

Last revised: February 18, 2010

HITS AXIS END USER LICENSE AGREEMENT

Welcome! This document is important--please read it carefully before using Headend In the Sky's software applications and related products. This End User License Agreement (the "AGREEMENT") is a legal contract between the company or entity that has executed an Order Form ("Customer") and Headend In The Sky, Inc., a Colorado Corporation ("HITS").

This Agreement governs the Customer's relationship with HITS as the provider of the Applications and the Customer's use of the Applications. This Agreement enables the Customer to use and distribute the Applications to Customer's subscribers and other authorized end-users. The license to the Applications and certain terms and conditions applicable to all users are in Section 3 (Applications). Capitalized terms, in this Agreement are defined in Section 1 (Definitions).

By executing a HITS AxIS Order Form, the Customer represents and agrees that: (A) HITS may gather information relating to, and contact the Customer about, the Customer and its subscribers' experience with the Applications; and (B) the Customer is bound by and is a party to this Agreement. The individual executing an Order Form or otherwise executing this Agreement on behalf of the Customer represents and warrants that such individual has the power and authority to bind the Customer to this Agreement.

HITS may change the terms and conditions of this Agreement in the future. Unless this Agreement or applicable law specifies otherwise, HITS will provide Customer with ten (10) days prior notice of any significant change to this Agreement. If the Customer reasonably determines the change is unacceptable, the Customer may terminate the Agreement and any applicable Order Form. However, if the Customer continues to use the Applications after any such change to this Agreement is made, the Customer will be deemed to have accepted the change. The Customer may not modify this Agreement by making any typed, handwritten or any other changes to it for any purpose.

IF THE CUSTOMER DOES NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, THE CUSTOMER MAY NOT USE OR ACCESS THE APPLICATIONS.

1. DEFINITIONS. Capitalized terms not otherwise defined in this Agreement have the meanings set forth below.

1.1. "**Application(s)**" means the then-current executable object code version of each interactive television application identified in an Order Form and HITS' user agent or platform.

1.2. "**Content**" means all content, media, graphic or artistic material, text, audio or visual material, music, graphics, images, data, files, designs, resources, access information, URL addresses, display engines, software or application plug-ins, network services and other media and information, streaming or related material of any kind provided or transmitted by HITS to Customer in connection with this Agreement.

1.3. "**Errors**" means any technical or other defect, error, bug or problem with the Application.

1.4. "**Fees**" means the fees to be paid pursuant to this Agreement and any Order Form.

1.5. "**Hardware**" means the hardware and other equipment and any imbedded software, firmware, middleware or other components provided by HITS and used in connection with the Applications as identified on an Order Form.

1.6. "**Order Form**" means all HITS AxIS order forms and application addendum executed by and between HITS and Customer.

1.7. "**Term**" has the meaning set forth in Section 2 hereof.

1.8. "**Territory**" means the United States and its territories and possessions.

2. TERM. The term of this Agreement shall commence on the effective date set forth in an Order Form (the "**Effective Date**") and shall continue until the end date set forth in such Order Form (the "**Term**"), unless earlier terminated by either party in accordance with this Agreement or such Order Form.

3. APPLICATIONS.

3.1. **License Grant.** Pursuant to the other terms and conditions in this Agreement, HITS hereby grants to Customer a limited, personal, non-exclusive, non-transferable, non-sublicensable license, during the Term, to use, reproduce and distribute the Applications solely in the Territory for use by Customer's subscribers or other authorized end-users, in accordance with the terms and conditions of this Agreement. HITS reserves the right to alter features, licensing terms or other characteristics of any version of the Applications.

3.2. **Restrictions on Licenses.** Customer is not authorized to: (i) modify, adapt, translate or create derivative works based on whole or in part on the Applications; (ii) reverse engineer, decompile, or disassemble any part of the Applications; (iii) modify or remove any patent, trademark, copyright or other proprietary markings or restrictive legends placed on the Applications; or (iv) use the Applications for any purpose not expressly authorized by this Agreement. All copies of the Applications shall contain all proprietary markings and restrictive legends exactly as they appear on the originals. Customer shall not permit access to the Applications to any subscribers, end users or other third parties located outside of the Territory, unless Customer provides notice to HITS of each such potential party and HITS provides written consent, which may be withheld at the sole discretion of HITS, prior to the grant of access to each such party. In no event shall HITS be responsible for securing any rights, licenses or authorizations from any third party on behalf of the Customer other than those rights granted pursuant to Section 3.1 hereof.

