) imposed by any federal, state, or local government in connection with this Agreement. If a claim is made against Southwest for any such taxes, Southwest will promptly notify Row 44. If requested by Row 44 in writing, Southwest will, at Row 44's expense, take such action as Row 44 may reasonably direct with respect to such asserted liability and will not pay such taxes except under protest. If payment is made, Southwest will, at Row 44's expense, take such action as Row 44 may reasonably direct to recover payment and will, if requested, permit Row 44 in Southwest's name to file a claim or commence an action to recover such payment. If all or any part of any such taxes is refunded, Southwest will repay Row 44 such part thereof as Row 44 will have paid.

As Southwest's designated service provider, Row 44 shall receive and execute Southwest's direction with respect to the collection of taxes from Southwest passengers in the provision of the Services provided under this Agreement. Prior to the launch of any Entertainment Portal Service feature an assessment of the tax implications of such feature shall be performed by Row 44 and the parties shall mutually agreed on a best practices for the collection and remittance of any applicable tax for such Service.

6.4.3 **Southwest Tax Withholding.** Where Southwest is the merchant of record, Southwest shall pay and agrees to indemnify and hold Row 44 harmless from any taxes (except for taxes based on net income or capital or any franchise taxes, excess profit taxes or other taxes levied on Row 44's business) imposed by any federal, state, or local government in connection with this Agreement. If a claim is made against Row 44 for any such taxes, Row 44 will promptly notify Southwest. If requested by Southwest in writing, Row 44 will, at Southwest's expense, take such action as Southwest may reasonably direct with respect to such asserted liability and will not pay such taxes except under protest. If payment is made, Row 44 will, at Southwest's expense, take such action as Southwest may reasonably direct to recover payment and will, if requested, permit Southwest in Row 44's name to file a claim or commence an action to recover such payment. If all or any part of any such taxes is refunded, Row 44 will repay Southwest such part thereof as Southwest will have paid.

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\*\*\* Confidential treatment requested.

#### 6.4.4 Section 1441:

6.4.4.1 **Documents Required/Failure to Provide Document.** Row 44 hereby agrees to provide Southwest with any documentation requested by Southwest to allow Southwest to comply with its obligations under Section 1441 of the Internal Revenue Code of 1986, as amended, and any regulations thereunder (collectively, “**Section 1441**”), including without limitation, (i) a valid U.S. Taxpayer Identification Number, and (ii) a properly completed Form W-8BEN, Form W-8ECI, Form W-8IMY, as applicable, or any similar form requested by Southwest. If Row 44 fails to provide any such documentation to Southwest upon \*\*\* written notice from Southwest then, notwithstanding any provision of this Agreement to the contrary, Southwest shall thereafter have the right to (i) withhold any amounts due to Row 44 under this Agreement until Row 44 complies with this Section, (ii) withhold any amounts required by Section 1441 with respect to any payments due to Row 44 under this Agreement and deposit such amounts with the Internal Revenue Service, or (iii) terminate this Agreement.

6.4.4.2 **Continuing Obligation/Failure to Provide.** Row 44 shall have the obligation during the term of this Agreement to update any information provided to Southwest under Section 6.4.4 and shall provide Southwest with any additional documentation or forms requested by Southwest for compliance with Section 1441. If Row 44 fails to comply with this Section upon \*\*\* written notice from Southwest then, notwithstanding any provision of this Agreement to the contrary, Southwest shall thereafter have the right to (i) withhold any amounts due to Row 44 under this Agreement until Row 44 complies with this Section, (ii) withhold any amounts required by Section 1441 with respect to any payments due to Row 44 under this Agreement and deposit such amounts with the Internal Revenue Service, or (iii) terminate this Agreement.

6.4.4.3 **Tax Indemnity.** Row 44 shall defend, indemnify and hold harmless Southwest, its affiliates, and their respective officers, directors, agents and employees from and against any and all claims, threatened or actual, brought by United States taxing authorities under Section 1441 as a result of or arising out of Row 44’s breach of its obligations under this Section 6.4. Row 44 agrees to pay, without limitation, any litigation costs, attorneys’ fees, penalties, interest or any tax incurred by Southwest as a result of or arising out of Row 44’s breach of its obligations under this Section 6.4.

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\*\*\* Confidential treatment requested.

## ARTICLE 7.

### INDEMNIFICATION AND INSURANCE

7.1 **Indemnity By Row 44.** Subject to Section 11.10, Row 44 shall be liable to and shall indemnify, defend and hold harmless Southwest, and its subsidiaries and Affiliates and their respective directors, officers and employees and permitted assigns from and against any Losses arising out of, connected with or resulting from following:

7.1.1 Use of the Services or System Units in conformance with the requirements of this Agreement and applicable Law and in connection with the use of the Broadband System;

7.1.2 any act or omission where there was a duty to act, by Row 44 or its Affiliates or any of their respective employees, officers, directors, shareholders or agents hired by Row 44 or its Affiliates;

7.1.3 any breach by Row 44 or its Affiliates of a covenant, representation or warranty herein;

7.1.4 the failure of Row 44 or its Affiliates or the Services or the Broadband System to comply with any applicable Laws;  
or

7.1.5 personal injury or property damages arising out of, connected with or resulting from any act or omission where there was a duty to act, by Row 44 or its subcontractors, suppliers, personnel or agents.

Amounts owing under this ARTICLE 7 shall be paid promptly upon written demand for indemnification containing in reasonable detail the facts giving rise to such liability. The terms of this ARTICLE 7 shall survive the termination or expiration of this Agreement.

7.2 **Intellectual Property Indemnity.** Row 44 shall be liable to and shall indemnify, defend and hold harmless Southwest, and its subsidiaries and Affiliates and their respective directors, officers and employees and permitted assigns from and against any Losses arising out of, connected with or resulting from any claim arising out of or relating to any infringement, inducement of infringement, dilution, misappropriation or other violation of any third party Intellectual Property Rights arising from: (a) the materials and/or technology provided or approved for use by Row 44 in connection with the Broadband System; (b) the System Units or components thereof; or (c) the Services or Southwest's or its passengers' use thereof. In the event either Party makes a good faith determination that a third party claim as described in the preceding sentence will not be fully and finally dismissed, then upon such Party's election, in addition to its other obligations set forth in this Section 7.2, Row 44 shall as promptly as practicable either (i) procure for Southwest the right to use the Services or System Units free of such liability for infringement, (ii) replace the applicable Service or component with a non-infringing interchangeable substitute of at least similar performance and capability, or (iii) modify the applicable Service or component so that it becomes non-infringing without materially impairing its performance or interchangeability, or (iv) if none of the above is practical, remove the System Units from Southwest's aircraft at Row 44's expense. Notwithstanding the foregoing, Row 44 intellectual property indemnity obligations under this Section 7.2 shall not apply to the extent the applicable Loss would not have occurred but for any of the following: (A) Southwest's use of the System Units or Services in a manner for which they were neither contemplated nor designed, (B) the use of the Services or System Units modified in an unauthorized manner by a party other than Row 44 or any party under the direction of Row 44, (C) any combination of a Service or a System Unit by a party other than Row 44 or any party under the direction of Row 44 with any other service, device, equipment or technology, other than as necessary or foreseeable for reasonable use of the Broadband System or any component thereof, (D) the failure by Southwest to use a non-infringing interchangeable substitute Service furnished by Row 44, at no additional cost, expense or undue burden to Southwest, to avoid further infringement, and (E) the infringement of a third party's Intellectual Property Rights by any intellectual property owned, controlled or licensed by Southwest (other than intellectual property controlled or licensed by Southwest pursuant to this Agreement or the Supply Agreement).

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\*\*\* Confidential treatment requested.

7.3 **Indemnity by Southwest.** Subject to Section 11.10, Southwest shall be liable to and shall indemnify, defend and hold harmless Row 44, and its subsidiaries and Affiliates and their respective directors, officers and employees and permitted assigns from and against any Losses arising out of, connected with or resulting from Southwest's negligence or willful misconduct and resulting in injury to or death to any person or material loss or damage to any property.

7.4 **Third Party Actions.** A party entitled to indemnification hereunder (an "**Indemnified Party**") shall give prompt written notice to the Party that is obligated to provide indemnification hereunder (an "**Indemnifying Party**") of the commencement or assertion of any action, proceeding, demand, or claim by a third party (collectively, a "**third party action**") in respect of which such Indemnified Party shall seek indemnification hereunder. Any failure so to notify an Indemnifying Party shall not relieve such Indemnifying Party from any liability that it may have to such Indemnified Party under this ARTICLE 7 unless the failure to give such notice materially and adversely prejudices such Indemnifying Party. The Indemnifying Party shall have the right to assume control of the defense of, settle, or otherwise dispose of such third party action on such terms as it deems appropriate; provided, however, that:

7.4.1 The Indemnified Party shall be entitled, at its own expense, to participate in the defense of such third party action (provided, however, that the Indemnifying Party shall pay the attorneys' fees of the Indemnified Party if (a) the employment of separate counsel shall have been authorized in writing by such Indemnifying Party in connection with the defense of such third party action, (b) the Indemnifying Party shall not have employed counsel reasonably satisfactory to the Indemnified Party to have charge of such third party action, (c) the Indemnified Party shall have reasonably concluded that there may be defenses available to such Indemnified Party that are different from or additional to those available to the Indemnifying Party, or (d) the Indemnified Party's counsel shall have advised the Indemnified Party that there is a conflict of interest that could make it inappropriate under applicable standards of professional conduct to have common counsel);

7.4.2 The Indemnifying Party shall obtain the prior written approval of the Indemnified Party before entering into or making any settlement, compromise, admission, or acknowledgment of the validity of such third party action or any liability in respect thereof;

7.4.3 No Indemnifying Party shall consent to the entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by each claimant or plaintiff to each Indemnified Party of a release from all liability in respect of such third party action; and

7.4.4 The Indemnifying Party shall not be entitled to control (but shall be entitled to participate at its own expense in the defense of), and the Indemnified Party shall be entitled to have sole control over, the defense or settlement, compromise, admission, or acknowledgment of any third party action (a) as to which the Indemnifying Party fails to assume the defense within a reasonable length of time, (b) to the extent the third party action seeks an order, injunction, or other equitable relief against the Indemnified Party which, if successful, would materially adversely affect the business, operations, assets, or financial condition of the Indemnified Party, or (c) if the third party action seeks damages in excess of the amount recoverable from the Indemnifying Party under Section 11.10.

7.5 **Cooperation.** The parties hereto shall extend reasonable cooperation in connection with the defense of any third party action pursuant to this ARTICLE 7 and, in connection therewith, shall furnish such records, information, and testimony and attend such conferences, discovery proceedings, hearings, trials, and appeals as may be reasonably requested.

#### 7.6 **Insurance.**

7.6.1 Row 44, at its own expense, shall procure and maintain during the Term, policies of insurance that include the following coverage: (a) Aviation Products Liability Insurance: Covering against any and all liabilities which Row 44 becomes legally obligated to pay as damages because of personal injury, sickness or disease, including death at any time resulting therefrom sustained by any person and because of injury to or destruction of property including the loss of use thereof arising out of or in connection with the handling, use of or any condition existing in the Broadband System (“**Products Hazard**”), including training aids, instructions, manuals, drawings, engineering or other data, engineering or other advice and/or services and/or labor given or supplied by Row 44 relating to the Broadband System, which arises out of, results from or is in connection with an accident which is neither expected nor intended (an “**Occurrence**”) arising out of the Products Hazard in the amount of US\$100,000,000 per occurrence and in the amount of US\$100,000,000 in the aggregate; (b) Grounding Liability Insurance: Covering against any and all liabilities which Row 44 becomes legally obligated to pay as damages for loss of use of completed aircraft occurring after delivery and acceptance of the Broadband System by Southwest and caused by a grounding (the complete and continuous withdrawal from all flight operations at or about the same time of one or more aircraft due to a mandatory order of the FAA or EASA due to an existing, alleged or suspected like defect, fault or condition affecting the safe operation of two or more like model aircraft) following an Occurrence arising out of the Products Hazard in the amount of US\$100,000,000 per occurrence and in the amount of US\$100,000,000 in the aggregate and the combined coverage under this Section 7.6.1 is US\$100,000,000 in the aggregate; (c) Non-Aviation Commercial General Liability Insurance: Covering against any and all liabilities which Row 44 becomes legally obligated to pay as damages for non-aviation related exposures (Commercial General Liability Insurance) and exposures over and above the underlying General Liability policies (Umbrella Excess Liability Insurance) in the amount of US\$100,000,000 in the aggregate; (d) Workers' Compensation Insurance for its own employees that meets the statutory limits of the states in which Row 44 operates and all federal statutes and regulations, (e) Employers Liability of not less than \$1,000,000 combined single limit per occurrence, and (f) Comprehensive Automobile Liability (including Automobile Non-Ownership Liability) with a combined single limit of not less than \$5,000,000 per occurrence (provided that Row 44 shall have thirty (30) days following the Effective Date in which to obtain such Comprehensive Automobile Liability coverage). Southwest and all subsidiary and affiliated companies are to be named as additional insureds under the aforementioned policies.



7.6.2 Insurance certificates and notices of modification or termination shall clearly state Row 44's name and shall be sent to:

Southwest Airlines Co.  
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## ARTICLE 8.

### TERM AND TERMINATION

8.1 **Term**. The initial term of the Agreement will shall commence on the Effective Date and shall continue until December 31, 2020 (the "**Term**").

8.2 **Termination by Row 44 for Failure to Pay**. Each Party may terminate this Agreement upon the failure of the other Party to pay any undisputed amount when due hereunder, if such failure continues for 10 days after the receiving Party provides the paying Party with written notice of such failure.

8.3 **Termination by Either Party for Breach or Insolvency**. Either Party shall have the right to terminate this Agreement prior to the expiration of the Term upon the occurrence of any of the following:

8.3.1 Upon the breach of any representations, warranties or obligations by the other Party if the breaching Party has not cured such breach within 60 day after written notice thereof by the non-breaching Party; or

8.3.2 immediately upon written notice, if (a) the other Party, pursuant to or within the meaning of Bankruptcy Law, (i) commences a voluntary case, (ii) consents to the entry of an order for relief against it in an involuntary case, (iii) consents to the appointment of a custodian of it or for any substantial part of its property, or (iv) makes a general assignment for the benefit of its creditors, or (b) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against the other Party in an involuntary case, (ii) appoints a custodian of the other Party or for any substantial part of its property, or (iii) orders the winding up or liquidation of the other Party.

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\*\*\* Confidential treatment requested.

8.4 **Termination by Southwest**. Southwest may terminate this Agreement if:

8.4.1 \*\*\*

8.4.2 \*\*\*

8.4.3 Any Regulatory Authority takes any action, any Law is enacted, or any action, suit, claim, investigation or proceeding is initiated, or any Regulatory Approval is not obtained, in each case that adversely impacts or adversely conditions, or is reasonably expected to adversely impact or adversely condition, Southwest's ability to deliver the Wi-Fi Service to its passengers; or

8.4.4 Row 44 assigns or otherwise transfers this Agreement (within the meaning of Section 11.1) without the prior written consent of Southwest (provided that (a) Southwest must provide at least six months advance notice of a termination pursuant to this Section 8.4.4 and (b) such notice of termination must be provided no later than one year after such assignment or transfer by Row 44).

8.5 **Effect of Expiration or Termination of this Agreement for Any Reason**. Upon the expiration or termination of this Agreement by either Party for any reason, the following provisions will apply:

8.5.1 Subject to Southwest's rights to use materials placed in escrow hereunder, each Party will return the originals and any copies of the other Party's Confidential Information and Proprietary Information; provided, that, each Party may retain copies of any Confidential Information or Proprietary Information that is subject to a continuing license pursuant to a fully executed written agreement between the Parties, and one copy of the other Party's Proprietary Information in possession of its legal counsel for the purposes of monitoring its obligations hereunder and exercising any surviving rights;

8.5.2 Subject to Section 11.10, neither Party will be relieved of any liability or obligation of such Party that accrued, or which arose during or relates to any period, prior to the effective date of such termination, including without limitation any payment obligations; and

8.5.3 The provisions of ARTICLE 1, Sections 2.6, 3.3.6, 4.2.4, 4.3.2, 4.3.3, 5.1.2, 5.1.3, 5.1.4, 5.1.5, 5.1.6, 5.2, 6.3, 6.4, 7.1, 7.2, 7.3, 7.4, 7.5, ARTICLE 8, ARTICLE 9, ARTICLE 10 and ARTICLE 11, as applicable, will survive the expiration or termination of this Agreement and remain in full force and effect in accordance with their terms.

8.6 **Remedies Cumulative and Nonexclusive**. All of the non-breaching Party's remedies will be cumulative, and the exercise of one remedy hereunder by the non-breaching Party will not be deemed to be an election of remedies.

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\*\*\* Confidential treatment requested.

8.7 **Rights In Bankruptcy.** The Parties agree that Row 44 is a licensor to Southwest of intellectual property (as defined in 11 U.S.C. § 101 (35A), including trade secrets, inventions, process and design). In addition to all other rights and remedies that Southwest has or may come to have at law, in equity, or otherwise under this Agreement or applicable bankruptcy and non-bankruptcy law, in the event that Row 44 were to become a debtor or debtor in possession under Title 11 of the United States Code, Southwest shall be entitled to all rights under Title 11 of the United States Code, and specifically those rights afforded by 11 U.S.C. § 365(n) of Title 11 of the United States Code in the event of any rejection of this Agreement under 11 U.S.C. § 365.

8.8 **Operations after Termination.** \*\*\*

8.9 **Notice of Termination.** All termination notices delivered by either Party in connection with this Agreement must be delivered in writing.

8.10 **Wind Down.** \*\*\*

8.11 **Post-Termination Assistance.** \*\*\*

## ARTICLE 9.

### DISPUTE RESOLUTION

9.1 **Escalation.** Upon the occurrence of any event that, pursuant to the express provisions of this Agreement, is subject to the escalation provisions set out in this Section 9.1, or upon the occurrence of any other material Dispute under this Agreement by written notice by a Party to the other Party, the following procedures shall apply:

9.1.1 The Parties will attempt to resolve the Dispute promptly by negotiations between a designated Southwest Vice President and the Chief Executive Officer of Row 44, or their respective designees (collectively, the “**Senior Officers**”). The Senior Officers will meet in person or by telephone within 10 Business Days after the notice of the Dispute and attempt in good faith to resolve the Dispute.

9.1.2 In the event the Senior Officers do not resolve the Dispute within 30 Business Days from receipt of notice of a Dispute (which time period may be extended by written agreement of the Senior Officers), either Party may refer the Dispute to arbitration in accordance with Section 9.2.

9.2 **Binding Arbitration.**

9.2.1 Any controversy, dispute or claim (whether lying in contract or tort) between the Parties arising out of or related to this Agreement or the breach, termination or validity thereof (“**Dispute**”) shall, after the expiration of the time period set forth in Section 9.1.2 at the request of any Party be submitted to arbitration in accordance with this Section 9.2.

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\*\*\* Confidential treatment requested.

9.2.2 All Disputes shall, except as provided herein, be solely and finally settled by a single arbitrator; provided, however, in the event the amount in controversy, whether in an individual Dispute or in the aggregate as to multiple Disputes between the Parties, is \*\*\*, the Parties agree to submit such Disputes to a board of arbitrators consisting of three arbitrators, as set forth below (the term “**Arbitrators**” shall refer to the board of arbitrators or the single arbitrator, as applicable). The arbitration proceedings shall be held in Dallas, Texas, and except as otherwise may be provided in this Section 9.2, the arbitration proceedings shall be conducted in accordance with the Commercial Arbitration Rules (the “**AAA Rules**”) of the American Arbitration Association (the “**AAA**”).

9.2.3 If either Party determines to submit a Dispute for arbitration pursuant to this Section 9.2, such Party shall furnish the other Party to the Dispute with a dated, written statement (the “**Arbitration Notice**”) indicating (i) such Party’s intent to commence arbitration proceedings, (ii) the nature, with reasonable detail, of the Dispute, and (iii) the remedy or remedies such Party will seek. Where the Parties use a single arbitrator, within \*\*\* of the Arbitration Notice, the Parties shall select a single arbitrator from a list of members of the AAA’s National Panel of Commercial Arbitrators. If the parties use a single arbitrator, that arbitrator must be “neutral.” A “neutral” arbitrator shall be a Party who would not be subject to disqualification under rule No. 17 of the AAA Rules. If the Parties do not reach agreement on the selection of a single arbitrator within the \*\*\* period, the AAA shall have the right to make such selection upon the request of any Party to the arbitration proceedings. Where the Parties use a board of arbitrators, within \*\*\* of the date of the Arbitration Notice, the Party commencing the arbitration (the “**Petitioner**”) and the Party with whom the Petitioner has its Dispute (the “**Respondent**”) shall each select one qualifying arbitrator (and provide written notice of such selection to the Respondent and Petitioner). A “qualifying” arbitrator is a Party who is not (i) an Affiliate of either the Petitioner or Respondent or (ii) counsel to any such Party at such time. If either the Petitioner or Respondent fails to select a qualifying arbitrator or provide such notice within the \*\*\* period, the AAA shall have the right to make such selection upon the request of any party to the arbitration proceedings. (Such qualifying arbitrators hereafter may be referred to, respectively, as the “**First Arbitrator**” and the “**Second Arbitrator**.”).