3.3. **Ownership; Proprietary Rights.** The Applications are licensed, not sold, to Customer. No title to, ownership of, or copyright, trade secret or other proprietary rights in the Applications are transferred to Customer under this Agreement and any and all rights not specifically granted to Customer by this Agreement remain vested in HITS or the applicable third party application owner. The Customer acknowledges and agrees that the Applications are the intellectual property and trade secret of HITS' applicable licensors.

3.4. **Injunctive Relief.** The Customer acknowledges and agrees that, notwithstanding any other provisions of this Agreement, the Customer's breach or threatened breach of Sections 3.1 through 3.3 and 14 of this Agreement shall cause HITS irreparable damage for which recovery of money damages would be inadequate and that HITS or its licensors therefore may obtain timely injunctive relief to protect its rights under this Agreement in addition to any and all other remedies available at law or in equity.

3.5. **General Delivery Requirements.** During the Term, HITS shall deliver the Applications to Customer in accordance with an Order Form. Customer shall make commercially reasonable efforts to promote, market and distribute the Applications to its subscribers. In the case of a conflict or inconsistency between the terms of an Order Form and this Agreement, the terms of such Order Form shall govern.

3.6. **Suspension of Access.** If at any time during the Term, the Customer's use of the Applications does not comply with the terms of Sections 3.1 and 3.2 hereof or otherwise violates the terms of this Agreement, HITS may immediately terminate, without notice, Customer's access and use of the Applications until such time, in HITS' sole discretion, as Customer is in compliance with this Agreement.

4. TRAINING AND SUPPORT.

4.1. **Support.** HITS shall provide general technical support for the installation, use and operation of the Applications.

4.2. **Reporting Problems.** If Customer experiences operational problems or outages with the Applications, Customer shall promptly report such problems to the HITS Operations Management Center ("OMC") at 1-(800) 486-7790.

4.3. **Interruptions.** HITS may interrupt certain functions of the Applications when reasonably necessary for testing, maintenance or scheduled backups and will make commercially reasonable efforts to provide Customer with advance notice of such interruptions. HITS may also interrupt functions as needed in the case of emergency without notice.

5. HARDWARE.

5.1. **Generally.** During the Term, HITS may provide Hardware to Customer. Such Hardware shall be used solely in connection with the Applications or as otherwise indicated by HITS. All Hardware provided hereunder is and shall remain the sole property of HITS, and no transfer of title to, ownership of, or copyright, patent, trade secret or other proprietary rights in the Hardware are transferred to Customer under this Agreement and any and all rights not specifically granted to Customer by this Agreement remain vested in HITS. All modifications, adjustments, error corrections or other updates to the Hardware made by Customer or any third party under Customer's control will become part of such Hardware and Customer shall have no title or interest to such modifications, adjustments, error corrections or other updates. Customer shall not and shall not attempt to: (i) access any components or individual parts of the Hardware; (ii) modify or adapt the Hardware; (iii) reverse engineer, decompile, or disassemble any part of the Hardware; (iv) modify or remove any patent, trademark, copyright or other proprietary markings or restrictive legends placed on the Hardware; or (v) use the Hardware for any purpose not expressly authorized by this Agreement. Customer shall not permit access to the Hardware to any third parties, other than as expressly permitted by HITS. Customer agrees to reasonably cooperate with HITS in any testing, maintenance or inspection of the Hardware that HITS deems advisable. Upon prior written notice from HITS, Customer shall provide HITS with access to its facilities for maintenance of the Hardware during regular business hours for such facility. HITS may modify any portion or aspect of the Hardware from time to time without notice to Customer. Customer shall give HITS prior notice of its relocation of any Hardware and may only relocate such Hardware with HITS's prior approval. Customer shall keep the Hardware in good operating condition subject to normal wear and tear for equipment of such kind.

5.2. **Operating Environment.** During the Term, Customer shall maintain its facilities at which any Hardware is located in accordance with the specifications provided by HITS to Customer or as otherwise set forth in an Order Form, including without limitation by providing a proper and adequate operating environment for use of such Hardware. HITS shall have sole responsibility for using and maintaining any Hardware and ensuring that such Hardware is in proper working order. Customer shall provide HITS reasonable access to Customer's facilities during normal business hours and upon reasonable advance notice for the purpose of accessing, maintaining, inspecting or repairing any Hardware. Customer

shall bear the risk of any loss or damage to any Hardware after installation by HITS and until the return thereof, except to the extent due to the negligence or willful misconduct of HITS.

6. COMPLIANCE WITH APPLICABLE LAWS AND THIRD PARTY AUTHORIZATIONS.

Customer has and will have all rights and consents and governmental permits, licenses and authorizations necessary for Customer to enter into and perform its obligations under this Agreement and to provide the rights and any hardware, equipment or facilities necessary for HITS to provide the Applications. Customer acknowledges that, notwithstanding anything herein to contrary, during the Term of this Agreement, if Customer does not have the right to receive and utilize the Applications, Hardware or any Content, Customer shall not be entitled pursuant to this Agreement to receive and utilize the Applications, Hardware or Content and, in no event, will HITS be liable for any license or other fees due to or payable to any subscriber or other third party by Customer with respect to the Applications, Hardware or the distribution of Content or other information.

7. FEES.

7.1. **Payments.** Fees shall be paid in accordance with the terms set forth on an Order Form, provided the Fees shall be prorated for any partial calendar months during the Term.

7.2. **Disputes.** In the event that Customer disputes any Fees due HITS hereunder, Customer shall provide written notice of such dispute to HITS within ten (10) days of receipt of an invoice pursuant to any Order Form, which notice shall identify the amount of the Fees that are disputed, the reason for such dispute and any support for such reasoning, including itemized reports identifying Customer's usage of any Applications. HITS shall review such notice and information provided by Customer and deliver a written response to Customer within twenty (20) days of receipt of such notice from Customer, which response shall accept or reject, in whole or in part, the amounts disputed in Customer's notice and provide an explanation of such acceptance or rejection. HITS's response to any dispute notice provided by Customer pursuant to this section shall also set forth the final amount of Fees owed to HITS in connection with such dispute. Such Fees shall be due and payable in accordance with the terms of this Agreement and the applicable Order Form.

7.3. **Reports.** Customer agrees to notify HITS of any Errors in the Applications identified by Customer or reported to Customer by Customer's subscribers and other authorized end-users. Customer shall promptly notify HITS of any malfunction or misuse of the Hardware known to Customer.

7.4. **Audit Rights.** Each party shall keep and maintain, in accordance with generally accepted accounting principles consistently applied, accurate books and records with respect to the use and distribution of the Applications and the payment and calculation of any Fees and any other amounts owed to the other party hereunder. For a period of four (4) years after any month (including after expiration or termination of this Agreement) for which Fees or other amounts are due and payable to either party hereunder or after the expiration or termination of this Agreement, whichever is later, such party, and, in the case of HITS, its licensors or designees, shall have access to the books and records of the other party, upon reasonable notice, for inspection and audit during normal business hours at such other party's offices. If any underpayment is found, the party responsible for the underpayment shall immediately pay the total amount owed to the other party with accrued interest. Audits shall be at the expense of the auditing party unless the audit reveals an underpayment of Fees or other amounts owed to such party with respect to the period audited of more than ten percent (10%), in which case the other party shall promptly pay the auditing party its reasonable costs and expenses, including accountant fees, incurred by conducting such audit.

Such payment shall be in addition to any other remedies that may be available to such party under this Agreement, at law or equity. No period may be audited more than one time under this Agreement.

8. EVENTS OF DEFAULT AND REMEDIES; TERMINATION RIGHTS.

8.1. **General Termination Rights.** Without limiting any other available rights or remedies, either party may terminate this Agreement and any Order Form if the other party ceases to do business in the normal course, becomes or is declared insolvent or bankrupt, is the subject of any proceeding related to its liquidation or insolvency (whether voluntary or involuntary) which is not dismissed within ninety (90) days, or makes an assignment for the benefit of creditors.

8.2. **HITS's Termination Rights.** In addition to the foregoing, HITS may terminate this Agreement and any Order Form immediately upon written notice to Customer, without providing Customer an opportunity to cure, if (i) Customer breaches any of its representations, warranties, obligations or covenants under such Order Form or this Agreement (including without limitation a failure by Customer to timely pay any amounts due hereunder) which breach is not cured within thirty (30) days following receipt of written notice thereof, (ii) Customer has committed two (2) payment defaults within a consecutive twelve (12) month period, (iii) HITS should exit all or part of the business relating to this Agreement, or (iv) HITS's right to license, sublicense or otherwise provide the Applications identified in such Order Form is terminated for any reason.

8.3. **Payments Upon Termination.** If HITS terminates this Agreement or any Order Form pursuant to Sections 8.1 or 8.2(i) or (ii), Customer will immediately pay to HITS any and all outstanding amounts owed to HITS. Upon any termination of this Agreement pursuant to Sections 8.2(iii) or 8.2(iv), Customer shall pay any and all outstanding amounts owed to HITS within thirty (30) days of such termination. Upon expiration or any other termination of this Agreement or any Order Form, all amounts due and payable pursuant to such Order Form shall be paid by the parties within thirty (30) days of such expiration or termination.