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\*\*\* Confidential treatment requested.

9.2.4 Within \*\*\* following their selection, the First Arbitrator and Second Arbitrator shall mutually select (and provide written notice to the Respondent and the Petitioner of such selection) a third arbitrator (the “**Third Arbitrator**”) from a list of members of the AAA’s National Panel of Commercial Arbitrators. The Third Arbitrator must be “neutral.” A “neutral” arbitrator shall be an individual who would not be subject to disqualification under rule No. 17 of the AAA Rules. At any time within \*\*\* after the date of the Arbitration Notice, the Petitioner and Respondent can make discovery requests of the other (including requests for delivery of documents, production of witnesses for deposition testimony and delivery of interrogatory responses). The recipient of a discovery request shall have \*\*\* after the receipt of such request to object to any or all portions of such request and make an application to the Arbitrators to limit the scope of such discovery request, and shall respond to any portions of such request not so objected to within \*\*\* of the receipt of such request. All objections shall be in writing and shall indicate the reasons for such objections. Within five Business Days after the end of the period for the submission by the requested party of an application to limit the discovery request, the Arbitrators shall grant or deny such discovery request, in whole or in part, to the extent the Arbitrators determine such discovery is or is not, as the case may be, reasonably necessary to enable the requesting party to obtain information relevant to the Dispute without unreasonably burdening the requested party. The requested party shall comply with a discovery request granted by the Arbitrators within \*\*\*after such discovery request is granted, or within such longer period as the Arbitrators may determine upon application of the requested party for extension thereof for reasonable cause. Neither party shall be permitted to make more than one application for discovery to the Arbitrators. All depositions shall be taken in the city in which the Person being deposed resides or has its principal place of business, unless otherwise agreed by the parties. The Arbitrators are not authorized to subpoena documents or perform independent investigations. Hearings must commence no later than \*\*\* following the date of the Arbitration Notice and such hearings shall be conducted for no more than five Business Days. Each of the Petitioner and the Respondent shall submit a brief, outlining such party’s claim for relief or defense to any claim, to the other and to the Arbitrators on or before the tenth day before the date of the first hearing. Reply briefs must be exchanged and submitted to the Arbitrators on or before the third day before the date of the first hearing.

9.2.5 The Respondent and Petitioner shall each submit to the Arbitrators within 20 days following the last hearing a proposed order for disposing of the Dispute(s) presented. The final decision of the Arbitrators is due on or before the thirtieth day following the date of the last hearing. The Arbitrators shall issue a final decision that, in their judgment, is consistent with the terms of this Agreement, the intent of the parties, and Law, as supported by evidence presented by the Petitioner and Respondent in the arbitration proceeding or, if the subject matter of the Dispute is not clearly addressed in or determinable under this Agreement, that, in their opinion, would be most fair to the Petitioner and Respondent. The Arbitrators shall have no authority to award any punitive, special or exemplary damages. The Arbitrators shall be required to provide reasons for their decision. The foregoing time periods and procedural steps may be modified or extended by the Arbitrators in their discretion to the extent they deem necessary to prevent fundamental unfairness; provided that, at all times the Arbitrators shall be mindful of the parties’ desire for the most expeditious possible resolution of Disputes.

9.2.6 To the extent permissible under applicable Law, the Parties agree that the award of the Arbitrators shall be final and shall not be subject to judicial review. Judgment on the arbitration award may be entered and enforced in any court having jurisdiction over the Parties or their assets. It is the intent of the Parties that the arbitration provisions hereof be enforced to the fullest extent permitted by applicable Law, including the Federal Arbitration Act, 9 U.S.C. § 2. Nothing contained in this Section 9.2 shall prevent the Parties from seeking injunctive relief or require arbitration of any issue for which injunctive relief is sought by either Party hereto.

**9.3 Governing Law; Jurisdiction; Venue.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF \*\*\* (WITHOUT REFERENCE TO ANY CONFLICT OF LAW RULES). FOR ANY PROCEEDINGS IN AID OF ARBITRATION UNDER SECTION 9.2 OR ANY REQUEST FOR INJUNCTIVE RELIEF, EACH PARTY EXPRESSLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE OF DELAWARE AND TO THE VENUE OF FEDERAL AND STATE COURTS SITUATED IN \*\*\*, AND AGREES TO ACCEPT SERVICE OF PROCESS BY REGISTERED MAIL. EACH PARTY IRREVOCABLY WAIVES ANY OBJECTION IT MIGHT OTHERWISE HAVE TO SUCH VENUE AND ANY RIGHT TO REMOVE OR TRANSFER JURISDICTION TO ANY OTHER FORUM.

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\*\*\* Confidential treatment requested.

## ARTICLE 10.

### CONFIDENTIALITY, PUBLICATION AND PUBLICITY

10.1 **Confidentiality.** All Confidential Information disclosed by or on behalf of one Party to the other Party hereunder will be maintained in confidence by the receiving Party and will not be disclosed to a third party or used for any purpose whatsoever except as follows:

10.1.1 If a Party reasonably believes based on advice of outside counsel that the Confidential Information is required to be disclosed (a) to governmental or other regulatory agencies in order to obtain patents or (b) to comply with applicable stock exchange requirements or Securities and Exchange Commission regulations, then such disclosure may be made only to the extent reasonably necessary to obtain patents or approvals, or to comply with such requirements and regulations as appropriate, and such receiving Party seeks confidential treatment to the extent reasonably practicable;

10.1.2 If a Party reasonably believes it is necessary for Confidential Information to be disclosed to employees, agents, consultants, Affiliates and/or other third parties for the purpose of conducting activities permitted under this Agreement in accordance with this Agreement, Confidential Information may be disclosed to such employees, agents, consultants, Affiliates and/or other third parties only to the extent necessary, and only if such individuals agree to be bound by confidentiality obligations substantially equivalent to the terms herein;

10.1.3 If a Party reasonably believes it is necessary to disclose the terms and conditions of this Agreement to actual or prospective investors, lenders, real estate or equipment lessors or acquirors or other potential or current financing sources of a Party (collectively "**Financing Sources**"), such terms and conditions may be disclosed to such Financing Sources provided that the Financing Sources agree to be bound by confidentiality obligations substantially equivalent to the terms herein; or

10.1.4 If a Party reasonably believes that Confidential Information is required to be disclosed by law, regulation, request from a governmental or other regulatory agency or court order, then provided that notice of such disclosure is promptly delivered to the disclosing Party in order to provide an opportunity to challenge or limit the disclosure obligations, and provided further that the receiving Party works in good faith with the disclosing Party to seek confidential treatment of such disclosure and to disclose only to the extent reasonably necessary to comply with the applicable law or court order, such Confidential Information may be disclosed to the extent legally required. If such required disclosure involves filing information with the SEC, then, in addition to the notification obligation above, the Parties will cooperate in making any request for confidential treatment from the SEC that a Party may deem necessary to protect trade secrets and other commercial and financial information the disclosure of which could result in competitive harm.

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\*\*\* Confidential treatment requested.

10.2 **Publicity.** Subject to Section 10.1, any publication, news release or other public announcement relating to this Agreement or the terms hereof that either Party wishes to release shall first be provided to the other Party for review within a reasonable period in advance, and the submitting Party shall not release such announcement without the prior written consent of the other Party.

10.3 **Employees and Consultants.** Each Party hereby agrees and covenants that all of its employees and consultants and all of the employees and consultants of its Affiliates who participate in any activities under this Agreement or have access to any Confidential Information or Proprietary Information are or will, prior to their participation or access, be bound by written obligations to maintain such Confidential Information or Proprietary Information in confidence and not to use or transfer such information or materials except as expressly permitted hereunder. Each Party agrees to use, and to cause its Affiliates to use, reasonable commercial efforts to enforce such obligations.

## ARTICLE 11.

### OTHER PROVISIONS

11.1 **Assignment.** In the event that either Party desires to assign or otherwise transfer this Agreement or any obligation of such Party hereunder (the "Assigning Party"), the Assigning Party shall seek the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed (the "Remaining Party") (it being understood that for purposes of the foregoing restriction on assignment and transfer, a change of control of either Party (directly or indirectly, and whether by merger, consolidation, share exchange, stock sale or other similar transaction) and sale of all or substantially all of the assets of a Party, shall be deemed to constitute an assignment or transfer); provided, however, that Southwest may assign this Agreement and the rights, obligations and interests of Southwest, in whole or in part, to any of its Affiliates, to any purchaser of all, or substantially all, of its assets or to any successor corporation resulting from any merger, consolidation, share exchange, stock sale or other similar transaction, and provided further that Row 44 may assign or sell its rights to receive any amounts due hereunder. If the Remaining Party does not provide its consent within 30 days after a request for consent by the Assigning Party, then the Remaining Party shall be deemed to have withheld its consent. In the event that the Remaining Party consents to any assignment or transfer proposed by the Assigning Party, then this Agreement shall continue in full force and effect according to its terms from and after such assignment or transfer, with the assignee or transferee being substituted herein for the Assigning Party. In the event that Southwest does not consent to a proposed Row 44 assignment or transfer, and Row 44 completes the assignment or transfer, then this Agreement shall continue in full force and effect according to its terms from and after such assignment or transfer, with the assignee or transferee being substituted herein for the Assigning Party, and Southwest will have the termination right set forth in Section 8.4.4. This Agreement will inure to the benefit of Southwest and Row 44 and their respective successors.

11.2 **Severability.** In the event any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein will not in any way be affected or impaired thereby, unless the absence of the invalidated provision(s) adversely affect the substantive rights of the Parties. The Parties will in such an instance use their reasonable best efforts to replace the invalid, illegal or unenforceable provision(s) with valid, legal and enforceable provision(s) that, insofar as practical, implement the purposes of this Agreement.

11.3 **Notices.** All notices, documents or other communications that are required or permitted hereunder will be in writing and sufficient if delivered personally, sent by telefacsimile (and promptly confirmed by personal delivery, registered or certified mail or overnight courier), sent by nationally-recognized overnight courier or sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

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With a copy to:

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With a copy to:

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or to such other address as the Party to whom notice is to be given may have furnished to the other Party in writing in accordance herewith. Any such communication will be deemed delivered (i) if sent by mail, as aforesaid, on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, (ii) if sent by telefacsimile, as aforesaid, when sent (with confirmation of receipt), and (iii) if sent by courier or hand delivered, as aforesaid, when received.

11.4 **Entire Agreement.** This Agreement, the exhibits hereto, and, when executed, the agreements contemplated herein, contain the entire understanding of the Parties with respect to the subject matter hereof, and all express or implied agreements and understandings, either oral or written, heretofore made are expressly superseded by the same. Except as expressly set forth in this Agreement, this Agreement may be amended, or any term hereof modified, only by a written instrument duly executed by both Parties. The exhibits to this Agreement are deemed incorporated herein as if directly set forth herein in their entirety.

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\*\*\* Confidential treatment requested.



11.5 **Independent Contractors.** It is expressly agreed that Row 44 and Southwest will be independent contractors and that the relationship between the two Parties will not constitute a partnership, joint venture or agency. Neither Row 44 nor Southwest will have the authority to make any statements, representations or commitments of any kind, or to take any action, which will be binding on the other, without the prior consent of the other Party.

11.6 **Waiver.** The waiver by either Party hereto of any right hereunder or the failure to perform or of a breach by the other Party will not be deemed a waiver of any other right hereunder or of any other breach or failure by said other Party whether of a similar nature or otherwise.

11.7 **Counterparts.** This Agreement may be executed in identical duplicate copies exchanged by telefacsimile transmission. The Parties agree to execute two identical original copies of this Agreement after exchanging signed telefacsimile versions. Each identical counterpart will be deemed an original, but all of which together will constitute one and the same instrument.

11.8 **Waiver of Rule of Construction.** Each Party has had the opportunity to consult with counsel in connection with the review, drafting and negotiation of this Agreement. Accordingly, the rule of construction that any ambiguity in this Agreement will be construed against the drafting Party will not apply.

11.9 **Force Majeure.** Either Party's timely performance of any part of this Agreement, other than payment obligations, shall be excused to the extent that it is hindered, delayed or otherwise made impractical by any cause beyond the reasonable control of that Party and not caused by the negligence of the non-performing Party (collectively referred to as "**Force Majeure**"). If any Force Majeure condition(s) occur, the non-performing Party shall make reasonable efforts to notify the other Party of the nature of any such condition and the extent of the delay, and shall make reasonable, good faith efforts to resume performance as soon as possible.

11.10 **Liability Limitations.** EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH HEREIN, ROW 44 SPECIFICALLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE SERVICES PROVIDED BY ROW 44 HEREUNDER, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY KIND OR NATURE (INCLUDING LOST PROFITS AND LOST REVENUES), WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR RELATING TO THIS AGREEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOSSES OR DAMAGES OF ANY KIND OR NATURE ARISING OUT OF RELATING TO THIS AGREEMENT IN EXCESS OF THE TOTAL AMOUNT ACTUALLY PAID TO AND RECEIVED BY ROW 44 FROM SOUTHWEST DURING THE 12 MONTH PERIOD PRIOR TO SUCH CLAIM, WHICH AMOUNT WILL BE THE MAXIMUM AGGREGATE LIABILITY OF EITHER PARTY TO THE OTHER PARTY HEREUNDER. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL BE DEEMED TO LIMIT ANY LIABILITY WITH RESPECT TO (A) AN OBLIGATION OF INDEMNITY SET FORTH IN THIS AGREEMENT, (B) FOR DAMAGES RESULTING FROM A BREACH OF AN OBLIGATION OF CONFIDENTIALITY, (C) A BREACH OF THE OBLIGATIONS IN EXHIBIT J HEREUNDER, (D) FOR PERSONAL INJURY OR PATENT INFRINGEMENT OR (E) ANY RIGHT OR REMEDY AVAILABLE TO SOUTHWEST AT LAW OR EQUITY BASED ON ROW 44'S FRAUDULENT ACTS, FRAUDULENT OMISSIONS OR INTENTIONAL MISREPRESENTATIONS. THE PAST, PRESENT OR FUTURE DIRECTORS, OFFICERS, EMPLOYEES AND STOCKHOLDERS OF SOUTHWEST AND ITS AFFILIATES SHALL NOT HAVE ANY PERSONAL LIABILITY OR OBLIGATION TO ROW 44 ARISING UNDER THIS AGREEMENT.

11.11 **Third Party Beneficiaries.** Except as otherwise expressly provided in this Agreement, nothing herein expressed or implied is intended or will be construed to confer upon or to give to any third party any rights or remedies by reason of this Agreement. Except as otherwise expressly provided in this Agreement, there are no intended third party beneficiaries under or by reason of this Agreement.

[Remainder of this page is intentionally left blank.]

**IN WITNESS WHEREOF**, the Parties have executed this Agreement to be effective as of the Effective Date.

**SOUTHWEST AIRLINES CO.**

**ROW 44, INC.**

By: /s/ Dave Ridley  
Name: Dave Ridley  
Title: SVP – Chief Marketing Officer

By: /s/ John LaValle  
Name: John LaValle  
Title: CEO

SIGNATURE PAGE TO AMENDED AND RESTATED SUPPLY AND SERVICES AGREEMENT

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## **EXHIBIT A**

### **Definitions**

“**AAA**” has the meaning set forth in Section 9.2.2.

“**AAA Rules**” has the meaning set forth in Section 9.2.2.

“**Acceptance**” has the meaning set forth in Section 2.1.2.

“**Additional Included Services**” has the meaning set forth in Section 3.3.

“**Affiliate**” means an individual, trust, business trust, joint venture, partnership, corporation, association or other legal entity that, directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with an entity. For purposes of this definition only, “Control” and, with correlative meanings, the terms “Controlled by” and “under common Control with” means (a) the possession, directly or indirectly, of the power to direct the management or policies of a legal entity, whether through the ownership of voting securities or by contract relating to voting rights or corporate governance, or (b) the ownership, directly or indirectly, of more than 50% of the voting securities or other ownership interest of a legal entity.

“**Agreement**” has the meaning set forth in the Preamble.

“**Arbitration Notice**” has the meaning set forth in Section 9.2.3.

“**Arbitrators**” has the meaning set forth in Section 9.2.2.

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“**Auditing Party**” has the meaning set forth Section 4.3.3.1.

“**Auditors**” has the meaning set forth in Section 4.3.3.1.

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“**Bankruptcy Law**” means Title 11, United State Code, or any similar Federal or state law for the relief of debtors.

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“**Broadband System**” means the satellite based broadband internet system composed of the System Software, the System Hardware and all other hardware and software components necessary for the system to operate in accordance with the Specifications (as defined in the Supply Agreement).

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\*\*\* Confidential treatment requested.

“**Business Day**” means a day that is not a Saturday, Sunday or a day on which banking institutions in either New York, New York or Dallas, Texas are required by law to remain closed.

“**Commissioned Aircraft**” has the meaning set forth in Section 3.1.

“**Commissioning Procedure**” has the meaning set forth in Section 3.1.

“**Confidential Information**” means the terms and conditions of this Agreement, information disclosed by a Party to the other Party in connection with this Agreement or the performance of its obligations hereunder, or related to any use, method, compound, research project, work in progress, future development, scientific, engineering, manufacturing, marketing, business plan, Know-How, and financial and personnel matters relating to a Party, or its present or future products, sales, suppliers, employees, investors or business, whether disclosed in oral, written, graphic or electronic form, and whether or not specifically marked as confidential or proprietary, other than information that (a) is known by recipient at the time of its receipt, and not through a prior disclosure by or on behalf of the disclosing Party, as documented by contemporaneous business records; (b) is properly in the public domain through no fault of the recipient; (c) is subsequently disclosed to the recipient by a third party who may lawfully do so and is not directly or indirectly under an obligation of confidentiality to the disclosing Party, as documented by written business records in existence prior to the receipt of such information from the disclosing Party; or (d) is developed by the recipient independently of, and without reference to or use of, the information received from the disclosing Party. For the avoidance of doubt, any and all information provided by Southwest’s passengers to Row 44 or otherwise collected by Row 44 from Southwest’s customers shall be considered Southwest’s Confidential Information hereunder.

“**Content Control Services**” has the meaning set forth in Section 3.5.2.

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“**Defect**” means any failure of the Deliverables, or components thereof, to operate in accordance with or otherwise conform to the applicable Specifications.

“**Deliverable**” means all work product and other deliverables, and all related written reports, requirements documents (including newly created technical and non-technical data embodied therein), specifications, program materials, flow charts, notes, outlines and the like, and all intermediate and partial versions thereof, that are developed, authored, conceived, originated, prepared, or otherwise created by Row 44 or its employees, agents or subcontractors for or on behalf of Southwest under this Agreement, including the System Software and each System Unit delivered pursuant to a Purchase Order.

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\*\*\* Confidential treatment requested.

“**Designated Aircraft**” means the aircraft identified by Southwest on which the Broadband System will be installed.

“**Disabling Code**” has the meaning set forth in Section 5.1.5.

“**Dispute**” has the meaning set forth in Section 9.2.1.

“**Documentation**” means the Specifications and any other documentation associated with the Broadband System.

“**Effective Date**” has the meaning set forth in the Preamble.

“**Elected Services**” has the meaning set forth in Section 3.5.

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“**Entertainment Portal Service**” means the services to be provided by Row 44 in connection with the Entertainment Portal as set forth in Section 3.4.

“**FAA**” means the Federal Aviation Administration.

“**FCC**” means the Federal Communications Commission.

“**Financing Sources**” has the meaning set forth in Section 10.1.3.

“**First Arbitrator**” has the meaning set forth in Section 9.2.3.

“**Force Majeure**” has the meaning set forth in Section 11.9.

“**Indemnified Party**” has the meaning set forth in Section 7.4.

“**Indemnifying Party**” has the meaning set forth in Section 7.4.

“**Intellectual Property Rights**” means all inventions, patents, copyrights, trade secrets, trade names, Know-How, intellectual property, software, shop rights, moral rights, licenses, developments, research data, designs, processes, formulas and other intangible proprietary or property rights, whether or not patentable (or otherwise subject to legally enforceable restrictions or protections against unauthorized third party usage), and any and all applications for, and extensions, divisions and reissuances of, any of the foregoing, and rights therein, and whether arising by statute or common law.

“**Know-How**” means any non-public, documented or otherwise recorded or memorialized knowledge, experience, know-how, technology, information, and data, including formulas and formulations, processes, techniques, unpatented inventions, discoveries, ideas, and developments, test procedures, and results, together with all documents and files embodying the foregoing.

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\*\*\* Confidential treatment requested.

“**Knowledge**” means, with respect to either Party, the actual or constructive knowledge of the chief executive officer, the president, any executive vice-president or any vice president of such Party.

“**Landing Page**” has the meaning set forth in Section 4.1.2.

“**Law**” means all national, intergovernmental, common law, federal, state, provincial, regional, territorial and local laws, statutes, ordinances, regulations, rules, executive orders, orders of a court or governmental agency, supervisory requirements, directives, circulars, opinions, interpretive letters and other official releases of or by any government, or any authority, department or agency thereof.

“**Losses**” means all costs, damages, judgments, penalties, fines, losses and expenses, including reasonable attorneys’ fees, disbursements and court costs.

“**LRU**” shall have the meaning set forth in Section 2.3.4.

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“**Operational Data Service**” has the meaning set forth in Section 3.6.

“**Party**” or “**Parties**” has the meaning set forth in the Preamble.

“**Petitioner**” has the meaning set forth in Section 9.2.3.

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“**Proprietary Information**” means all regulatory filings, or information or data, whether disclosed in oral, written, graphic or electronic form, which is provided by, or on behalf of, one Party to the other Party in connection with this Agreement, whether or not specifically marked as confidential or proprietary, and whether or not it is Confidential Information.

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\*\*\* Confidential treatment requested.

“**Purchase Order**” has the meaning set forth in Section 2.3.

“**Regulatory Activities**” has the meaning set forth in Section 2.2.

“**Regulatory Approvals**” means any approval, product and establishment license, registration or authorization of any Regulatory Authority required for the use of the Broadband System.

“**Regulatory Authority**” means any government regulatory authority, including any applicable government regulatory authority involved in granting approvals for the manufacture, commercialization, use, reimbursement and/or pricing of the Services and the Broadband System or that otherwise has regulatory authority with respect to the Services and the Broadband System or aircraft. “Regulatory Authority” includes the FAA and the Federal Communications Commission.

“**Regulatory Filings**” means any filings that may be required for any Regulatory Approval or otherwise filed or submitted to a Regulatory Authority in an effort to comply with applicable Laws.

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“**Respondent**” has the meaning set forth in Section 9.2.3.

“**Responding Party**” has the meaning set forth in Section 4.3.3.1.

“**Row 44**” has the meaning set forth in the Preamble.

“**Row 44 Materials**” has the meaning set forth in Section 4.3.2.2.

“**Second Arbitrator**” has the meaning set forth in Section 9.2.3.

“**Section 1441**” has the meaning set forth in Section 6.4.4.

“**Senior Officers**” has the meaning set forth in Section 9.1.1.

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“**Services**” has the meaning set forth in Section 3.1.

“**Services Agreement**” has the meaning set forth in the Recitals.

“**Southwest**” has the meaning set forth in the Preamble.

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“**Southwest Materials**” has the meaning set forth in Section 4.3.2.1.

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“**Specifications**” means the specifications set forth in the applicable STC, as it may be amended from time to time.

“**STC**” means a supplemental type certificate as issued by the FAA.

“**Supply Agreement**” has the meaning set forth in the Recitals.

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“**System Unit**” has the meaning set forth in the Recitals.

\*\*\*

“**Television Service**” has the meaning set forth in Section 3.7.2.

\*\*\*

“**Term**” has the meaning set forth in Section 8.1.

“**Third Arbitrator**” has the meaning set forth in Section 9.2.4.

“**third party action**” has the meaning set forth in Section 7.4.

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“**Vendor**” means those third parties supplying Row 44 with components for the System Units.

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“**VOD**” means video-on-demand.

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\*\*\* Confidential treatment requested.

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\*\*\* Confidential treatment requested.

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Exhibit A-7

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**EXHIBIT B**

**HARDWARE AGREEMENT EXHIBIT ITEMS**

**EXHIBIT B-1**

**Documentation**

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\*\*\* Confidential treatment requested.

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Exhibit B-1

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**EXHIBIT B-2**

**System Unit Pricing**

**New Equipment Sales per Full Up Aircraft**

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\*\*\* Confidential treatment requested.

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Exhibit B-2

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**EXHIBIT B-3**

**System Unit Warranty Information**

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\*\*\* Confidential treatment requested.

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Exhibit B-3

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**EXHIBIT B-4**

**System Software**

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\*\*\* Confidential treatment requested.

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Exhibit B-4

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**EXHIBIT B-5**

**System Hardware**

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\*\*\* Confidential treatment requested.

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Exhibit B-5

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## EXHIBIT C

### **Commissioning Procedure**

The commissioning procedure shall be the applicable installer taking the steps set forth in the \*\*\* On Aircraft Test Plan \*\*\* or the \*\*\* On Aircraft Test Plan \*\*\* to verify the system is connected to the Service.

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\*\*\* Confidential treatment requested.

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Exhibit C-1

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## EXHIBIT D

### **Entertainment Portal Service**

The Entertainment Portal Service shall consist of (i) Row 44's standard web-based portal software platform, including a framework for an initial "landing page" for customers connecting to the Wi-Fi Service, Television Service and Entertainment Portal Service and related navigation pages to individual features offered by the Entertainment Portal Service (the "***Portal Platform***") and (ii) a variety of features and services to be incorporated into such software platform as mutually, agreed by the parties (the "***Portal Features***").

#### **General Entertainment Portal Service Management**

Row 44 will private label the Entertainment Portal Service for Southwest; provided, that, Row 44 will manage the portal, content, and associated updates and changes. Southwest will have the right to approve the selection of content, the look and feel of the portal and its pages, and the initiation of new portal services and capabilities. The Parties acknowledge and agree that the Entertainment Portal Service is dependent on mutual agreement and cooperation regarding the specific services and features to be made available on the Entertainment Portal Service and the business arrangements with third party providers that support such features. The Parties agree to exercise their reasonable discretion in approval and selection of specific features, advertising partners (subject to the Southwest restriction list described in item 2 below) (including all advertising and naming rights transactions) and business arrangements with respect to the Entertainment Portal Service.

Row 44's portal management will include, as applicable depending on the Portal Features operating at any given time, the acquisition of content and the management, delivery, and updating of content aboard all Southwest aircraft.

As part of the Program Schedule, the parties will jointly establish a portal management team to operate the Entertainment Portal Service and engage with third parties to be included in the same; provided, that, Row 44's engineering team shall initially have sole responsibility for management of the Portal Platform and implementation of Portal Features. Row 44 will provide design considerations to Southwest for review and approval for deployment. \*\*\*

#### **Basic Design/Customization**

Row 44 will customize the "look and feel" of the Portal Platform to Southwest's look, feel, livery, and languages, all in accordance with the capabilities of the Portal Platform and as reasonably requested by Southwest.

Row 44 will be responsible for maintaining the Portal Platform, but will support additional reasonable customization of the look and feel of the Portal Platform as Southwest's brand changes over time.

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Row 44 will diligently seek options for improving user experience and performance throughout the Term, and promptly communicate such options to Southwest.

Every \*\*\* the parties will review and “refresh” the look and feel of the Portal Platform.

### **Portal Features**

The Entertainment Portal Service is expected to consist of advertising, sponsorship and fee supported entertainment and services, such as media content on demand free entertainment such as games, destination deals and shopping. Subject to all rights assigned to Southwest outlined in this Agreement, Row 44 will be responsible for 3rd party relationships and contracts associated with portal content and services, \*\*\*. Unless otherwise agreed by the parties, Southwest acknowledges and agrees that all activities and dialog with 3rd parties related to the portal development should be done in cooperation with Row 44 to ensure consistency of communications, branding, messaging, and maximization of network efficiencies.

The Parties hereby acknowledge and agree that it is the intent and an essential purpose of this Agreement that Row 44 have the ability to implement additional features throughout the Term in order to maximize revenue generation of the Entertainment Portal Service. Southwest shall have the right to veto additional Portal Features from being implemented, but only in the case where such additional Portal Feature will conflict with Southwest’s brand and policies, all to be determined in the reasonable discretion of Southwest. Row 44 will propose such new Portal Features to Southwest prior to implementation and Southwest shall have thirty (30) days to exercise the foregoing veto.

While additional Portal Features are expected to be under the terms of the \*\*\* set forth in this Agreement, Row 44 and/or Southwest may from time to time propose specific a Portal Feature with a specific business model associated with such feature because of the unique nature of such Portal Feature.

If Row 44 agrees to include a portal feature sourced exclusively by Southwest and subject to an exclusivity clause for Southwest’s fleet, then such feature will be designated as exclusive to Southwest and Row 44 may not utilize the sourced feature on any other customer’s aircraft. For the avoidance of doubt, the foregoing shall not restrict Row 44 from implementing a similar feature on other Row 44 customers fleet using a different third party source and/or custom development.

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\*\*\* Confidential treatment requested.

## **Advertising**

### *Generally*

Row 44 and Customer will coordinate the sale and presentation of advertising for the Entertainment Portal Service (and the Television Service). Advertising may be local, national, or international, and likely a mix of all. With respect to live and stored media content, Row 44 will use commercially reasonable efforts to implement advertising in a reasonable set of scenarios so as not to hinder the portal experience, including advertising to be inserted before the showing of stored content (movies and TV shows) and within the live streams of live TV channels made available on the Television Service, all in accordance with the Entertainment Platform Service's capabilities and the applicable license restrictions for such content. Row 44 will be restricted from selling advertising space in violation of Southwest's policies, which include sales in the following categories of advertisements; provided, that Southwest may reasonably update the following restricted categories from time to time:

\*\*\*

### *Approval Process*

Southwest and Row 44 agree to the following approval processes for approving acceptable advertisers and advertisements that may potentially appear on the Entertainment Portal Service (and/or the Television Service):

\*\*\*

### *Internal Southwest Promotion Space*

Row 44 agrees to provide, and Southwest will have the right to use a reasonable amount of space on the Entertainment Portal Service for the promotion of Southwest provided such use does not unreasonably interfere with pre-existing advertising space committed to third parties.

### *Rapid Rewards Partners*

The Parties acknowledge and agree that sales and partnerships with Southwest's current Rapid Rewards partners for the Entertainment Portal Service may require special terms for such Parties. Southwest and Row 44 agree to continue to explore in good faith appropriate terms and economics for supporting Rapid Rewards partners participation in the Entertainment Portal Service.

## **Portal Reporting Attributes**

The Entertainment Portal Service shall be designed to support the following reporting attributes for information to be collected regarding use of the Entertainment Portal Service:

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### **Context**

Flight number  
Tail number  
City pair  
On/Off time  
Flight minutes  
Logs from onboard devices  
MDU stats  
Skew stats  
Plot flight  
Outages  
Length of outages  
Reason for outage  
Availability of the system  
Ability to graph diagnostics  
Access to tickets

### **Traffic**

Visits  
Unique visitors  
URLs hit/blocked  
Authenticated users  
Total possible users (number of devices that have associated to the wireless)  
Number of user sessions  
Average amount of time for sessions  
Time on page  
Average time on page  
Time on site  
Average time on site  
Top discussions  
Page views  
Protocols in use

Identify passengers on direct and connecting flights to the extent possible

### **User Info**

MAC address  
IP address  
Laptop or handheld by device type  
Operating system  
Browser  
Timestamp of customer usage  
Amount of data upload/download  
Credit card information if paid for service  
    from 3rd party provider other than  
    Southwest, if available  
Promo Code for paid Internet service

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\*\*\* Confidential treatment requested.

## Reporting

Following the Effective Date, the Parties will work in good faith to establish a best practices guide for reporting Entertainment Portal Service metrics, and further agree to update such reporting on an as needed basis as new Portal Features are added to the Entertainment Portal Service.

## Entertainment Portal Support Metrics

Row 44 will support the Entertainment Portal Service using the following error/response time terms:

Priority	Workaround Target
P1	4 hours if the problem occurs during Business Hours*; 8 hours if the problem occurs outside Business Hours*
P2	24 Business Hours
P3	8 Business Days
P4	4 Production Cycles

\*Business Hours are Monday – Friday 9am Central to 6pm Central.

Response and resolution times are measured from the moment Southwest opens a support ticket with the Row 44 network operations center.

### *Priority Definitions*

**P1 - Priority 1:** Critical Problem. Use of Entertainment Portal Service or key function thereof is stopped or so severely impacted and no known, viable workaround exists. No useful work can be done. Most common operations fail consistently. P1 Problems have one or more of the following characteristics:

- System hangs. The process hangs indefinitely or there is severe performance degradation, causing unreasonable waits for resources or response, as if the system is hanging.
- System crashes repeatedly and continues to fail after re-login attempts.
- Critical functionality is not available. The Entertainment Portal Service cannot continue because a vital feature is inoperable, data cannot be secured, etc.

Note: A Southwest contact (direct phone, cell phone and email) must be available in Priority 1 situations to provide information required for problem diagnosis and to test/confirm the resolution.

**P2 - Priority 2:** Significant Business Impact. Use of the Entertainment Portal Service is continuing but there is a serious impact on usefulness. Important features are unavailable. Certain common operations fail consistently. Services crash readily. P2 Problems have one or more of the following characteristics:

- Software error causing the Entertainment Portal Service to fail, but restart or recovery is possible.
- Severely degraded performance due to software error.
- Some important functionality is unavailable but the Entertainment Portal Service continues to operate in restricted fashion.

**P3 - Priority 3:** Some Business Impact. A fundamental function is experiencing an intermittent problem, or a common operation sometimes fails. A less common operation fails consistently. P3 Problems have one or more of the following characteristics:

- A software error for which there is an acceptable workaround.
- A software error with minor impact to the operation of the system.
- A software error requiring manual editing of configuration or script files to work around a problem.

**P4 - Priority 4:** Minimal Business Impact. All problems not covered above. Southwest requests information, an enhancement, or documentation clarification but there is no impact on operation. Southwest's use of the Entertainment Portal Service is continuing.

## EXHIBIT E

### Television Service & VOD

#### **General Description**

Row 44 will develop and make available the Television Service consisting of \*\*\* on Commissioned Aircraft. For the avoidance of doubt, subject to mutual agreement, \*\*\*. Row 44 will secure the relevant content as agreed by the Parties, and new release content and the digital rights management therefor in order for the content to be offered in a non-app based format, except where digital rights management and related security requirements require use of an application or application plug-in for viewing such content. Notwithstanding the foregoing, the Parties agree to launch the Television Service under the terms of this Agreement as follows:

\*\*\*

#### *Deployment of Supplemental Television Hardware*

From the Effective Date and until \*\*\*, the Television Service will consist of the currently available linear television channels and the expected deployment of additional television show and movie video on demand content. During this period, Row 44 shall establish and implement a road map for the deployment of \*\*\*.

The Supplemental Television Hardware will be delivered by Row 44 and installed by Southwest pursuant to the following milestones:

\*\*\*

#### *Business Model*

The Parties acknowledge the current business model set forth in the Agreement describes the sale of a single package of live television channels and a selection of video-on-demand television content. Additional items offered are expected to include “pay-per-view” access to movies and special subject content and separately offered access to special live television channels. Southwest acknowledges and agrees that Row 44’s current content agreements are licensed contemplating implementation of product offering outlined above and that any changes to the business model could have a material impact on licensing costs. Row 44 and Southwest must both agree in writing to any proposed changes to the business model for the Television Service; provided, however that the “free TV model” set forth herein is not subject to re-negotiation.

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\*\*\* Confidential treatment requested.

## Content Selection and Updating

All live channels and on demand content deployed on the Television Service shall be provided as set forth in this Exhibit, and otherwise subject to the mutual agreement of the Parties; provided, that, Row 44 shall be responsible for establishing and maintaining all licensing agreements for content.

Row 44 shall ensure that the content it will make available for selection and deployment on the Television Services represents a current selection representing a leading offering when compared to similar offerings on for use on commercial aircraft using similar in-flight entertainment systems and technology. Row 44 shall immediately notify Southwest if Row 44 becomes aware of any events or issues that may result in certain content becoming unavailable for any reason, including, without limitation content license contract disputes or long term service outages. In addition, due to the varying storage capacity of installed server management units on board Commissioned Aircraft, the following descriptions of content loading and available content may vary depending on the available capacity of a particular Commissioned Aircraft.

### *TV Video-On-Demand*

TV Video-On-Demand (“**TV VOD**”) content will be procured on an ongoing basis by Row 44. Row 44 will program and provide a list of all proposed TV VOD content it would like to include in the Television Service to Southwest for approval. Southwest agrees to review and approve all content prior to inclusion in the offering. Row 44 will not be liable or responsible for any approved content that may be deemed objectionable by any Southwest passenger.

TV VOD Content for the Television Service will generally consist of the following format. TV episodes include episodes from 30 minute and 60 minutes TV series. While the overall content mix may fluctuate, the approximate distribution and amount of VOD content available to passengers would be distributed as follows (shaded areas) based on current aircraft server size as of the Effective Date:

Content Type	# of Movies / # of TV Series	# of Episodes	Total # of video files
***	***	***	***
***	***	***	***
***	***	***	***

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\*\*\* Confidential treatment requested.



The onboard TV VOD content will be refreshed \*\*\* with more recent movies and TV episodes being added, replacing some of the content currently onboard. Approximate \*\*\* updates would be distributed as follows based on \*\*\* as of the Effective Date:

Content Type	# of Movies / # of TV Series	# of Episodes	Total # of video files
***	***	***	***
***	***	***	***
***	***	***	***

Along with each video file, Row 44 will provide the content metadata associated with each TV episode. The content metadata is then displayed within the portal to describe and promote each VOD title. For TV episodes, metadata consists of: TV Series Title, TV Episode Title, TV Episode Synopsis, Season #, Episode #, Rating and Genre(s).

*Live Television*

The Television Service will include a live television product consisting of at least \*\*\*. The channels will include \*\*\* by Row 44 on behalf of Southwest Airlines. The current channels include:

1. WNYW \*\*\*
2. MLB.com Channel \*\*\*
3. NFL Network
4. NFL RedZone \*\*\*
5. NBC Sports
6. CNBC
7. MSNBC
8. Fox Business
9. Fox News

Row 44 will work with Southwest on channel programming. The Channel line-ups will consist of the following:

\*\*\*

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\*\*\* Confidential treatment requested.

Southwest shall have the right to determine it its reasonable discretion whether the channels actually provided by Row 44 meet the criteria set forth above. Notwithstanding the foregoing channel line-up category requirements, if, during the course of good faith negotiations with content providers, \*\*\*.

Row 44 will ensure that all channels are licensed for \*\*\*.

Row 44 will ensure it secures all rights associated with any content licensed that is procured on behalf of the live Television Service offering.

#### *Movie Video-On Demand*

Row 44 shall make movie content available on all Southwest airplanes equipped with the Row 44 WiFi equipment. Access to movies will be available to passengers on a “pay-per-view” basis. Pricing for each movie title will be subject to the terms previously outlined in this Agreement.

Row 44 will provide access to an assortment of movies. Southwest acknowledges and agrees that there are certain video storage limitations associated with the Row 44 WiFi server solution and that these limitations vary and apply to the various types of equipment installed on Southwest airplanes. The variations in storage capacity and equipment may require different movie VOD libraries aboard Southwest planes.

Movies will be procured on an ongoing basis through either direct relationship with content providers, or by utilizing content service providers (CSPs). Row 44 will make a commercially reasonable effort to adhere to security requirements associated with such agreements, but can make no guarantees that Row 44’s security architecture implemented in it’s video streaming solution will be accepted by all content providers.

Row 44 will program and provide a list of all proposed movie content it would like to offer to passengers aboard Southwest airlines for approval. Southwest agrees to review and approve all movie content prior to Row 44 pushing the content to airplanes. Row 44 will not be liable or responsible for any approved content that may be deemed objectionable by any Southwest passenger.

Movie content for the TV Product will generally consist of the following format.

While the overall movie content mix may fluctuate, the approximate distribution and amount of movie content available to Passengers would be distributed as follows (shaded areas) based on aircraft server size as of the Effective Date:

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\*\*\* Confidential treatment requested.

Content Type	# of Movies / # of TV Series	# of Episodes	Total # of video files
***	***	***	***

The onboard VOD content will be refreshed \*\*\* with more recent movies replacing some of the content currently onboard. Approximate \*\*\* would be distributed as follows based on aircraft server size as of the Effective Date:

Content Type	# of Movies / # of TV Series	# of Episodes	Total # of video files
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***

Along with each video file, Row 44 will provide the content metadata associated with each Movie or TV episode. The content metadata is then displayed within the portal to describe and promote each VOD title. For movies, metadata consists of: Movie Title, Synopsis, Director, Cast, Rating and Genre(s).

For aircraft that have \*\*\*. The approximate distribution and amount of the VOD content would be distributed as follows based \*\*\*:

Content Type	# of Movies / # of TV Series	# of Episodes	Total # of video files
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***

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\*\*\* Confidential treatment requested.

## *Passenger Pricing*

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## *Content Licensing Acknowledgement.*

Southwest acknowledges and understands that content licensing agreements with content providers and third party distributors may require certain commitments and security requirements associated with such licensing agreements. Row 44 will provide the applicable licensing and security commitments for an item of content (or package of content from the same source) at the time such content is offered for selection by Southwest. Without limiting the generality of the foregoing, and unless permitted in a separate agreement between Southwest and a third party, under no circumstance may Southwest utilize the content provided by Row 44 except for distribution utilizing the Entertainment Portal Service under the management and control of Row 44.

If the trademarks, trade names, logos and other marks of content providers are provided by Row 44 to Southwest for use in the distribution and promotion of the content or Entertainment Portal Services, Southwest acknowledges that all right, title and interest in such marks shall remain with the applicable content provider, except as expressly permitted by the applicable content provider, which shall be included in the delivery of such marks by Row 44 to Southwest.

Upon termination or expiration of this Agreement for any reason, Southwest shall provide Row 44 with reasonable assistance to enable Row 44 to ensure removal or destruction of all third party licensed content utilized in conjunction with the Entertainment Portal Service and stored on any portion of the Systems Units, with the intent that all such Content be removed no later than one month from termination or expiration.

## **Customer Support**

Southwest will be responsible for all first line customer service requests associated with the Television Service. Row 44 will be responsible for providing second line support to Southwest's customer service organization. Row 44 will provide access to customer care tools which will identify service level parameters for the video product such that Southwest's Customer Care department can make refund determinations as part of their normal support operations. These tools will be made available in the current Row 44 Billing Provider customer care solution.

## **Service Level\*\*\***

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\*\*\* Confidential treatment requested.

## **EXHIBIT F**

### **Wi-Fi Service and Operational Data Service**

#### **Service Features:**

##### *Wi-Fi Service and Operational Data Service*

The Wi-Fi Service and Operational Data Service, as applicable, shall deliver broadband Internet access, including ground-based backhaul Internet connectivity, satellite-based data connectivity to each aircraft and Wi-Fi-based Internet access availability within the cabin. Row 44 will work to provision \*\*\*.

#### **Service Availability:**

The Wi-Fi Service and Operational Data Services shall be \*\*\* on Southwest's Commissioned Aircraft for \*\*\* based on an average of all Commissioned Aircraft.

\*\*\*

#### **Service Failures**

\*\*\*

#### **Restrictions**

Use of the Services shall be subject to all rules and regulations established by applicable Regulatory Authorities, including the FAA and FCC, including Row 44's FCC license.

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\*\*\* Confidential treatment requested.

**EXHIBIT G**  
**Content Filtering and Procedures**

Row 44's content filtering service can be utilized to filter (i) entire categories of websites based on the classifications set forth below and (ii) specific, customer-selected URLs. To enable or disable a filter, Southwest must notify Row 44's network operation center of the classification of website(s) and/or specific URLs it would like to be filtered from customer availability, and Row 44 will enable such filter as soon as possible but no later than 48 hours after receipt of notice from Southwest. Notwithstanding the foregoing, the Parties acknowledge that all content filtering implemented on the Services is subject to compliance with applicable FCC rules and regulations.

**Categories of Content Based Filters:**

**Abortion**

Sites with neutral or balanced presentation of the issue.

- **Pro-Choice** - Sites that provide information about or are sponsored by organizations that support legal abortion or that offer support or encouragement to those seeking the procedure.
- **Pro-Life** - Sites that provide information about or are sponsored by organizations that oppose legal abortion or that seek increased restriction of abortion.

**Adult Material**

Parent category that contains the categories:

- **Adult Content** - Sites that display full or partial nudity in a sexual context, but not sexual activity; erotica; sexual paraphernalia; sex-oriented businesses as clubs, nightclubs, escort services; and sites supporting the online purchase of such goods and services.
- **Lingerie and Swimsuit** - Sites that offer images of models in suggestive but not lewd costume, with semi nudity permitted. Includes classic 'cheese-cake,' calendar, and pinup art and photography. Includes also sites offering lingerie or swimwear for sale.
- **Nudity** - Sites that offer depictions of nude or seminude human forms, singly or in groups, not overtly sexual in intent or effect.
- **Sex** - Sites that depict or graphically describe sexual acts or activity, including exhibitionism; also, sites offering direct links to such sites.
- **Sex Education** - Sites that offer information about sex and sexuality, with no pornographic intent.

**Advocacy Groups**

Sites that promote change or reform in public policy, public opinion, social practice, economic activities, and relationships.

**Business and Economy**

Sites sponsored by or devoted to business firms, business associations, industry groups, or business in general.

- **Financial Data and Services** - Sites that offer news and quotations on stocks, bonds, and other investment vehicles, investment advice, but not online trading. Includes banks, credit unions, credit cards, and insurance.
- **Hosted Business Applications** - Sites that provide access to business-oriented web applications and allow storage of sensitive data, excluding those for web collaboration.

**Drugs**

Parent category that contains the categories:

- **Abused Drugs** - Sites that promote or provide information about the use of prohibited drugs, except marijuana, or the abuse or unsanctioned use of controlled or regulated drugs; also, paraphernalia associated with such use or abuse.
- **Marijuana** - Sites that provide information about or promote the cultivation, preparation, or use of marijuana.
- **Prescribed Medications** - Sites that provide information about approved drugs and their medical use.
- **Supplements and Unregulated Compounds** - Sites that provide information about or promote the sale or use of chemicals not regulated by the FDA (such as naturally occurring compounds).

## Education

Parent category that contains the categories:

- **Cultural Institutions** - Sites sponsored by museums, galleries, theatres (but not movie theatres), libraries, and similar institutions; also, sites whose purpose is the display of artworks.
- **Educational Institutions** - Sites sponsored by schools and other educational facilities, by non-academic research institutions, or that relate to educational events and activities.
- **Educational Materials** - Sites that provide information about or that sell or provide curriculum materials or direct instruction; also, learned journals and similar publications.
- **Reference Materials** - Sites that offer reference-shelf content such as atlases, dictionaries, encyclopedias, formularies, white and yellow pages, and public statistical data.

## Entertainment

Sites that provide information about or promote motion pictures, non-news radio and television, books, humor, and magazines.

- **MP3 and Audio Download Services** - Sites that support downloading of MP3 or other sound files or that serve as directories of such sites.

**Gambling** - Sites that provide information about or promote gambling or support online gambling, involving a risk of losing money.

**Games** - Sites that provide information about or promote electronic games, video games, computer games, role-playing games, or online games. Includes sweepstakes and giveaways.

## Government

Sites sponsored by branches, bureaus, or agencies of any level of government, except for the armed forces.

- **Military** - Sites sponsored by branches or agencies of the armed services.
- **Political Organizations** - Sites sponsored by or providing information about political parties and interest groups focused on elections or legislation.

**Health** - Sites that provide information or advice on personal health or medical services, procedures, or devices, but not drugs. Includes self-help groups.

**Illegal or Questionable** - Sites that provide instruction in or promote nonviolent crime or unethical or dishonest behavior or the avoidance of prosecution.

## Information Technology

Sites sponsored by or providing information about computers, software, the Internet, and related business firms, including sites supporting the sale of hardware, software, peripherals, and services.

- **Computer Security** - Sites that provide information about or free downloadable tools for computer security.
- **Hacking** - Sites that provide information about or promote illegal or questionable access to or use of computer or communication equipment, software, or databases.
- **Proxy Avoidance** - Sites that provide information about how to bypass proxy server features or to gain access to URLs in any way that bypasses the proxy server.
- **Search Engines and Portals** - Sites that support searching the Web, news groups, or indices or directories thereof.
- **URL Translation Sites** - Sites that offer online translation of URLs. These sites access the URL to be translated in a way that bypasses the proxy server, potentially allowing unauthorized access.
- **Web & Email Spam** - Sites whose links are sent in unsolicited commercial email, either as part of campaigns to promote products or services, or to entice readers to click through to surveys or similar sites. Also included are sites that display comment spam.
- **Web Collaboration** - Sites that provide virtual workspace for purposes of collaboration and conferencing, which may include sites that enable authorized access to a computer or network from a remote location
- **Web Hosting** - Sites of organizations that provide hosting services, or top-level domain pages of Web communities.

### **Internet Communication**

Parent category that contains the categories:

- **Web Chat** - Sites that host Web chat services or that support or provide information about chat via HTTP or IRC.
- **General Email** - Sites that provide email services open to general use.
- **Organizational Email** - login sites for corporate or institutional email systems.
- **Text and Media Messaging** - Sites that enable the sending of messages and other content via SMS, EMS, MMS, or similar protocols.

**Job Search** - Sites that offer information about or support the seeking of employment or employees.

**Militancy and Extremist** - Sites that offer information about or promote or are sponsored by groups advocating antigovernment beliefs or action.

### **Miscellaneous**

Parent category that contains the categories:

- **Content Delivery Networks** - Commercial hosts that deliver content to subscribing Web sites.
- **Dynamic Content** - URLs that are generated dynamically by a Web server.
- **File Download Servers** - Web servers whose primary function is to deliver files for download.
- **Image Servers** - Web servers whose primary function is to deliver images.
- **Images (Media)** - URLs ending with image filenames.
- **Network Errors** - URLs with hosts that do not resolve to IP addresses.
- **Private IP Addresses** - IP addresses defined in RFC 1918, 'Address Allocation for Private Intranets.'

### **News and Media**

Sites that offer current news and opinion, including those sponsored by newspapers, general-circulation magazines, or other media.

- **Alternative Journals** - Online equivalents to supermarket tabloids and other fringe publications.

**Parked Domain** - Sites that are expired, offered for sale, or known to display targeted links, advertisements.

**Racism and Hate** - Sites that promote the identification of racial groups, the denigration or subjection of groups, or the superiority of any group.

### **Religion**

Parent category that contains the categories:

- **Non-Traditional Religions and Occult and Folklore** - Sites that provide information about or promote religions not specified in Traditional Religions or other unconventional, cultic, or folkloric beliefs and practices.
- **Traditional Religions** - Sites that provide information about or promote Bahai, Buddhism, Christian Science, Christianity, Hinduism, Islam, Judaism, Mormonism, Shinto, and Sikhism, as well as atheism.

### **Shopping**

Sites that support the online purchase of consumer goods and services except: sexual materials, lingerie, swimwear, investments, medications, educational materials, computer software or hardware, alcohol, tobacco, travel, vehicles and parts, weapons.

- **Internet Auctions** - Sites that support the offering and purchasing of goods between individuals.
- **Real Estate** - Sites that provide information about renting, buying, selling, or financing residential real estate.



## **Social Organizations**

Parent category that contains the categories:

- **Professional and Worker Organizations** - Sites sponsored by or that support or offer information about organizations devoted to professional advancement or workers' interests.
- **Service and Philanthropic Organizations** - Sites sponsored by or that support or offer information about organizations devoted to doing good as their primary activity.
- **Social and Affiliation Organizations** - Sites sponsored by or that support or offer information about organizations devoted chiefly to socializing or common interests other than philanthropy or professional advancement.

## **Society and Lifestyles**

Sites that provide information about matters of daily life, excluding entertainment, health, hobbies, jobs, sex, and sports.

- **Alcohol and Tobacco** - Sites that provide information about, promote, or support the sale of alcoholic beverages or tobacco products or associated paraphernalia.
- **Blogs and Personal Sites** - Sites that host blogs and personal sites.
- **Gay or Lesbian or Bisexual Interest** - Sites that provide information about or cater to gay, lesbian, or bisexual lifestyles, but excluding those that are sexually or issue-oriented.
- **Hobbies** - Sites that provide information about or promote private and largely sedentary pastimes, but not electronic, video, or online games.
- **Personals and Dating** - Sites that assist users in establishing interpersonal relationships, excluding those intended to arrange for sexual encounters.
- **Restaurants and Dining** - Sites that list, review, advertise, or promote food, dining, or catering services.
- **Social Networking** - Sites of web communities that provide users with means for expression and interaction.
- **Social Networking and Personal Sites** - Sites chiefly devoted to personal expression by individuals (as in diaries or personal blogs) or small groups, often but not necessarily involving multiple links to similar sites.

**Special Events** - Sites devoted to a current event that requires separate categorization.

## **Sports**

Sites that provide information about or promote sports, active games, and recreation.

**Sport Hunting and Gun Clubs** - Sites that provide information about or directories of gun clubs and similar groups, including war-game and paintball facilities.

**Tasteless** - Sites with content that is gratuitously offensive or shocking, but not violent or frightening. Includes sites devoted in part or whole to scatology and similar topics or to improper language, humor, or behavior.

**Travel** - Sites that provide information about or promote travel-related services and destinations.

**Vehicles** - Sites that provide information about or promote vehicles, including those that support online purchase of vehicles or parts.

**Violence** - Sites that feature or promote violence or bodily harm, including self-inflicted harm; or that gratuitously display images of death, gore, or injury; or that feature images or descriptions that are grotesque or frightening and of no redeeming value.

**Weapons** - Sites that provide information about, promote, or support the sale of weapons and related items.

In addition to the foregoing, as part of Row 44's network monitoring service, Row 44 will utilize additional filtering of websites that contain the following security hazards:

- **Botnets** - sites that host the command-and-control centers for networks of bots that have been infiltrated into users' computers. Excludes Web crawlers.

- **Keyloggers** - Sites or pages that download programs that run in the background recording all keystrokes, and which may also send those keystrokes (potentially including passwords or confidential information) to an external party.
- **Malicious Embedded Link** - Sites that are infected with a malicious link.
- **Malicious Embedded iFrame** - Sites that are infected with a malicious iframe.
- **Malicious Web sites** - Sites that contain code that may intentionally modify end-user systems without their consent and cause harm.
- **Phishing and Other Frauds** - Sites that counterfeit legitimate business sites for the purpose of eliciting financial or other private information from users.
- **Potentially Unwanted Software** - Sites that use technologies that alter the operation of the user's hardware, software, or network in ways that diminish control over the user experience, privacy, or the collection and distribution of personal information.
- **Spyware** - Sites or pages that download software that, without the user's knowledge, generate HTTP traffic (other than simple user identification and validation).
- **Suspicious Embedded Link** - Sites suspected of being infected with a malicious link.

**EXHIBIT H**

**Network Description**

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\*\*\* Confidential treatment requested.

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Exhibit H-1

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## EXHIBIT I

### VOD Only Solution Product

#### **Description**

RF Cables

Flight Deck Control Panel

SMU (Server Management Unit)  
2.2 GHz CPU - 8GB RAM – 1.6TB  
SSD Storage

Wireless Access Point, "n" capable

nWAP antennae and nWAP cables

Installation Kit for Internal LRUs  
(Provisions)

PCS (GSM) Antenna

Row 44 Portal Platform Software

## EXHIBIT J

### Security Provisions

#### I. GENERALLY APPLICABLE SECURITY PROVISIONS

Security Best Practices. Row 44 shall provide a secure environment for Confidential Information and any hardware and software, including servers, network and data components, to be provided or supported by the Row 44 as part of its performance under this Agreement. Row 44 represents that the security measures it takes in performance of its obligations under this Agreement do, and will at all times, remain at the higher of (1) applicable security and privacy laws and regulations, (2) applicable privacy and security rules imposed by industry groups, such as the PCI Standards Council, (3) Privacy & IT Security Best Practices (as defined by ISO 27002), and (4) (i) all security requirements, obligations, specifications and event reporting procedures as required in any applicable exhibit or schedule hereof and (ii) at Southwest's cost and expense, with any new security requirement after receiving thirty days advance notification from Southwest of such new security requirement, specification or event reporting procedure; collectively referred to as "Security Best Practices". Failure by Row 44 to comply with Security Best Practices in fulfilling its security obligations shall constitute a material breach of this Agreement and no limitation on Row 44's liability to Southwest as set forth in Section 7 of the Agreement shall apply to any losses resulting from or relating to such a breach, including, without limitation, any limitation on consequential and/or incidental damages.

**Southwest System Access.** To the extent that Row 44 will be accessing Southwest systems, Row 44 will access Southwest systems and use Southwest data in a manner consistent with the then-current Southwest Airlines Information Security Policy which will be provided to Row 44 upon request.

**SOC 2 Audits and Reports.** Row 44 will provide Southwest with a copy of each applicable audit report (a "SOC 2 Report") resulting from a SOC 2 audit of the Row 44's control standards in use at the Row 44 facility where the services under this Agreement are performed (each such audit is called a "SOC 2 Audit"). If no SOC 2 Audits have been conducted, and Row 44 is unable to provide any SOC 2 Reports, then at Southwest's request and expense, Row 44 will appoint a qualified firm to conduct a SOC 2 Audit, and shall provide Southwest with a copy of each applicable SOC 2 Report. To the extent that the SOC 2 Reports provided to Southwest do not satisfy Southwest's reporting or audit requirements, Southwest may conduct its own audits.

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**Southwest Audit of Row 44 Systems.** Southwest, or its designated representatives (at Southwest's sole cost and expense, upon at least thirty (30) days notice to Row 44, shall have the right to conduct an audit of the Row 44's operations, in order to verify that the Row 44 is operating in accordance with Security Best Practices in performance of its obligations under this Agreement. As between the parties, Southwest's or its designated representatives' costs related to such audit shall be borne solely by Southwest. Such an audit may consist of assessing all aspects of services delivered under the Agreement, and may include, but is not limited to: (i) software development practices and procedures, (ii) network, operating system, database, and application configuration controls, (iii) general controls and security practices and procedures, (iv) disaster recovery and back-up procedures, (v) change and problem management processes and procedures (vi) invoice processing, (vii) service level compliance, (viii) network and system vulnerability and risk analysis and (ix) resource consumption. Row 44 will allow reasonable access, during normal business hours and upon reasonable notice, to all pertinent records, documentation, computer systems, data, personnel, and processing areas as Southwest deems necessary to accurately and effectively complete their audit engagement. Southwest will take all reasonable steps to ensure that its audit will not materially adversely impact Row 44's business or operations.

**Security Breaches.** Row 44 shall notify Southwest within 24 hours in the event of any breach or suspected breach in the security of its network, computing systems, or facilities providing access to Southwest data. For all breaches, Row 44 will conduct an audit to determine the cause of such breach and provide Southwest with a detailed report indicating the cause of the breach and the plan to address the issue. In the event of any breach of Confidential Information, Row 44 will immediately notify Southwest in writing, and fully indemnify and hold Southwest harmless from any and all third party claims and damages incurred by Southwest as a result of any such breach of security caused by Row 44's breach of this Agreement without regard to any limitation on Row 44's liability in this Agreement. If a breach or suspected breach involves cardholder data, Row 44 agrees that a Payment Card Industry representative, or a Payment Card Industry approved third party, will be provided with full cooperation and access to conduct a thorough security review after a security breach. The review will validate compliance with Payment Card Industry Data Security Standards for protecting cardholder data.

**System Free of Security Vulnerabilities.** To Row 44's knowledge or to knowledge Row 44 should have, any software provided or used by Row 44 in connection with this Agreement does not contain any malicious code, program, or other internal component (e.g., computer virus, computer worm, computer time bomb, or similar component), which could damage, destroy, alter or disrupt any computer program, firmware, or hardware or which could, in any manner, reveal, damage, destroy, alter or disrupt any data or other information accessed through or processed by such software in any manner (a "Computer Virus"). Row 44 shall immediately advise Southwest, in writing, upon reasonable suspicion or actual knowledge that any such software may contain a Computer Virus. In the event a Computer Virus is found to have been introduced into Southwest's systems by the software, Row 44 shall use commercially reasonable efforts, at no additional charge, to assist Southwest in reducing the effects of the computer virus and, if the computer virus causes a loss of operational efficiency or loss of data, to assist Southwest to the same extent to mitigate and restore such losses. In addition, Row 44 shall indemnify, defend and hold Southwest and its customers harmless from any damage resulting from the harm described above without regard to any limitation on Row 44's liability in this Agreement.

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## II. SECURITY PROVISIONS SPECIFIC TO CARD-HOLDER DATA

**PCI-DSS, PA-DSS, and PTS Responsibilities.** Row 44 shall provide and maintain the equipment, software services and testing necessary to effectively and reliably protect credit card information (card-holder data) in accordance with the Security Best Practices section of this Agreement. Row 44 acknowledges that card-holder data can ONLY be used in fulfillment of Row 44's obligations under this Agreement for completing a transaction, supporting a loyalty program, providing fraud control services, or for uses specifically required by law.

**PCI-DSS Compliance.** Row 44 acknowledges it must comply with the requirements of the most current published version of the Payment Card Industry Data Security Standard (PCI-DSS) when processing, storing, or transmitting card-holder data. The PCI-DSS is available from the PCI Security Standards Council (currently located at <https://www.pcisecuritystandards.org>). Row 44 shall indemnify Southwest for any expenses incurred by Southwest attributable to a breach of security occurring while data is under the control of the Row 44. Row 44 will provide Southwest an annual letter of attestation from its Qualified Security Assessor confirming compliance with PCI-DSS.

**PA-DSS Compliance.** Row 44 acknowledges it must comply with the requirements of the most current published version of the Payment Application Data Security Standard (PA-DSS) for all applications it develops that process, store, or transmit card-holder data that are sold, distributed or licensed to third parties, including Southwest. The PA-DSS is available from the PCI Security Standards Council (currently located at <https://www.pcisecuritystandards.org>). Row 44 shall indemnify Southwest for any expenses or incurred by a breach of security while data is under the control of the Row 44. Row 44 will maintain the status of its application as a PCI Security Standards Counsel Validated Payment Application for current versions of payment applications provided to Southwest.

**PTS / PED Compliance.** Row 44 acknowledges it must comply with the requirements of the most current published version of the PIN Transaction Security standard (PTS) for PIN transaction devices including PIN Pad Devices, Point of Sale Devices, Hardware Security Modules, or Unattended Payment Terminals it provides that process, store, or transmit card-holder data. The PTS security requirements and testing and approval programs are available from the PCI Security Standards Council (currently located at <https://www.pcisecuritystandards.org>). Row 44 shall indemnify Southwest for any expenses incurred by Southwest attributable to a breach of security occurring through a non-certified PTS device provided by the Row 44. Row 44 will maintain its status as a PCI Security Standards Counsel Approved PIN Transaction Security Device for current versions of PTS devices provided to Southwest.

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### III. SECURITY PROVISIONS SPECIFIC TO WEB-BASED SYSTEMS

**Secure Code Training of Developers.** All developers of systems and software being delivered to Southwest will have the expertise, knowledge and training to develop systems that meet secure coding standards, as defined by such industry leaders as the OWASP Top Ten, SANS and NIST. Row 44 will supply evidence reasonably satisfactory to Southwest of such training upon request.

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**WELLINGTON MANAGEMENT COMPANY, LLP**

280 Congress Street  
Boston, MA 02110

January 31, 2013

Global Eagle Acquisition Corp.  
10900 Wilshire Blvd., Suite 1500  
Los Angeles, California 90024

Ladies and Gentlemen:

Reference is made to that certain Agreement and Plan of Merger and Reorganization, dated as of November 8, 2012, by and among the Global Eagle Acquisition Corp., a Delaware corporation (the “**Company**”), EAGL Merger Sub Corp., a Delaware corporation and a direct wholly owned subsidiary of the Company (“**Merger Sub**”), Row 44, Inc., a Delaware corporation (“**Row 44**”), and PAR Investment Partners, L.P., a Delaware limited partnership (“**PAR**”), in its capacity as stockholders’ agent and for other specific purposes (as it may be amended, the “**Merger Agreement**”). Pursuant to the Merger Agreement, Merger Sub will merge with and into Row 44, with Row 44 surviving the merger, as a result of which Row 44’s equity holders will be entitled to receive shares of voting common stock of the Company (the “**Common Stock**”) at the closing thereunder, subject to adjustment and an escrow holdback as described therein (such transaction, the “**Merger**”).

Wellington Management Company, LLP (“**Wellington**”) acts as the investment advisor to the entities listed on Exhibit A hereto (the “**Wellington Investors**”) who are stockholders of Row 44. Wellington is the sole stockholder of Wellington Management Investment, Inc. (“**WMI**”). WMI is the sole manager of each of Wellington Hedge Management, LLC (“**WHM**”) and Wellington Hedge Administrator, LLC (“**WHA**” and, together with WHM, the “**Wellington GPs**”). Wellington, WMI, the Wellington GPs and the Wellington Investors are collectively referred to herein as the “**Wellington Entities**.” WHM is the managing general partner of certain of the Wellington Investors and WHA is the general partner of certain of the Wellington Investors, in each case as set forth on Exhibit A hereto. As part of the Merger, the Wellington Investors will receive shares of Common Stock and warrants to purchase Common Stock in exchange for their capital stock and warrants to purchase capital stock of Row 44 (such shares of Common Stock, including shares of Common Stock underlying such warrants, the “**Wellington Merger Shares**”). The term “Wellington Merger Shares” shall also include any securities issued or issuable upon any stock split, dividend or other distribution, recapitalization, reclassification or similar event with respect to the Wellington Merger Shares.

Each of the parties hereby agrees as follows:

1. Until the Termination Time (as defined below), to the extent (but only to the extent) that Wellington, WMI, the Wellington GPs and/or the Wellington Investors, individually or collectively, would, but for the limitations contained in this paragraph, beneficially own in excess of 9.9% (the “**Maximum Percentage**”) of the Common Stock when taking into account (partially or wholly) the ownership of the Wellington Merger Shares (the Wellington Merger Shares so causing the Maximum Percentage to be exceeded being referred to herein as the “**Excess Shares**”), each of Wellington, WMI, any Wellington GP and any Wellington Investor covenants and agrees that it shall not (and each expressly disclaims and relinquishes any right to), directly or indirectly, (i) exercise any voting power with respect to the Excess Shares, including the power to vote or direct the voting of such Excess Shares or (ii) exercise any investment power with respect to the Excess Shares, including the power dispose or direct the disposition of such Excess Shares. To the extent the above limitations apply, each of Wellington, WMI, any Wellington GP and any Wellington Investor agrees to apply such limitations to such Excess Shares on a pro rata basis among the Wellington Investors based on the number of Wellington Merger Shares held, or to be held, by each Wellington Investor. For the purposes of this paragraph, beneficial ownership and all determinations and calculations (including, without limitation, with respect to calculations of percentage ownership) shall be determined in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), and the rules and regulations promulgated thereunder. The provisions of this paragraph shall be implemented in a manner otherwise than in strict conformity with the terms of this paragraph to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Maximum Percentage beneficial ownership limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such Maximum Percentage limitation. The holders of Common Stock shall be third party beneficiaries of this paragraph and the limitations contained herein may not be amended or waived without the consent of holders of a majority of the Common Stock. For any reason at any time, upon the written or oral request of Wellington, the Company shall promptly confirm orally and in writing to Wellington the number of shares of Common Stock then outstanding.

2. In order to implement the enforcement of the Maximum Percentage limitation, within one (1) business day following the closing of the Merger and prior to the issuance of any Wellington Merger Shares to the Wellington Investors pursuant to the Merger Agreement, in connection with the issuances of stock certificates representing the Wellington Merger Shares, (i) the Company shall deliver to Wellington (A) a notice stating the number of shares of Common Stock outstanding upon consummation of the Merger and (B) a copy of the Spreadsheet (as defined in the Merger Agreement) and (ii) to the extent the issuance of the Wellington Merger Shares to the Wellington Investors would, but for the limitations contained in paragraph 1 above, cause a violation of the Maximum Percentage limitation, the Wellington Investors shall, in their letters of transmittal provided to them by the Company pursuant to the Merger Agreement, instruct the exchange agent identified therein (the “**Exchange Agent**”) as to the number of Excess Shares, if any, to be deposited with American Stock Transfer & Trust Company LLC as escrow agent (the “**Escrow Agent**”), which Excess Shares shall be registered in the name of the Escrow Agent, all pursuant to an Escrow Agreement in the form of Exhibit B attached hereto (the “**Escrow Agreement**”) to be entered into by the Company, the Escrow Agent, Wellington and the Wellington Investors prior to the closing of the Merger, which Excess Shares shall be held in escrow until disbursed in accordance with the Escrow Agreement. In furtherance of the foregoing, the Company shall instruct the Exchange Agent to cause such Excess Shares to be so issued in the name of, and deposited with, the Escrow Agent. In addition, if Wellington determines at any time and from time to time that the Wellington Investors have possession of Excess Shares, then it shall cause such Excess Shares to be deposited with the Escrow Agent, be held in escrow until disbursed in accordance with the Escrow Agreement. Furthermore, any attempt by Wellington, WMI, any Wellington GP or any Wellington Investor to exercise voting power or dispositive power with respect to Excess Shares shall be void *ab initio*. Pursuant to the Escrow Agreement, the Escrow Agent shall distribute Excess Shares to a Wellington Investor upon receipt of and only in accordance with the terms of a copy of an executed certification signed by Wellington, in its capacity as investment adviser to the Wellington Investors, and addressed to the Company and the Escrow Agent certifying that, based on the number of shares of Common Stock outstanding in the Company’s most recent report filed under the Exchange Act or as otherwise provided by the Company to Wellington, the exercise of voting power or investment power with respect to such Excess Shares by any Wellington Entity shall not cause a violation of the Maximum Percentage limitation described herein.

3. The Company shall be indemnified and held harmless by the Wellington Investors, severally and not jointly, from and against any losses, costs and expenses, including reasonable counsel fees and disbursements, suffered by the Company in connection with any inaction or action taken by it hereunder or under the Escrow Agreement, or any action, suit or other proceeding, and each of the Wellington Investors agree not to bring any action against the Company, in each case, involving any claim which in any way, directly or indirectly, arises out of or relates to this Letter Agreement or the Escrow Agreement. Promptly after the receipt by the Company of notice of any demand or claim or the commencement of any action, suit or proceeding, the Company shall notify the other parties hereto in writing. The provisions of this paragraph 3 shall survive the Termination Time.

4. This letter agreement shall automatically terminate at such time (the “**Termination Time**”) which is the earlier of (i) such time that none of Wellington, WMI, the Wellington GPs and/or the Wellington Investors, individually or collectively, beneficially own (as determined in accordance with Section 13(d) of the Exchange Act), without regard to the Maximum Percentage limitation described above, more than 9.9% of the Common Stock and (ii) such time that the Common Stock (including any equity securities into which the Common Stock has been recapitalized, reclassified or converted) is no longer registered pursuant to Section 12 of the Exchange Act.

5. Any notice or other communication required or permitted to be delivered to any party under this letter agreement shall be in writing and shall be deemed properly delivered, given and received (a) when delivered by hand, or (b) upon confirmed delivery by courier or express delivery service or by facsimile, in each case to the address or facsimile telephone number set forth beneath the name of such party below (or to such other address or facsimile telephone number as such party shall have specified in a written notice given to the other parties hereto):

If to the Company:

Global Eagle Acquisition Corp.  
10900 Wilshire Blvd., Suite 1500  
Los Angeles, CA 90024  
Attention: General Counsel  
Facsimile: 310-209-7225

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

McDermott Will & Emery LLP  
340 Madison Avenue  
New York, NY 10173-1922  
Attention: Joel Rubinstein, Esq.  
Facsimile: 646-390-1209

If to a Wellington Entity:

c/o Wellington Management Company, LLP  
280 Congress Street  
Boston, MA 02110  
Attention: Steven M. Hoffman  
Facsimile: 617-289-5699

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

Bradley A. Jacobson, Esq.  
Greenberg Traurig, LLP  
One International Place  
Boston, MA 02110  
Facsimile: 617-279-8402

6. To the extent that any regulatory or self-regulatory body should raise any issues or questions with respect to the matters addressed herein, the parties agree to consult with each other and work in good faith to address such issues or questions in a manner consistent with a mutual resolution addressing the issues of each party.

7. This letter agreement shall be construed in accordance with, and governed in all respects by, the laws of the State of New York (without giving effect to principles of conflicts of laws). This letter agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, with the same effect as if all parties had signed the same document. All such counterparts will be deemed an original, will be construed together and will constitute one and the same instrument.

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

Very truly yours,

**WELLINGTON MANAGEMENT COMPANY, LLP**

By: /s/ Steven M. Hoffman  
Name: Steven M. Hoffman  
Title: Vice President and Counsel

**WELLINGTON MANAGEMENT INVESTMENT, INC.**

By: /s/ Gregory S. Konzal  
Name: Gregory S. Konzal  
Title: Vice President

**WELLINGTON HEDGE MANAGEMENT, LLC**

By: /s/ Gregory S. Konzal  
Name: Gregory S. Konzal  
Title: Vice President

**WELLINGTON HEDGE ADMINISTRATOR, LLC**

By: /s/ Gregory S. Konzal  
Name: Gregory S. Konzal  
Title: Vice President

**J. CAIRD PARTNERS, L.P.**

By: Wellington Management Company, LLP, as investment adviser

By: /s/ Steven M. Hoffman  
Name: Steven M. Hoffman  
Title: Vice President and Counsel

**J. CAIRD INVESTORS (BERMUDA) L.P.**

By: Wellington Management Company, LLP, as investment adviser

By: /s/ Steven M. Hoffman  
Name: Steven M. Hoffman  
Title: Vice President and Counsel

**QUISSETT PARTNERS, L.P.**

By: Wellington Management Company, LLP, as investment adviser

By: /s/ Steven M. Hoffman  
Name: Steven M. Hoffman  
Title: Vice President and Counsel

**QUISSETT INVESTORS (BERMUDA) L.P.**

By: Wellington Management Company, LLP, as investment adviser

By: /s/ Steven M. Hoffman

Name: Steven M. Hoffman

Title: Vice President and Counsel

**BAY POND PARTNERS, L.P.**

By: Wellington Management Company, LLP, as investment adviser

By: /s/ Steven M. Hoffman

Name: Steven M. Hoffman

Title: Vice President and Counsel

**BAY POND INVESTORS (BERMUDA) L.P.**

By: Wellington Management Company, LLP, as investment adviser

By: /s/ Steven M. Hoffman

Name: Steven M. Hoffman

Title: Vice President and Counsel

**ITHAN CREEK MASTER INVESTORS (CAYMAN) L.P.**

By: Wellington Management Company, LLP, as investment adviser

By: /s/ Steven M. Hoffman

Name: Steven M. Hoffman

Title: Vice President and Counsel

**ITHAN CREEK MASTER INVESTMENT PARTNERSHIP  
(CAYMAN) II, L.P.**

By: Wellington Management Company, LLP, as investment adviser

By: /s/ Steven M. Hoffman

Name: Steven M. Hoffman

Title: Vice President and Counsel

ACCEPTED AND AGREED as of  
the date first written above by the undersigned,  
thereunto duly authorized

**GLOBAL EAGLE ACQUISITION CORP.**

By: James A. Graf

Name: James A. Graf

Title: Vice President

Exhibit A

Wellington Investors

<u>Wellington Investor</u>	<u>Managing General Partner/General Partner</u>
Ithan Creek Master Investment Partnership (Cayman) II, L.P.	Wellington Hedge Management, LLC
Ithan Creek Master Investors (Cayman) L.P.	Wellington Hedge Management, LLC
Bay Pond Investors (Bermuda) L.P.	Wellington Hedge Administrator, LLC
Bay Pond Partners L.P.	Wellington Hedge Management, LLC
J. Caird Partners, L.P.	Wellington Hedge Management, LLC
J. Caird Investors (Bermuda) L.P.	Wellington Hedge Administrator, LLC
Quissett Investors (Bermuda) L.P.	Wellington Hedge Administrator, LLC
Quissett Partners, L.P.	Wellington Hedge Management, LLC

**Exhibit B**

**Escrow Agreement**

[TO BE ATTACHED]



## ESCROW AGREEMENT

**This Escrow Agreement** (this “*Escrow Agreement*”) is made and entered into as of January 31, 2013, by and among Global Eagle Acquisition Corp., a Delaware corporation (the “*Company*”), Wellington Management Company, LLP, a Massachusetts limited liability partnership (“*Wellington*”), each of the entities listed on Exhibit B hereto (the “*Wellington Investors*” and together with Wellington and the Company, sometimes referred to individually as a “*Party*” or collectively as the “*Parties*”), and American Stock Transfer & Trust Company LLC (the “*Escrow Agent*”).

### RECITALS

Reference is made to that certain Agreement and Plan of Merger and Reorganization, dated as of November 8, 2012, by and among the Company, EAGL Merger Sub Corp., a Delaware corporation and a direct wholly owned subsidiary of the Company (“*Merger Sub*”), Row 44, Inc., a Delaware corporation (“*Row 44*”), and PAR Investment Partners, L.P., a Delaware limited partnership, in its capacity as stockholders’ agent and for other specific purposes (as it may be amended, the “*Merger Agreement*”). Pursuant to the Merger Agreement, Merger Sub will merge with and into Row 44, with Row 44 surviving the merger, as a result of which Row 44’s equity holders will be entitled to receive shares of voting common stock of the Company (the “*Common Stock*”) at the closing thereunder, subject to adjustment and an escrow holdback as described therein (such transaction, the “*Merger*”).

Reference is also made to that certain letter agreement, dated January 31, 2013 (the “*Letter Agreement*”), by and among the Company, Wellington, Wellington Management Investment, Inc. (“*WMI*”), Wellington Hedge Management, LLC (“*WHM*”), Wellington Hedge Administrator, LLC (“*WHA*”) and the Wellington Investors (Wellington, WMI, WHM, WHA and the Wellington Investors are collectively referred to herein as the “*Wellington Entities*”);

WHEREAS, the Letter Agreement provides that, promptly following the closing of the Merger, the Exchange Agent (as defined in the Merger Agreement) shall deposit shares of Common Stock with the Escrow Agent to support the “Maximum Percentage” limitation contained in the Letter Agreement, to be held and disbursed by the Escrow Agent as hereinafter provided;

WHEREAS, the Escrow Agent has agreed to accept, hold, and disburse the property deposited with it and the earnings thereon in accordance with the terms of this Escrow Agreement;

WHEREAS, Wellington is authorized to act on behalf of the Wellington Entities in connection with this Escrow Agreement;

WHEREAS, the provisions of the Letter Agreement are hereby incorporated herein by reference as the context of this Escrow Agreement may require, *provided* that the Escrow Agent shall act only in accordance with the terms and conditions contained herein; and

WHEREAS, the Parties have agreed to deposit in escrow certain property, and wish such deposit to be subject to the terms and conditions set forth herein.

## AGREEMENT

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

1. *Appointment.* The Parties hereby appoint the Escrow Agent as their escrow agent for the purposes set forth herein, and the Escrow Agent hereby accepts such appointment under the terms and conditions set forth herein.

2. *Escrow Account.*

(a) Promptly following the closing of the Merger, at the direction of the Wellington Investors, the Exchange Agent shall deliver to the Escrow Agent, in book-entry form, a specified number of shares of Common Stock, which shares shall be registered in the name of Escrow Agent f/b/o the Wellington Investors (the “*Escrow Shares*”), and the Escrow Agent will acknowledge receipt of the Escrow Shares to the Company and Wellington promptly upon receipt thereof. The initial Escrow Shares shall be held for the economic benefit of the Wellington Investors in the amounts set forth opposite their names on a schedule to be provided by Wellington to the Escrow Agent following closing of the Merger, which schedule shall then be attached as Exhibit B hereto. In addition, if Wellington determines at any time and from time to time that the Wellington Investors have possession of Excess Shares (as defined in the Letter Agreement), then it shall cause such Excess Shares to be deposited with the Escrow Agent, and such shares shall be deemed “Escrow Shares” for purposes of this Escrow Agreement (and Exhibit B shall be revised accordingly). Subject to the terms and conditions of this Escrow Agreement, the Escrow Agent shall hold the Escrow Shares and shall invest, reinvest and manage any proceeds thereof as directed in Section 3(d) (the “*Proceeds*,” and the Escrow Shares and the Proceeds, collectively, the “*Escrow Account*”). Upon receipt of the Escrow Shares, the Escrow Agent shall hold and dispose of the Escrow Shares only in accordance with the terms of this Escrow Agreement, and shall not release the Escrow Shares or the rest of the Escrow Account except in accordance with this Escrow Agreement. The Escrow Agent shall not vote or direct the voting of the Escrow Shares.

(b) If the Company at any time or from time to time between the date of this Escrow Agreement and the final disposition of the Escrow Account in accordance with this Escrow Agreement, (i) subdivides (by any stock split, stock dividend, recapitalization or otherwise) its outstanding shares of Common Stock into a greater number of shares, or (ii) combines (by reverse stock split or otherwise) its outstanding shares of Common Stock into a smaller number of shares, then the Company will deliver notice thereof to the Escrow Agent, and, unless the applicable authorizing Board of Directors resolutions do not require delivery of new Escrow Shares as a result of such action, the Company will as promptly as practicable after the effective date with respect thereto deliver to the Escrow Agent in book-entry form the requisite Escrow Shares as may be required to reflect the applicable increase or reduction, as the case may be, of such Escrow Shares. The Escrow Agent shall be entitled to execute and deliver any transmittal letter or other documents and share certificates required to effectuate an exchange of shares if contemplated by the action taken pursuant to the preceding clauses (i) or (ii). If the Company at any time or from time to time between the date of this Escrow Agreement and the final disposition of the Escrow Account in accordance with this Escrow Agreement pays any distribution or dividend in respect of the Escrow Shares in additional shares of Common Stock, then the Company will deliver notice thereof to the Escrow Agent and Wellington, and, unless the applicable authorizing Board of Directors resolutions do not require delivery of additional Escrow Shares as a result of such action, the Company will as promptly as practicable after the payment date with respect thereto deliver to the Escrow Agent additional Escrow Shares representing such additional shares of Common Stock. Upon such delivery referred to in this Section 2.1(b), the Escrow Agent shall hold such additional or substitute Escrow Shares, and all such shares are deemed Escrow Shares for purposes of this Escrow Agreement.

(c) This Escrow Agreement assumes that the Escrow Account will at all times be comprised only of Common Stock and cash (and interest earned thereon). If the Common Stock is converted into any securities or other property other than Common Stock, or any securities or other property (in each case, other than cash (and interest earned thereon) or additional shares of Common Stock) are distributed, issued or exchanged with respect to any shares of Common Stock (then held in the Escrow Account) upon any recapitalization, reclassification, merger, consolidation, stock dividend or the like, or if for any other reason securities or other property (in each case, other than cash (and interest earned thereon) or additional shares of Common Stock) at any time are held in the Escrow Account, the Company and Wellington shall negotiate in good faith, and execute and deliver, such supplemental written instructions to the Escrow Agent as are necessary to account for such other securities or property in a manner consistent with the results that would have prevailed if only Common Stock and cash (and interest earned thereon) were held in the Escrow Account, and shall deliver such supplemental written instructions to the Escrow Agent. If the Parties are unable to agree on any such supplemental instructions contemplated by the preceding sentence within thirty (30) days after such sentence shall become applicable, then the Escrow Agent shall refrain from taking any action with respect to such property other than Common Stock and cash (and interest earned thereon), other than to keep safely such other property until it shall be directed otherwise in writing jointly by the Company and Wellington or by final non-appealable order of a court of competent jurisdiction. The Escrow Agent shall be entitled to execute and deliver any transmittal letter or other documents and Escrow Shares required in connection with such any recapitalization, reclassification, merger, consolidation or similar event to receive any shares of stock, securities, properties or cash in exchange for Escrow Shares.

3. *Investment of Escrow Account.*

(a) The Parties recognize and agree that the Escrow Agent will not provide supervision, recommendations or advice relating to either the investment of moneys or any other assets held in the Escrow Account or the purchase, sale, retention or other disposition of any investment described herein. The Escrow Agent shall not liquidate, sell, invest or reinvest any portion of the Escrow Account except as provided herein and shall hold the Escrow Shares and any cash or other assets received in respect thereof in the form initially received, except as provided herein. The Escrow Agent shall not have any liability for any loss sustained as a result of any investment or the failure to make an investment made pursuant to the terms of this Escrow Agreement.

(b) During the term of this Escrow Agreement, any moneys in the Escrow Account shall be invested in a money market deposit account or a successor or similar investment offered by the Escrow Agent and approved by Wellington, unless otherwise instructed in writing by Wellington and as shall be reasonably acceptable to the Escrow Agent. The Escrow Agent will provide compensation on balances in the Escrow Account at the then-applicable rate for such account or investment from time to time. Written investment instructions, if any, shall specify the type and identity of the investments to be purchased and/or sold. The Escrow Agent is hereby authorized to execute purchases and sales of investments through the facilities of its own trading or capital markets operations or those of any affiliated entity. The Escrow Agent or any of its affiliates may receive reasonable compensation with respect to any investment directed hereunder including without limitation charging a reasonable agency fee in connection with each transaction. The Parties recognize and agree that the Escrow Agent will not provide supervision, recommendations or advice relating to either the investment of moneys held in the Escrow Account or the purchase, sale, retention or other disposition of any investment described herein. The Escrow Agent shall not have any liability for any loss sustained as a result of any investment in an investment made pursuant to the terms of this Escrow Agreement or as a result of any liquidation of any investment prior to its maturity or for the failure of Wellington to give the Escrow Agent instructions to invest or reinvest the Escrow Account.

4. *Disbursement of Escrow Account.* The Escrow Agent shall hold the Escrow Shares and the related Proceeds and distribute Escrow Shares and related Proceeds only (a) to a Wellington Investor upon receipt of and only in accordance with the terms of a copy of an executed certification signed by Wellington, in its capacity as investment adviser to the Wellington Investors, and addressed to the Company and the Escrow Agent certifying that, based on the number of shares of Common Stock outstanding in the Company's most recent report filed under the Securities Exchange Act of 1934, as amended, or as otherwise provided by the Company to Wellington, the exercise of voting power or investment power with respect to such Escrow Shares by any Wellington Entity shall not cause a violation of the "Maximum Percentage" limitation described in the Letter Agreement; or (b) in the event that Escrow Shares and Proceeds remain undistributed immediately following the fifth anniversary of the date hereof, to the Wellington Investors in accordance with the percentages set forth on Exhibit B.

5. *Disposition and Termination.* Upon delivery of the Escrow Account by the Escrow Agent in accordance with Section 4 above, this Escrow Agreement shall terminate, subject to the provisions of Sections 6(b), 6(c), 6(g) and 7.

6. *Concerning the Escrow Agent.*

(a) *Good Faith Reliance.* The Escrow Agent shall not be liable for any action taken or omitted by it in good faith and in the exercise of its own best judgment, and may rely conclusively and shall be protected in acting upon any order, notice, demand, certificate, opinion or advice of counsel (including counsel chosen by the Escrow Agent, which counsel may be company counsel), statement, instrument, report or other paper or document (not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and acceptability of any information therein contained) which is believed by the Escrow Agent to be genuine and to be signed or presented by the proper person or persons. The Escrow Agent shall not be bound by any notice or demand, or any waiver, modification, termination or rescission of this Escrow Agreement unless evidenced by a writing delivered to the Escrow Agent signed by the proper party or parties and, if the duties or rights of the Escrow Agent are affected, unless it shall have given its prior written consent thereto.

(b) *Indemnification.* The Escrow Agent shall be, severally and not jointly, indemnified and held harmless by the Wellington Investors from and against any expenses, including reasonable counsel fees and disbursements, or loss suffered by the Escrow Agent in connection with any action taken by it hereunder, action, suit or other proceeding involving any claim which in any way, directly or indirectly, arises out of or relates to this Escrow Agreement, the services of the Escrow Agent hereunder, or the Escrow Account held by it hereunder, other than expenses or losses arising from the fraud, gross negligence or willful misconduct of the Escrow Agent. Promptly after the receipt by the Escrow Agent of notice of any demand or claim or the commencement of any action, suit or proceeding, the Escrow Agent shall notify the other parties hereto in writing. In the event of the receipt of such notice, the Escrow Agent, in its sole discretion, may commence an action in the nature of interpleader in an appropriate court to determine ownership or disposition of the Escrow Account or it may deposit the Escrow Account with the clerk of any appropriate court or it may retain the Escrow Account pending receipt of a final, non-appealable order of a court having jurisdiction over all of the parties hereto directing to whom and under what circumstances the Escrow Account are to be disbursed and delivered. The provisions of this Section 6(b) shall survive in the event the Escrow Agent resigns or is discharged pursuant to Sections 6(e) or 6(f) below.

(c) *Compensation.* The Escrow Agent shall be entitled to such compensation from the Wellington Investors for all services rendered by it hereunder set forth on Exhibit A hereto, which shall be paid by the Wellington Investors. The Escrow Agent shall also be entitled to reimbursement from the Wellington Investors for all reasonable expenses paid or incurred by it in the administration of its duties hereunder including, but not limited to, all counsel, advisors' and agents' fees and disbursements and all taxes or other governmental charges.

(d) *Further Assurances.* From time to time on and after the date hereof, the Company and Wellington shall deliver or cause to be delivered to the Escrow Agent such further documents and instruments and shall do or cause to be done such further acts as the Escrow Agent shall reasonably request to carry out more effectively the provisions and purposes of this Escrow Agreement, to evidence compliance herewith or to assure itself that it is protected in acting hereunder.

(e) *Resignation.* The Escrow Agent may resign at any time and be discharged from its duties as escrow agent hereunder by its giving the other parties hereto written notice, and such resignation shall become effective as hereinafter provided. Such resignation shall become effective at such time that the Escrow Agent shall turn over to a successor escrow agent appointed by the Company and approved by Wellington, which approval will not be unreasonably withheld, conditioned or delayed, the Escrow Account held hereunder. If no new escrow agent is so appointed within the sixty (60) day period following the giving of such notice of resignation, the Escrow Agent may deposit the Escrow Account with any court it reasonably deems appropriate in the State of New York.

(f) *Discharge of Escrow Agent.* The Escrow Agent shall resign and be discharged from its duties as escrow agent hereunder if so requested in writing at any time by the Parties, jointly; *provided, however*, that such resignation shall become effective only upon acceptance of appointment by a successor escrow agent as provided in Section 6(e).

(g) *Liability.* Notwithstanding anything herein to the contrary, the Escrow Agent shall not be relieved from liability hereunder for its own gross negligence, fraud or willful misconduct.

7. *Miscellaneous.*

(a) *Governing Law; Venue.* This Escrow Agreement shall be construed in accordance with, and governed in all respects by, the laws of the State of New York (without giving effect to principles of conflicts of laws). Any claim, action or proceeding (each, a “**Legal Proceeding**”) relating to this Escrow Agreement or the enforcement of any provision of this Escrow Agreement may be brought or otherwise commenced in any federal or state court located in the New York, New York. Each of the Parties and the Escrow Agent: (i) expressly and irrevocably consents and submits to the jurisdiction of each federal and state court located in the New York, New York in connection with any such Legal Proceeding; (ii) agrees that service of any process, summons, notice or document by U.S. mail addressed to such party at the address set forth in Section 7(e) shall constitute effective service of such process, summons, notice or document for purposes of any such Legal Proceeding; (iii) agrees that each federal or state court located in the New York, New York, shall be deemed to be a convenient forum; and (d) agrees not to assert (by way of motion, as a defense or otherwise), in any such Legal Proceeding commenced in any federal or state court located in the New York, New York any claim that such party is not subject personally to the jurisdiction of such court, that such Legal Proceeding has been brought in an inconvenient forum, that the venue of such action or proceeding is improper or that this Escrow Agreement or the subject matter of this Escrow Agreement may not be enforced in or by such court.

(b) *Entire Agreement.* This Escrow Agreement and the Letter Agreement set forth the entire understanding of the parties hereto relating to the subject matter hereof and thereof and supersede all prior agreements and understandings among or between any of the parties relating to the subject matter hereof and thereof. Escrow Agent shall have no liability under and no duty to inquire as to the provisions of any agreement (even though such agreement may be referenced in this Escrow Agreement) other than this Escrow Agreement. In the event of any conflict between the terms and provisions of this Escrow Agreement and any other agreement, as to Escrow Agent, the terms and conditions of this Agreement shall control.

(c) *Headings.* The headings contained in this Escrow Agreement are for convenience of reference only, shall not be deemed to be a part of this Escrow Agreement and shall not be referred to in connection with the construction or interpretation of this Escrow Agreement.

(d) *Successors and Assigns; Assignment.* This Escrow Agreement shall be binding upon each of the parties hereto and each of their successors and permitted assigns, if any. This Escrow Agreement shall not be assigned by any party hereto, by operation of law or otherwise, without the prior written consent of the other parties hereto.

(e) *Notices.* Any notice or other communication required or permitted to be delivered to any party under this Escrow Agreement shall be in writing and shall be deemed properly delivered, given and received (a) when delivered by hand, or (b) two business days after such notice is sent by registered mail, by courier or express delivery service or by facsimile, in each case to the address or facsimile telephone number set forth beneath the name of such party below (or to such other address or facsimile telephone number as such party shall have specified in a written notice given to the other parties hereto):

**If to the Company:**

Global Eagle Acquisition Corp.  
10900 Wilshire Blvd., Suite 1500  
Los Angeles, CA 90024  
Attention: Chief Financial Officer  
Facsimile: (310) 209-7225

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

McDermott Will & Emery LLP  
340 Madison Avenue  
New York, NY 10173-1922  
Attention: Joel Rubinstein, Esq.  
Facsimile: 212-547-5444

**If to Wellington or a Wellington Investor:**

Wellington Management Company, LLP  
280 Congress Street  
Boston, MA 02110  
Attention: Steven M. Hoffman  
Facsimile: 617-289-5699

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

Bradley A. Jacobson, Esq.  
Greenberg Traurig, LLP  
One International Place  
Boston, MA 02110  
Facsimile: 617-279-8402

**If to the Escrow Agent:**

American Stock Transfer & Trust Company LLC  
6201 15th Avenue  
Brooklyn, New York 11219  
Attention: Joseph Smith  
Facsimile: 718-765-8758

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

American Stock Transfer & Trust Company, LLC  
6201 15<sup>th</sup> Avenue  
Brooklyn, NY 11219  
Attention: General Counsel  
Facsimile: 718-331-1852

(f) *Amendments.* This Escrow Agreement may not be amended, modified, altered or supplemented other than by means of a written instrument duly executed and delivered on behalf of all of the parties hereto.

(g) *Waiver of Jury Trial.* Each of the parties hereto hereby irrevocably waives any and all right to trial by jury in any Legal Proceeding arising out of this Escrow Agreement or the transactions contemplated hereby.

(h) *Counterparts.* This Escrow Agreement may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.

(i) *Electronic Execution and Delivery.* A facsimile, telecopy, PDF or other reproduction of this Escrow Agreement may be executed by one or more parties hereto, and an executed copy of this Escrow Agreement may be delivered by one or more parties hereto by facsimile, e-mail or similar electronic transmission device pursuant to which the signature of or on behalf of such party can be seen, and such execution and delivery shall be considered valid, binding and effective for all purposes. At the request of any party hereto, all parties hereto agree to execute an original of this Escrow Agreement as well as any facsimile, telecopy or reproduction thereof. The parties hereto hereby agree that neither shall raise the execution of facsimile, telecopy, PDF or other reproduction of this Escrow Agreement, or the fact that any signature or document was transmitted or communicated by facsimile, e-mail or similar electronic transmission device, as a defense to the formation of this Escrow Agreement.

[Signature page follows]



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

**Global Eagle Acquisition Corp.**

By: /s/ James A. Graf  
Name: James A. Graf  
Title: Vice President

**Wellington Management Company, LLP**

By: /s/ Steven M. Hoffman  
Name: Steven M. Hoffman  
Title: Vice President

**J. Caird Partners, L.P.**

By: Wellington Management Company, LLP, as investment adviser

By: /s/ Steven M. Hoffman  
Name: Steven M. Hoffman  
Title: Vice President

**J. Caird Investors (Bermuda) L.P.**

By: Wellington Management Company, LLP, as investment adviser

By: /s/ Steven M. Hoffman  
Name: Steven M. Hoffman  
Title: Vice President

**Quissett Partners, L.P.**

By: Wellington Management Company, LLP, as investment adviser

By: /s/ Steven M. Hoffman

Name: Steven M. Hoffman

Title: Vice President

**Quissett Investors (Bermuda) L.P.**

By: Wellington Management Company, LLP, as investment adviser

By: /s/ Steven M. Hoffman

Name: Steven M. Hoffman

Title: Vice President

**Bay Pond Partners, L.P.**

By: Wellington Management Company, LLP, as investment adviser

By: /s/ Steven M. Hoffman

Name: Steven M. Hoffman

Title: Vice President

**Bay Pond Investors (Bermuda) L.P.**

By: Wellington Management Company, LLP, as investment adviser

By: /s/ Steven M. Hoffman

Name: Steven M. Hoffman

Title: Vice President

**Ithan Creek Master Investors (Cayman) L.P.**

By: Wellington Management Company, LLP, as investment adviser

By: /s/ Steven M. Hoffman

Name: Steven M. Hoffman

Title: Vice President

**Ithan Creek Master Investment Partnership (Cayman) II, L.P.**

By: Wellington Management Company, LLP, as investment adviser

By: /s/ Steven M. Hoffman

Name: Steven M. Hoffman

Title: Vice President

**American Stock Transfer & Trust Company, LLC**

By: /s/ Joseph M. Smith

Name: Joseph M. Smith

Title: Director

**Exhibit A**

**Escrow Agent's Compensation**

An annual fee of \$3,500.

**Exhibit B**

Wellington Investors

<b>Wellington Investor</b>	<b>Escrow Shares</b>	<b>Percentage</b>
Ithan Creek Master Investment Partnership (Cayman) II, L.P.		
Ithan Creek Master Investors (Cayman) L.P.		
Bay Pond Investors (Bermuda) L.P.		
Bay Pond Partners L.P.		
J. Caird Partners, L.P.		
J. Caird Investors (Bermuda) L.P.		
Quissett Investors (Bermuda) L.P.		
Quissett Partners, L.P.		
<b>Total:</b>		

**SUBSIDIARIES OF GLOBAL EAGLE ENTERTAINMENT INC.**

<b>Subsidiary Legal Name</b>	<b>Name Under Which Business is Conducted</b>	<b>State or Country of Incorporation</b>
Row 44, Inc.	Row 44, Inc.	Delaware
N44HQ, LLC	N44HQ, LLC	Delaware
Global Eagle Entertainment Luxembourg I S.a r.l	Global Eagle Entertainment Luxembourg I S.a r.l	Luxembourg
Global Eagle Entertainment Luxembourg II S.a r.l	Global Eagle Entertainment Luxembourg II S.a r.l	Luxembourg
Global Eagle Entertainment GmbH	Global Eagle Entertainment GmbH	Germany
Advanced Inflight Alliance AG	Advanced Inflight Alliance AG	
	AIA	Germany
	Inflight Productions	
	IFP	
Inflight Productions Germany GmbH	Atlas Air	Germany
IFE Alliance Licensing GmbH	IFE Alliance Licensing GmbH	Germany
	Entertainment in Motion	
Entertainment in Motion, Inc.	EIM	California
	Inflight Productions	
	IFP	
Inflight Productions, Ltd.	28Design	United Kingdom
	Inflight Productions	
Inflight Productions Ltd.	IFP	New Zealand
	Inflight Productions	
Inflight Productions Pte. Ltd.	IFP	Singapore
The Lab Aero, Inc.	The Lab.Aero	California
	Inflight Productions	
Inflight Productions USA Inc. / AAEC Inc.	IFP	California
	Inflight Productions	
Inflight Productions BV	IFP	Netherlands
	Inflight Productions	
Inflight Productions FZ-LLC	IFP	United Arab Emirates
Advanced Inflight Alliance Ltd.	Advanced Inflight Alliance Ltd.	United Kingdom
Advanced Film GmbH	Advanced Film GmbH	Germany
	DTI	
DTI Software Inc.	DTI Software	Canada
	DTI	
DTI Software FZ-LLC	DTI Software	United Arab Emirates
	DTI	
DTI Solutions Inc.	DTI Solutions	Canada
	Fairdeal	
Fairdeal Multimedia Pvt. Ltd.	Fairdeal Multimedia	India
	Fairdeal	
Fairdeal Studios Pvt. Ltd.	Fairdeal Studios	India
	Emphasis	
	Emphasis Video	
	Emphasis Media	
	Emphasis Video Entertainment	
Emphasis Video Entertainment Ltd.		China
Inflight Management Development Centre Ltd.	IMDC	United Kingdom

## ROW 44, INC.

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## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors  
Row 44, Inc.

We have audited the accompanying balance sheet of Row 44, Inc. as of December 31, 2009 and the related statements of operations, stockholders' deficit, and cash flows the year ended December 31, 2009. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with the standards established by the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. We were not engaged to perform an audit of the Company's internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Row 44, Inc. at December 31, 2009, and the results of its operations and its cash flows for the year ended December 31, 2009, in conformity with U.S. generally accepted accounting principles.

Rose, Snyder & Jacobs LLP

Encino, California

January 30, 2013



ROW 44, INC.  
BALANCE SHEET  
DECEMBER 31, 2009

ASSETS

CURRENT ASSETS

Cash and cash equivalents	\$ 104,915
Accounts receivable, net of allowance for doubtful accounts of \$48,293	5,700
Inventories	2,069,503
Prepaid expenses	402,596
Advances, related parties	109,213
Other current assets	28,806
<b>TOTAL CURRENT ASSETS</b>	<b><u>2,720,733</u></b>

PROPERTY AND EQUIPMENT, net	<u>2,461,505</u>
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OTHER ASSETS

Deposits and other assets	82,918
<b>TOTAL OTHER ASSETS</b>	<b><u>82,918</u></b>

<b>TOTAL ASSETS</b>	<b><u>\$ 5,265,156</u></b>
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LIABILITIES AND STOCKHOLDERS' DEFICIT

CURRENT LIABILITIES

Accounts payable and accrued expenses	\$ 1,523,001
Accrued employee paid-time-off	163,065
Deferred revenue	247,097
Derivative liabilities	3,536,208
Convertible bridge loans, net	15,528,613
Note payable	2,753,695
Accrued interest	1,106,376
<b>TOTAL CURRENT LIABILITIES</b>	<b><u>24,858,055</u></b>

LONG-TERM LIABILITIES

Deferred revenue	1,339,482
Other non-current liabilities	52,896
<b>TOTAL LIABILITIES</b>	<b><u>26,250,433</u></b>

COMMITMENTS AND CONTINGENCIES

REDEEMABLE PREFERRED STOCK

Series A-1, \$0.0001 par value; 9,794,142 shares authorized, issued and outstanding	7,337,787
Series A-2, \$0.0001 par value; 19,887,000 shares authorized,	17,027,275
<b>TOTAL REDEEMABLE PREFERRED STOCK</b>	<b><u>24,365,062</u></b>

STOCKHOLDERS' DEFICIT

Common stock, \$0.0001 par value; 500,000,000 shares authorized, 24,663,510 shares issued and outstanding	2,466
Additional paid-in capital	3,793,390
Subscriptions receivable	(794,387)
Accumulated deficit	(48,351,808)
<b>TOTAL STOCKHOLDERS' DEFICIT</b>	<b><u>(45,350,339)</u></b>

<b>TOTAL LIABILITIES AND STOCKHOLDERS' DEFICIT</b>	<b><u>\$ 5,265,156</u></b>
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See report of independent public accounting firm and notes to financial statements.

ROW 44, INC.  
STATEMENT OF OPERATIONS  
FOR THE YEAR DECEMBER 31, 2009

REVENUES

Equipment revenue	\$ 374,427
Service revenue	<u>-</u>
TOTAL REVENUES	<u>374,427</u>

OPERATING EXPENSES

Equipment cost of sales	262,747
Cost of services	5,914,933
Personnel	2,268,971
Research and development	3,474,699
Selling, general and administrative	3,690,296
TOTAL OPERATING EXPENSES	<u>15,611,646</u>

OPERATING LOSS	<u>(15,237,219)</u>
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OTHER INCOME (EXPENSE)

Interest income	31,322
Miscellaneous expense	(200)
Interest expense	<u>(11,649,842)</u>

TOTAL OTHER INCOME (EXPENSE)	<u>(11,618,720)</u>
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NET LOSS	(26,855,939)
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Less: Preferred stock dividends	<u>(1,804,819)</u>
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NET LOSS AVAILABLE TO COMMON STOCKHOLDERS	<u>\$ (28,660,758)</u>
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Net loss attributable to common stock per share - basic and diluted	<u>\$ (1.16)</u>
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Weighted average number of common shares outstanding - basic and diluted	<u>24,663,510</u>
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ROW 44, INC.  
STATEMENT OF STOCKHOLDERS' DEFICIT  
FOR THE YEAR ENDED DECEMBER 31, 2009

	Common Stock		Additional	Subscriptions	Accumulated	
	Shares	Amount	Paid-in Capital	Receivable	Deficit	Total
Balance, January 1, 2009	24,663,510	\$ 2,466	\$ 13,426	(769,173)	\$(21,495,869)	\$(22,249,150)
Discount on convertible promissory notes	-	-	1,984,158	-	-	1,984,158
Stock-based compensation	-	-	140,014	-	-	140,014
Preferred stock dividends	-	-	(1,804,819)	-	-	(1,804,819)
Reclassification of derivative liabilities	-	-	3,460,611	-	-	3,460,611
Interest income on subscriptions receivable	-	-	-	(25,214)	-	(25,214)
Net loss	-	-	-	-	(26,855,939)	(26,855,939)
Balance, December 31, 2009	<u>24,663,510</u>	<u>\$ 2,466</u>	<u>\$ 3,793,390</u>	<u>\$ (794,387)</u>	<u>\$(48,351,808)</u>	<u>\$(45,350,339)</u>

See report of independent public accounting firm and notes to financial statements.

ROW 44, INC.  
STATEMENT OF CASH FLOWS  
FOR THE YEAR ENDED DECEMBER 31, 2009

CASH FLOWS FROM OPERATING ACTIVITIES:

Net loss	\$ (26,855,939)
Adjustments to reconcile net loss to net cash used in operating activities:	
Non-cash interest on convertible promissory notes	10,484,589
Depreciation and amortization	611,340
Interest income on subscriptions receivable	(25,214)
Stock-based compensation	140,014
Changes in operating assets and liabilities:	
Accounts receivable	(5,700)
Inventories	(718,905)
Prepaid expenses and other current assets	(223,695)
Deposits and other assets	5,670
Accounts payable and accrued expenses	121,853
Accrued interest	1,106,376
Accrued employee paid-time-off	57,207
Deferred revenue	1,145,857
NET CASH USED IN OPERATING ACTIVITIES	<u>(14,156,547)</u>

CASH FLOWS FROM INVESTING ACTIVITIES:

Purchases of property and equipment	<u>(114,187)</u>
NET CASH USED IN INVESTING ACTIVITIES	<u>(114,187)</u>

CASH FLOWS FROM FINANCING ACTIVITIES:

Proceeds from issuance of notes payable	14,025,000
Payments on capital lease obligation	<u>(25,562)</u>
NET CASH PROVIDED BY FINANCING ACTIVITIES	<u>13,999,438</u>
NET DECREASE IN CASH AND CASH EQUIVALENTS	(271,296)

CASH AND CASH EQUIVALENTS, BEGINNING OF YEAR	<u>376,211</u>
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CASH AND CASH EQUIVALENTS, END OF PERIOD	<u><u>\$ 104,915</u></u>
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Supplemental disclosures:

Interest paid in cash	<u>\$ 58,876</u>
Income taxes paid in cash	<u>\$ -</u>

See report of independent public accounting firm and notes to financial statements.

ROW 44, INC.  
NOTES TO FINANCIAL STATEMENTS  
DECEMBER 31, 2009

1. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Organization

Row 44, Inc. (the “Company”, “Row 44”, “we”, “us”, “our”) was founded in 2004 and provides satellite based in-flight broadband connectivity for commercial air passengers, as well as commercial airline operations services for cockpit and crew. In addition to its in-flight broadband system, the Company offers its customers a private labeled portal that is free to access for passengers. This portal currently comprises a custom menu of entertainment services, which includes online shopping, and games with plans to add additional features such as a moving map, streaming video, live TV, movies, and texting. Row 44 currently offers services in the United States with plans to extend satellite coverage to Western Europe and then other regions of the world as the opportunities arise. The Company has several wholly owned, dormant subsidiaries that were created for regulatory purposes in current and anticipated operating regions.

Liquidity

The Company has historically raised capital through the issuance of convertible promissory notes (“bridge loans”) sufficient to continue operations until such time that additional equity funding (in the form of Preferred Stock rounds) is obtained.

In addition to the convertible bridge loans entered into in 2009 (note 5), the Company received an additional \$525,000 in 2010 for a total debt funding of \$14.55 million. In April 2010, these convertible bridge loans and the related unpaid, accrued interest was converted into Series B-2 Preferred units. Between April 2010 and August 2010, the Company raised \$22.5 million in connection with funding for Series B-1a Preferred units and Series B-1b preferred units. Between December 2011 and June 2012, the Company successfully raised approximately \$45 million of funding, which comprised \$25 million of new cash investment from an existing preferred shareholder for Series C-1 Preferred units and the issuance of two \$10 million bridge loan rounds. The two \$10 million bridge loans and related accrued interest were converted into Series C-2 Preferred units in June 2012.

Management intends to become profitable by continuing to seek out additional airline companies in various global markets that are interested in offering connectivity to their customers and to expand its product offering with emphasis on bringing to market enhanced products like streaming video, live TV, and movies. Based upon the Company’s cash on hand, other sources of liquidity, as described above, and based upon the Company’s operating plan, the Company’s management anticipates that the Company will be able to satisfy the cash requirements of its operations through at least the next twelve months. The Company anticipates that further equity or debt financings, and/or additional revenue generating arrangements will be necessary to continue to fund operations in the future.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts and disclosures. Management uses its historical records and knowledge of its business in making these estimates. Accordingly, actual results may differ from these estimates.

Revenue Recognition

Revenues consist primarily of sales of equipment to airlines, which are hardware equipment sets that Row 44 purchases from third party vendors and then sells to the commercial airlines.

The Company recognizes revenue when all of the following have occurred: persuasive evidence of an agreement with the customer exists, products are shipped and the customer takes delivery, the selling price is fixed or determinable, and collectability of the selling price is reasonably assured. For equipment sales, revenue recognition generally occurs at the time of shipment or delivery, depending on shipping terms.

See report of independent registered public accounting firm.

ROW 44, INC.  
NOTES TO FINANCIAL STATEMENTS  
DECEMBER 31, 2009

1. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Debt and Equity Instruments

The Company accounts for convertible instruments issued with freestanding warrants in accordance with ASC 470, "*Debt*" and ASC 480, "*Distinguishing Liabilities from Equity*". In addition, the Company considers the provisions of ASC 815, "*Derivatives and Hedging*", when evaluating freestanding and embedded instruments. These instruments include the bridge loans, preferred stock, and associated warrants.

Derivative Financial Instruments

All derivatives are accounted for on a fair value basis. Embedded derivative instruments subject to bifurcation are also accounted for on a fair value basis. The change in fair value of derivatives is recorded through earnings. Cash flows from embedded derivatives subject to bifurcation are reported consistently with the host contracts within the Statement of Cash Flows.

During the year ended December 31, 2009, warrants to purchase common stock were classified as derivatives due to an embedded feature that required the Company to issue additional warrants in the event of a default on a convertible bridge loan. See notes 4 and 5 for further discussion of these warrants.

Warranties

The Company is not directly responsible for warranty costs related to equipment sales. The vendors that supplied the individual parts, which comprise the assemblies sold by the Company to customers, provide the warranty.

Deferred Revenue

Deferred revenue primarily consists of prepayments received from customers for which the Company's revenue recognition criteria have not been met. The deferred revenue will be recognized as revenue once the criteria for revenue recognition have been met.

Inventories

Inventories, which are classified as finished goods, are comprised of individual parts and assemblies and are stated at the lower of cost or market. Cost of inventories is determined using actual cost on a first-in, first-out basis. The Company provides inventory write-downs based on excess and obsolete inventories determined primarily by future demand forecasts. The write-down is measured as the difference between the cost of the inventory and market based upon assumptions about future demand and charged to the provision for inventory, which is a component of cost of sales. At the point of the loss recognition, a new, lower cost basis for that inventory is established, and subsequent changes in facts and circumstances do not result in the restoration or increase in that newly established cost basis. At December 31, 2009, the reserve for inventory write-downs amounted to \$0.

Long-Lived Assets

The Company accounts for the impairment and disposition of long-lived assets in accordance with ASC 350, "*Intangibles – Goodwill and Other*" and ASC 360, "*Property and Equipment*". Long-lived assets to be held and used are reviewed for events or changes in circumstances that indicate that their carrying value may not be recoverable. No impairment losses were recorded during the year ended December 31, 2009.

Software Development Costs

The Company accounts for the development of software to be used for internal purposes in accordance with ASC 350-40, "*Goodwill and Other – Internal-Use Software*". These costs are expensed as incurred due to the frequency with which software is updated.

See report of independent registered public accounting firm.

ROW 44, INC.  
NOTES TO FINANCIAL STATEMENTS  
DECEMBER 31, 2009

1. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Shipping and Handling

Shipping and handling costs are recorded as part of selling, general and administrative expenses and amounted to \$33,481 for the year ended December 31, 2009.

Research and Development

Costs relating to designing and developing new products are expensed in the period incurred.

Property and Equipment

Property and equipment are stated at cost. Depreciation and amortization are being provided using the straight-line method over the estimated useful lives of the assets. The estimated useful lives used are as follows:

Classification	Life
Albatross (aircraft)	5 Years
Furniture and fixtures	7 Years
Equipment	5-7 Years
Computer equipment	3 Years
Computer software	3 Years
Automobiles	5 Years

Leasehold improvements are amortized using the straight-line method over the shorter of the lease terms or the useful lives of the improvements. Expenses for repairs and maintenance are charged to expense as incurred, while renewals and betterments are capitalized.

Accounts Receivable

The Company extends credit to its customers. An allowance for doubtful accounts is maintained for estimated losses resulting from the inability of the Company's customers to make required payments. Management specifically analyzes the age of customer balances, historical bad debt experience, customer credit-worthiness, and changes in customer payment terms when making estimates of the collectability of the Company's trade accounts receivable balances. If the Company determines that the financial condition of any of its customers has deteriorated, whether due to customer specific or general economic issues, an increase in the allowance may be made. After all attempts to collect a receivable have failed, the receivable is written off. Based on the information available, management believes the Company's accounts receivable, net of the allowance for doubtful accounts, are collectable.

The following table reconciles changes in the Company's allowance for doubtful accounts for the year ended December 31, 2009:

Beginning allowance for doubtful accounts	\$	-
Doubtful account accruals		48,293
Receivables written off		-
Ending allowance for doubtful accounts	\$	<u>48,293</u>

Marketing and Advertising

Marketing and advertising costs are expensed as incurred. Marketing and advertising amounted to \$326,952 for the year ended December 31, 2009 and are included in selling, general and administrative expenses.

See report of independent registered public accounting firm.

ROW 44, INC.  
NOTES TO FINANCIAL STATEMENTS  
DECEMBER 31, 2009

1. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Preferred Stock

The Company elects to accrete the difference between the redemption value and carrying value of outstanding preferred stock over the period from the date of issuance to the earliest redemption date using the effective interest method.

Currency

All of the Company's contracts, agreements, and transactions are denominated in U.S. dollars.

Cash and Cash Equivalents

For the purpose of the statement of cash flows, the Company considers cash equivalents to include short-term, highly liquid investments with an original maturity of three months or less.

Income Taxes

The Company accounts for income taxes using the liability method in accordance with ASC 740, "*Income Taxes*". To date, no current income tax liability has been recorded due to the Company's accumulated net losses. Deferred income tax assets and liabilities are recognized for temporary differences between the financial statement carrying amounts of assets and liabilities and the amounts that are reported in the income tax returns. Deferred income tax assets and liabilities are recorded on a net basis; however, the net deferred income tax assets have been fully reserved by a valuation allowance due to the uncertainty of the Company's ability to realize future taxable income and to recover its net deferred income tax assets.

Stock-Based Compensation

The Company accounts for stock-based employee compensation arrangements in accordance with ASC 718, "*Compensation – Stock Compensation*", which requires the measurement and recognition of compensation expense for all share-based payment awards made to employees and directors based on the estimated grant date fair value of the award. The value of the portion of the award that is ultimately expected to vest is recognized as expense over the requisite service periods in the Company's statement of operations.

Warrants issued to non-employees are expensed as services are rendered.

The Company estimates fair value of share-based awards using the Black-Scholes model. This model requires the Company to estimate the expected volatility and value of its common stock and the expected term of the stock options; all of which are highly complex and subjective variables. The variables take into consideration, among other things, actual and projected employee stock option exercise behavior. The Company uses an average of similar companies' historical volatility as a basis for its expected volatility. Expected term is computed using the simplified method provided within Securities and Exchange Commission Staff Accounting Bulletin No. 110. The Company has selected a risk-free rate based on the implied yield available on U.S. Treasury securities with a maturity equivalent to the expected term of the stock option or warrant.

See report of independent registered public accounting firm.



ROW 44, INC.  
NOTES TO FINANCIAL STATEMENTS  
DECEMBER 31, 2009

1. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Earnings (Loss) per Share

Basic earnings (loss) per share is computed using the weighted-average number of common shares outstanding during the period. Diluted earnings (loss) per share are computed using the weighted-average number of common shares and dilutive potential common shares outstanding during the period. Dilutive potential common shares, which primarily consist of stock options issued to employees, warrants issued to third parties, convertible promissory notes, and convertible preferred stock, have been excluded from the diluted loss per share calculation because their effect is anti-dilutive.

The Company includes participating securities, which consists of Preferred Stock outstanding, in the computation of earnings per share pursuant to the two-class method. The participating securities have contractual participation rights to distributed earnings equivalent to those of stockholders of unrestricted common stock. The two-class method of computing earnings per share is an allocation method that calculates earnings per share for common stock and participating securities. During periods when the Company generates a net loss, no portion of the loss is allocated to the preferred stock as the preferred shareholders are not contractually obligated to participate in losses.

	For the Year Ended December 31, 2009
Net loss	\$ (26,855,939)
Less: Preferred stock dividends	(1,804,819)
Undistributed losses	<u>\$ (28,660,758)</u>

Allocation of undistributed losses to  
participating securities:

Common stock	\$ (28,660,758)
Preferred stock	--
Undistributed losses	<u>\$ (28,660,758)</u>

Fair Value of Financial Instruments

The Company groups financial assets and financial liabilities measured at fair value into three levels of hierarchy in accordance with ASC 820-10, "Fair Value Measurements and Disclosure". Assets and liabilities recorded at fair value in the accompanying balance sheet are categorized based upon the level of judgment associated with the inputs used to measure their fair value. The categories are as follows:

Level Input:

Input Definition:

Level I	Inputs are unadjusted, quoted prices for identical assets or liabilities in active markets at the measurement date.
Level II	Inputs, other than quoted prices included in Level I, that are observable for the asset or liability through corroboration with market data at the measurement date.
Level III	Unobservable inputs that reflect management's best estimate of what market participants would use in pricing the asset or liability at the measurement date.

See report of independent registered public accounting firm.

ROW 44, INC.  
NOTES TO FINANCIAL STATEMENTS  
DECEMBER 31, 2009

1. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Effect of Recently Issued Accounting Standards

During 2009, the Company adopted changes issued by the FASB to the authoritative hierarchy of GAAP. These changes establish the FASB Accounting Standards Codification ("Codification") as the source of authoritative accounting principles recognized by the FASB to be applied by nongovernmental entities in the preparation of financial statements in conformity with GAAP. Rules and interpretive releases of the SEC under authority of federal securities laws are also sources of authoritative GAAP for SEC registrants. The FASB will no longer issue new standards in the form of Statements, FASB Staff Positions, or Emerging Issues Task Force Abstracts; instead the FASB will issue Accounting Standards Updates (ASUs). ASUs will not be authoritative in their own right as they will only serve to update the Codification. These changes and the Codification itself do not change GAAP. Other than the manner in which new accounting guidance is referenced, the adoption of these changes had no impact on our financial statements.

During 2009, the Company adopted changes issued by the FASB to accounting for and disclosure of events that occur after the balance sheet date but before financial statements are issued or are available to be issued, otherwise known as "subsequent events." Specifically, these changes set forth the period after the balance sheet date during which management of a reporting entity should evaluate events or transactions that may occur for potential recognition or disclosure in the financial statements, the circumstances under which an entity should recognize events or transactions occurring after the balance sheet date in its financial statements, and the disclosures that an entity should make about events or transactions that occurred after the balance sheet date. The adoption of these changes did not have a material impact on our financial statements.

In August 2009, the FASB issued ASU 2009-15, which changes the fair value accounting for liabilities. These changes clarify existing guidance that in circumstances in which a quoted price in an active market for the identical liability is not available, an entity is required to measure fair value using either a valuation technique that uses a quoted price of either a similar liability or a quoted price of an identical or similar liability when traded as an asset, or another valuation technique that is consistent with the principles of fair value measurements, such as an income approach (e.g., present value technique). This guidance also states that both a quoted price in an active market for the identical liability and a quoted price for the identical liability when traded as an asset in an active market when no adjustments to the quoted price of the asset are required are Level 1 input fair value measurements. This ASU is effective on January 1, 2010. Adoption of this ASU will not have a material impact on our financial statements.

2. PROPERTY AND EQUIPMENT

Depreciation and amortization of property and equipment amounted to \$604,138 during the year ended December 31, 2009 and are included in the accompanying statements of operations in selling, general and administrative expenses.

At December 31, 2009, property and equipment consists of the following:

Albatross (aircraft)	\$	384,798
Furniture and fixtures		462,942
Equipment		2,287,966
Computer equipment		244,783
Computer software		55,254
Automobiles		37,423
Leasehold improvements		49,372
		<u>3,522,538</u>
Less accumulated depreciation and amortization		<u>1,061,033</u>
Total	\$	<u><u>2,461,505</u></u>

See report of independent registered public accounting firm.

ROW 44, INC.  
NOTES TO FINANCIAL STATEMENTS  
DECEMBER 31, 2009

3. CONVERTIBLE, REDEEMABLE PREFERRED STOCK

As of December 31, 2009, the Company is authorized to issue, and has issued, 29,681,142 shares of Convertible Redeemable Preferred Stock ("Preferred Stock"), which is allocated to various Series as follows:

Series A-1: 9,794,142 shares  
Series A-2: 19,887,000 shares

8% Cumulative Dividends

The Preferred Stock accrues cumulative dividends at the rate of 8% per annum on the base amount, which is defined as the sum of (i) such Preferred Stock's Original Issue Price plus (ii) any Accruing Dividends accrued and unpaid thereon, whether or not declared, together with any other dividends declared but unpaid, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization, and are payable only if and when declared by the Company's Board of Directors. The Company may not declare, pay, or set aside any dividends on shares of any other class or series unless the holders of the Preferred Stock then outstanding receive a dividend equal to the sum of i) any unpaid cumulative dividends and ii) the dividend per share that would be received had the Preferred Stock been converted into shares of common stock at the applicable conversion price in effect at that time. No dividends on the Preferred Stock shall be paid in cash without the consent of the holders of at least a majority of the outstanding shares of Preferred Stock. Cumulative but unpaid dividends as of December 31, 2009 amounted to \$2,900,959.

Liquidation

At December 31, 2009, the Preferred Stock has an aggregate liquidation preference of \$24,365,062, which includes cumulative but unpaid dividends. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company, the holders of the Company's Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Company available for distribution to its stockholders, before any payments shall be made to the holders of the Company's Common Stock, the greater of (i) the applicable Original Issue Price plus any Accruing Dividends accrued but unpaid, whether or not declared, together with any other dividends declared but unpaid thereon and (ii) such amount per share as would have been payable had all shares of Preferred Stock been converted into Common Stock immediately prior to such liquidation, dissolution or winding up. If, upon any such liquidation, dissolution or winding up of the Company, the assets of the Company available for distribution to its stockholders shall be insufficient to pay the holders of Preferred Stock the full liquidation amount, then the holders of Preferred Stock shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

Voting Rights

Holders of Preferred Stock are entitled to cast the number of votes equal to the number of common shares into which the shares of Preferred Stock held by such holders are convertible as of the record date. The holders of Preferred Stock vote together with the holders of common stock as a single class. Certain activities of the Company require the written consent or affirmative vote of the holders of at least a majority of the then outstanding shares of Preferred Stock including, but not limited to: (i) liquidate, dissolve or wind-up the business and affairs of the Company, effect any Liquidation Transaction, or consent to any of the foregoing, (ii) amend, alter or repeal any provision of the Certificate of Incorporation or Bylaws of the Company in a manner that adversely affects the powers, preferences or rights of the Preferred Stock, or (iii) authorize the issuance of any debt security if the aggregate indebtedness of the Company for borrowed money following such action would exceed \$1 million.

See report of independent registered public accounting firm.

ROW 44, INC.  
NOTES TO FINANCIAL STATEMENTS  
DECEMBER 31, 2009

3. CONVERTIBLE, REDEEMABLE PREFERRED STOCK (Continued)

Optional Conversion Rights

Holders of the Preferred Stock, at their option, may convert their shares into shares of common stock at the following conversion prices, subject to certain adjustments for future issuances at a lower price and customary adjustments for stock splits, combinations, etc.:

Series A-1 \$0.5064  
Series A-2 \$0.5577

The Company evaluated the embedded conversion rights under the guidance of ASC 815, "*Derivatives and Hedging*". The Company determined that for purposes of evaluating embedded features that may require bifurcation, the preferred stock primarily had characteristics of equity. Therefore, the conversion feature permitting conversion to common stock would be clearly and closely related to the host instrument, and as a result was not bifurcated.

In the event of a notice of redemption of any shares of Preferred Stock, the Conversion Rights of the shares designated for redemption shall terminate unless the redemption is not fully paid on such redemption date, in which case the Conversion Rights for such shares shall continue until such price is paid in full, provided that the Conversion Rights shall be appropriately modified to take into account that portion of redemption proceeds actually received by the holders of Preferred Stock.

At December 31, 2009, there were approximately 45 million shares of common stock issuable upon the conversion of preferred stock.

Mandatory Conversion

All outstanding shares of Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective conversion rate, upon either (a) the closing of the sale of shares of Common Stock to the public at a price of at least \$2.50 per share resulting in at least \$50,000,000 of gross proceeds resulting in the shares of Common Stock being listed for trading on either the New York Stock Exchange or the NASDAQ Global Market or (b) the date and time, or the occurrence of an event, specified by vote or written consent of the holders of at least a majority of the then outstanding shares of Preferred Stock.

Redemption Rights

The Preferred Stock shall be redeemed by the Company, at any time on or after March 31, 2015, at a price equal to the greater of i) the Original Issue Price per share, plus any accumulated but unpaid dividends, or ii) the fair market value of the common stock, if a majority of the then outstanding holders of Preferred Stock, as determined on an as converted into Common Stock basis, provide written notice to the Company requesting redemption of the Preferred Stock. The Preferred Stock was recorded outside of permanent equity due to the fact that its redemption is outside the control of the Company. The Preferred Stock is presented on the accompanying balance sheet at its redemption amount. Changes to the redemption amount related to cumulative but unpaid dividends. As a result of the Company's accumulated deficit, cumulative dividends are charged against additional paid-in capital.

The following is a reconciliation of the preferred stock activity for the year ended December 31, 2009:

	Preferred Stock	
	Series A-1	Series A-2
Balance, January 1, 2009	\$ 6,794,248	\$ 15,765,995
Cumulative dividends	543,539	1,261,280
Balance, December 31, 2009	<u>\$ 7,337,787</u>	<u>\$ 17,027,275</u>

See report of independent registered public accounting firm.

ROW 44, INC.  
NOTES TO FINANCIAL STATEMENTS  
DECEMBER 31, 2009

4. STOCK OPTIONS AND WARRANTS

Stock Options

During 2007, the Company adopted a stock option/stock purchase plan to attract and retain the best available personnel to promote the success of the Company's business. Pursuant to the plan, the Company may grant employees, consultants, and directors of the Company incentive stock options or nonqualified stock options or allow such parties to purchase restricted stock of the Company. A total of 13,237,940 shares were available for issuance pursuant to the plan.

In 2007, two of the Company's officers purchased a total of 2,987,940 shares of restricted stock under the plan subject to certain restrictions for a period of three years. At December 31, 2009, 1,991,960 of these shares of restricted stock were fully vested. During 2009, the Company granted options representing a total of 252,899 shares.

As of December 31, 2009, there were 1,271,175 shares available for issuance pursuant to the plan. Options granted pursuant to the plan must be granted at not less than the fair value of the Company's common stock on the date of the grant, and are subject to vesting and other limitations as determined by the plan and the Board of Directors of the Company.

Stock option activity for the year ended December 31, 2009 is as follows:

	Shares	Weighted-average exercise price	Weighted-average remaining contractual term	Aggregate Intrinsic Value
Outstanding - January 1, 2009	8,725,926	\$ 0.15	9.83 years	
Granted	252,899	0.15		
Exercised	-	-		
Forfeited	-	-		
Outstanding - December 31, 2009	8,978,825	\$ 0.15	8.85 years	\$ -
Exercisable at December 31, 2009	4,859,865	\$ 0.15	8.83 years	\$ -
Expected to vest at December 31, 2009	4,118,960	\$ 0.15	8.88 years	\$ -

The weighted-average grant date fair value of awards granted under the plan during 2009 was \$0.07 per option. Fair values were determined using the Black-Scholes model and the following level 3 assumptions for the year ended December 31, 2009:

Value of common stock	\$0.15 per share
Expected stock volatility	47%
Expected dividends	0%
Weighted-average expected term	6.08 years
Risk-free rate	2.61%

Information about stock options at December 31, 2009 is summarized as follows:

Exercise Price	Number Outstanding	Weighted Average Remaining Contractual Life	Number Exercisable	Weighted Average Remaining Contractual Life
\$ 0.15	8,978,825	8.85 years	4,859,865	8.83 years

See report of independent registered public accounting firm.

ROW 44, INC.  
NOTES TO FINANCIAL STATEMENTS  
DECEMBER 31, 2009

4. STOCK OPTIONS AND WARRANTS (Continued)

The fair value of share options vested, and related share-based compensation recognized, during the year ended December 31, 2009 amounted to \$140,014 and was included in personnel costs and research and development expenses as follows:

Personnel	\$ 77,258
Research and development	62,756
Total	<u>\$ 140,014</u>

As of December 31, 2009, the Company had \$271,614 of total unrecognized compensation costs related to non-vested share-based compensation arrangements. These costs are expected to be recognized over the weighted-average period of 2.00 years.

Warrants

During 2009, the Company issued 30,475,000 warrants to purchase common stock in connection with convertible bridge loans ("Debt Warrants"). The Company performed an evaluation under the provisions of ASC 815 and determined that 17,837,500 of the Debt Warrants met the criteria of derivative liabilities ("Derivative Warrants") as a result of an embedded provision that required the issuance of additional warrants ("Penalty Warrants") upon failure to pay the convertible bridge loans pursuant to their contractual terms. The Penalty Warrants were issuable on a monthly basis at a rate of one warrant per \$1 of outstanding principal in default and shared the same terms and conditions as the Debt Warrants (i.e. exercise price, term, etc.). The Debt Warrants and Penalty Warrants have a contractual term of 7 years, an exercise price of \$0.0001, and vested immediately upon issuance. During 2009, the Company issued 27,358,332 Penalty Warrants.

The Derivative Warrants were recorded at fair value using the Black-Scholes valuation model and the assumptions below. The Derivative Warrants, upon issuance, were recorded as (i) a discount to the convertible bridge loans in 2009, which was amortized to interest expense through the maturity date using the effective interest method and (ii) derivative liabilities. During the year ended December 31, 2009, the Company recognized interest expense of \$10,484,589 related to these warrants, \$4,322,656 of which related to changes in value of the derivative liabilities.

Warrants granted during 2009 were valued at \$8,670,261. These values were used in the calculation of the relative fair value of the convertible bridge loans in footnote 5. The warrants were valued under the Black-Scholes valuation model using the following level 3 assumptions:

	2009
Common stock value (per share)	\$ 0.15
Expected term	7 years
Risk-free rate	2.37% - 3.17%
Stock volatility	50%
Dividend yield	0%

Following is a summary of warrant activity for the year ended December 31, 2009:

	Number of Warrants	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term
Outstanding, January 1, 2009	2,012,605	\$ 0.3727	5.15 years
Granted	57,833,332	0.0001	
Exercised	-	-	
Forfeited, cancelled and expired	-	-	
Outstanding, December 31, 2009	<u>59,845,937</u>	<u>\$ 0.0126</u>	<u>6.63 years</u>
Exercisable, December 31, 2009	<u>59,845,937</u>	<u>\$ 0.0126</u>	<u>6.63 years</u>

See report of independent registered public accounting firm.

ROW 44, INC.  
NOTES TO FINANCIAL STATEMENTS  
DECEMBER 31, 2009

4. STOCK OPTIONS AND WARRANTS (Continued)

The following is a summary of the warrants outstanding at December 31, 2009:

Exercise Price per Warrant	Number of Warrants	Class of Shares	Weighted Average Remaining Life
\$0.00 - \$0.0001	58,908,437	Common	6.66 Years
\$0.80	937,500	Common	4.99 Years
Total outstanding:	<u>59,845,937</u>		

5. NOTE PAYABLE AND CONVERTIBLE BRIDGE LOANS

In 2009, the Company entered into convertible bridge loans with PAR Investment Partners, LP and Exit Row Investments, LLC, which aggregated \$14,025,000, with various maturity dates in 2009. The Company was successful in extending these loans into 2010, at which time the unpaid principal and accrued interest were ultimately converted into 62,326,439 shares of Series B-2 Preferred Stock. In connection with the convertible bridge loans, the Company issued Debt Warrants and Penalty Warrants. See note 4 for further discussion regarding the warrants, including valuation methodology and accounting treatment. The loans bear interest at 12% per annum, however, the interest rate on one of the loans increased to 20% on October 1, 2009.

The conversion price of the bridge loans was to be determined based on the issuance price of a future round of Qualified Financing, as defined in the agreement, which was ultimately the Series B capital raise in 2010, discounted by 15%. The Company determined that these bridge loans constituted share-settled debt in accordance with ASC 480, "*Distinguishing Liabilities from Equity*". As such, the convertible bridge loans were initially recorded at an amount equal to their residual allocated amount and were accreted to their redemption amount, which was approximately 15% greater than its face amount, through the maturity date using the effective interest method. During 2009, the Company incurred \$5,521,031 of interest expense related to the accretion of the convertible bridge loans and amortization of note discount. As of December 31, 2009, the carrying amount of the convertible bridge loans is broken down as follows:

Principal balance	\$ 14,025,000
Incremental redemption amount	2,103,750
Note discount	<u>(600,137)</u>
	<u>\$ 15,528,613</u>

During the year ended December 31, 2009, the Company's effective interest rate on convertible bridge loans was 100%. Accrued but unpaid interest on these convertible bridge loans amounted to \$957,633 at December 31, 2009.

During 2009, the Company issued a promissory note in the amount of \$2,753,695 to a vendor as payment for outstanding trade accounts payable. The note matures on March 30, 2010, bears interest 12% per annum, and is not collateralized. Accrued but unpaid interest on this note amounted to \$148,743 at December 31, 2009.

The following is a schedule, by year, of future minimum principal payments required under convertible bridge loans and note payable as of December 31, 2009:

Years Ending December 31,	Convertible Bridge Loans	Note Payable
2010	\$ 14,025,000	\$ 2,753,695
2011	-	-
2012	-	-
2013	-	-
2014	-	-
	<u>\$ 14,025,000</u>	<u>\$ 2,753,695</u>

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6. FAIR VALUE OF FINANCIAL INSTRUMENTS

During the year ended December 31, 2009, the Company had warrants to purchase common stock outstanding that met the criteria of derivative liabilities as a result of an embedded provision that required the issuance of additional warrants upon a failure to pay convertible bridge loans pursuant to their contractual terms. These warrants were subsequently reclassified to equity during 2010 upon conversion of the underlying debt to Series B-2 Preferred Stock.

The following table presents the fair value reconciliation of Level 3 derivative liabilities measured at fair value on a recurring basis for the year ended December 31, 2009:

Balance, January 1, 2009	\$ -
Original issue of warrants	2,674,162
Change in value	4,322,657
Reclassification to equity	(3,460,611)
Balance, December 31, 2009	<u>\$ 3,536,208</u>

The fair value of derivatives were valued using a probability-weighted Black-Scholes model, which utilized Level 3 unobservable inputs. Significant inputs used in valuing the derivatives included (i) the Company's current stock price, (ii) the Company's expected stock-price volatility, (iii) the expected term of the instrument, and (iv) the probability that the Company would default on the convertible bridge loans. The change in value of derivative liabilities is presented as interest expense in the accompanying statements of operations.

The carrying amount of certain of the Company's financial instruments, including cash, accounts receivable, and accounts payable and accrued expenses, approximates fair value due to the relatively short maturity of such instruments. The fair value of borrowings is not considered to be significantly different than its carrying amount because the stated rates for such debt reflect current market rates and conditions.

7. CONCENTRATIONS

Major Suppliers

The Company purchases its satellite bandwidth from a single supplier. This supplier also provides the Company with the equipment and servers required to terminate the satellite stream, provides space at its datacenters to house the equipment and servers, and also provides network operations service support. During the year ended December 31, 2009, the Company paid \$6,011,769 to this supplier for services.

The Company purchases equipment from third party suppliers for sale to the airlines. The supplier that provides satellite bandwidth also provides modems for use within the equipment on the aircraft.

In 2009, the Company purchased the antenna assembly, related cabling, radomes and rings from a single supplier which, during the year ended December 31, 2009 comprised 23% of total inventory purchases. In 2010 the Company ended its relationship with this supplier in favor of a replacement supplier.

The Company purchases certain line replaceable units ("LRUs") from a single supplier, which during the year ended December 31, 2009 comprised 63% of total inventory purchases.

Any interruption in the supply from these significant vendors would have a significant impact on the Company's ability to provide equipment to the airline's for installation.

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7. CONCENTRATIONS (Continued)

Concentration of Credit Risk

The Company maintains its cash and cash equivalents at a financial institution which may, at times, exceed federally insured limits. Historically, the Company has not experienced any losses in such accounts.

8. INCOME TAXES

The difference between income tax expense attributable to continuing operations and the amount of income tax expense that would result from applying domestic federal statutory rates to pre-tax income (loss) is mainly related to an increase in the valuation allowance, partially offset by state income taxes. Valuation allowances are established, when necessary, to reduce deferred income tax assets to the amount expected to be realized. Deferred income tax assets are mainly related to net operating loss carryforwards. Management has chosen to take a 100% valuation allowance against the deferred income tax asset until such time as management believes that its projections of future profits make the realization of the deferred income tax assets more likely than not. Significant judgment is required in the evaluation of deferred income tax benefits and differences in future results from management's estimates could result in material differences.

A reconciliation of the expected income tax (benefit) computed using the federal statutory income tax rate to the Company's effective income tax rate is as follows for the year ended December 31, 2009:

Pretax Loss based on statutory rate	34.00%
State tax, net of federal benefit	3.96
Permanent difference	(5.01)
Federal R&D credit	0.92
CA R&D Credit	0.70
Change of Valuation Allowance	(34.57)
Income Tax based on effective tax rate	<u>0.00%</u>

Deferred tax assets:

Depreciation and Amortization of Property and Equipment and Research and Development Costs	\$ 3,457,667
Accrued Expenses	358,629
Allowance, Reserves & Other	431,164
NOL, capital loss & credit carryforward	<u>11,705,875</u>
	15,953,335
Less: Valuation Allowance	<u>(15,953,335)</u>
Total Deferred Tax Assets:	<u>\$ -</u>

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8. INCOME TAXES (Continued)

As of December 31, 2009, the Company has federal and state net operating loss carry forwards of \$26.2 million and \$23.9 million, respectively, which will begin to expire during the fiscal years ending December 31, 2028 and 2018, respectively. These NOLs may be used to offset future taxable income, to the extent the Company generates any taxable income, and thereby reduce or eliminate future federal income taxes otherwise payable. Section 382 of the Internal Revenue Code imposes limitations on a corporation's ability to utilize NOLs if it experiences an ownership change as defined in Section 382. In general terms, an ownership change may result from transactions increasing the ownership of certain stockholders in the stock of a corporation by more than 50 percent over a three-year period. In the event that an ownership change has occurred, or were to occur, utilization of the Company's NOLs would be subject to an annual limitation under Section 382 as determined by multiplying the value of the Company's stock at the time of the ownership change by the applicable long-term tax-exempt rate as defined in the Internal Revenue Code. Any unused annual limitation may be carried over to later years. The Company could experience an ownership change under Section 382 as a result of events in the past in combination with events in the future. If so, the use of the Company's NOLs, or a portion thereof, against future taxable income may be subject to an annual limitation under Section 382, which may result in expiration of a portion of the NOLs before utilization.

Therefore, the Company could be liable for income taxes sooner than otherwise would be true if the Company were not subject to Section 382 limitations. The Company expects to perform a study to determine the extent of the limitation. Due to the existence of the valuation allowance, future changes in the Company's unrecognized tax benefits will not impact its effective tax rate. Any carryforwards that expire prior to utilization as a result of such limitations will be removed, if applicable, from deferred tax assets with a corresponding reduction of the valuation allowance.

The Company has adopted guidance issued by the FASB that clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements and prescribes a recognition threshold of more likely than not and a measurement process for financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. In making this assessment, a company must determine whether it is more likely than not that a tax position will be sustained upon examination, based solely on the technical merits of the position and must assume that the tax position will be examined by taxing authorities. The Company's policy is to include interest and penalties related to unrecognized tax benefits in income tax expense. Interest and penalties totaled \$0 for the year ended December 31, 2009. The Company files income tax returns with the Internal Revenue Service ("IRS") and several states. All of the Company's tax filings are subject to examination at December 31, 2009. The Company's net operating loss carryforwards are subject to IRS examination until they are fully utilized and such tax years are closed.

9. EMPLOYEE BENEFIT PLAN

The Company has established a 401(k) employee retirement savings plan that is available to all of its employees. Under the provisions of the plan, employees may make pre-tax contributions not to exceed the limit set by the Internal Revenue Service. The Company elected to not make any matching contributions during 2009.

10. RELATED PARTY TRANSACTIONS

PAR Investment Partners, L.P. ("PAR") owns approximately 45% of the outstanding equity of Row 44 as of December 31, 2009. Accordingly, PAR can exercise significant influence on the Company.

As discussed in Note 5, in 2009 PAR loaned Row 44 a total of \$7,275,000 and was granted warrants to purchase 46,670,832 shares of Row 44's \$0.0001 par value common stock. In September 2011, PAR exercised these warrants. In connection with the April 2010 financing, PAR's various bridge loans were converted into 31,803,678 shares of Series B-2 Preferred Stock.

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10. RELATED PARTY TRANSACTIONS (Continued)

Subscriptions Receivable, Notes Receivable and Advances

At December 31, 2009, the Company had subscriptions receivable and advances due from two of its officers, which aggregated \$903,600; of which, \$794,387 related to subscriptions receivable. The subscriptions receivable bear interest at 6% and are due on March 31, 2011. In July 2011, the balance of the advances and subscriptions receivable, including accrued interest receivable, were converted into two new long-term receivables ("officers' receivables"), which bear interest at 6% per annum and are due in one payment of all principal and accrued interest in July 2014. These officers' subscriptions receivables are collateralized by certain outstanding shares of common stock owned by each of the officers. The Company recognizes interest income when earned, using the simple interest method. The Company makes ongoing assessments regarding the collectability of the notes receivable balance. Notes receivable are presented on the accompanying balance sheets at their estimated net realizable value.

11. COMMITMENTS AND CONTINGENCIES

Lease Commitments

The Company leases its operating facilities under non-cancelable operating leases that expire through 2011. The Company also leases certain facilities under month-to-month arrangements. Total rent expense for the year ended December 31, 2009 was \$291,303. The Company is responsible for certain operating expenses in connection with these leases. The following is a schedule, by year, of future minimum rental payments required under non-cancelable operating leases as of December 31, 2009:

Years Ending December 31,	
2010	\$ 207,735
2011	42,000
2012	-
2013	-
2014	-
Thereafter	-
	<u>\$ 249,735</u>

Satellite Costs Commitments

In connection with the purchase of satellite bandwidth, the Company signed a Master Services Agreement ("MSA") with Hughes Network System, LLC ("Hughes") to provide for satellite capacity in North America. The Company and Hughes have entered into subsequent agreements to adjust capacity as needed to support the bandwidth requirements for its airline customers and airline customer's passengers. The Company expenses these satellite capacity charges as incurred based on monthly invoices provide by Hughes for the month's applicable bandwidth amount made available to the Company. The following is a schedule, by year, of future payments under the MSA and subsequent agreements thereto as of December 31, 2009:

Years Ending December 31,	
2010	\$ 2,459,016
2011	2,459,016
2012	2,459,016
2013	-
2014	-
Thereafter	-
	<u>\$ 7,377,048</u>

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11. COMMITMENTS AND CONTINGENCIES (Continued)

Legal Matters

The Company is involved from time to time in various legal proceedings in the normal conduct of its business. The Company does not believe that the outcome of any pending litigation will have a material adverse impact on the Company's financial position, results of operations, or cash flows.

12. SUBSEQUENT EVENTS

The Company has evaluated subsequent events through January 30, 2013, the date the financial statements were available to be issued.

Between 2010 and 2012, the Company raised capital through the issuance of i) Preferred shares, ii) Preferred Units, and iii) convertible bridge loans, which were converted into Preferred shares / units.

Between 2010 and 2012, the Company has entered into various agreements / amended agreements with customers, contractors, and vendors in the normal course of business.

During November 2012, the Company entered into an Agreement and Plan of Merger with Global Eagle Acquisition Corp. (GEAC) whereby GEAC will acquire 100% of the equity interests of the Company in exchange for shares of GEAC Common Stock. The Company is proceeding with this transaction and expects to close the transaction in January 2013.

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