9. EFFECT OF TERMINATION. Promptly upon any termination or expiration of this Agreement and any Order Form, (i) the licenses and other rights granted under the Agreement and such Order Form shall terminate and Customer shall cease all use, distribution and reproduction of the Applications, (ii) the Customer shall remove and destroy all copies of the Applications subject to this Agreement and such Order Form, (iii) HITS and Customer shall return to the other party any Confidential Information of such other party that was furnished to the other party in connection with this Agreement, and (iv) as determined by HITS, in HITS's sole discretion, upon termination or expiration of this Agreement, Customer shall either promptly remove and return the Hardware to a location designated by HITS or permit HITS to access Customer's facilities during normal business hours to remove the Hardware. Notwithstanding anything to the contrary in this section, if an Order Form or the Agreement is terminated pursuant to Section 8.2(iv), Customer shall have thirty (30) days after the date of termination to comply with the foregoing obligations in this Section 9. Upon request from either party, a duly authorized officer of such other party shall, concurrently with the removal and destruction of the Applications and return of any Confidential Information, certify in writing to the requesting party that such party has complied with this section.

10. INDEMNIFICATION.

10.1. **Customer's Indemnification.** Customer will indemnify, defend, and hold harmless HITS, its directors, shareholders, officers, employees, partners, agents, subsidiaries, affiliates, subcontractors and assignees or any of them, from and against any

and all claims, demands, costs, expenses, losses, liabilities and damages (including, but not limited to, attorneys' fees and costs of suit) (collectively, "**Losses**"), to the extent arising from, in connection with, or related to (i) any use of the Applications or Hardware not in accordance with this Agreement or the intended use of such Applications or Hardware by Customer or any of Customer's subscribers or other authorized end users; (ii) any modifications, additions or changes to any Content, Applications or Hardware made by Customer or Customer's subscribers or other authorized end-users; (iii) any dispute between Customer and any of Customer's subscribers or other authorized end users; (iv) acts or omissions of Customer, its employees or contractors in connection with its access to and use of any Applications, Hardware, equipment or facilities provided by HITS, HITS's vendors, agents, employees, independent contractors or assigns; and (v) the negligence or willful misconduct of Customer, its employees or contractors.

10.2. HITS's Indemnification. HITS will indemnify, defend, and hold harmless Customer, its directors, shareholders, officers, employees and subsidiaries, from and against any and all Losses incurred by Customer as a result of any third party claim that HITS does not have the right to license the Applications, provided that such indemnity does not apply to any claims based on or arising from the Content or resulting from Customer's acts in delivering the Applications or the Content to its subscribers and other end users.

10.3. Mechanism of Indemnification. If any Loss or other assertion of liability is brought by third parties with respect to which a party is entitled to indemnification under this Agreement, the party seeking indemnification (the "**Indemnified Party**") will notify the indemnifying party (the "**Indemnifying Party**") in writing promptly after the Indemnified Party receives notice of such claim; provided, however, that the failure to give such notice will not affect the rights of the Indemnified Party hereunder except to the extent that such failure has materially prejudiced the Indemnifying Party's ability to defend such claim. The Indemnifying Party may use counsel of its own choosing, and the Indemnified Party will reasonably cooperate with the Indemnifying Party in the defense of such claim, including the settlement of the matter on the basis stipulated by the Indemnifying Party at the expense of the Indemnifying Party. The Indemnifying Party will keep the Indemnified Party reasonably advised of the progress of any proceedings related to such claim, and of any settlement discussions or proposals with respect thereto.

11. LIMITATION OF LIABILITY. EXCEPT FOR THE PARTIES' INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS, ANY BREACH OF A PARTIES' INTELLECTUAL PROPERTY RIGHTS AND THE PARTIES' OBLIGATIONS TO PAY FEES PURSUANT TO THIS AGREEMENT AND ANY ORDER FORM, NEITHER PARTY, AND IN THE CASE OF HITS, ITS LICENSORS, SHALL BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF THIS AGREEMENT, WHETHER IN AN ACTION OR ARISING OUT OF BREACH OF CONTRACT, TORT OR ANY OTHER CAUSE OF ACTION, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS, ANY BREACH OF A PARTIES' INTELLECTUAL PROPERTY RIGHTS AND THE PARTIES' OBLIGATIONS TO PAY FEES PURSUANT TO THIS AGREEMENT AND ANY ORDER FORM, EACH PARTIES' AND, IN THE CASE OF HITS, ITS LICENSORS', LIABILITY FOR DIRECT DAMAGES ARISING OUT OF THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY CUSTOMER TO HITS IN CONNECTION WITH THE APPLICATION GIVING RISE TO SUCH DAMAGES DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, HITS AND ITS LICENSORS WILL HAVE NO LIABILITY WHATSOEVER FOR ANY DIRECT OR INDIRECT LOSSES OF ANY KIND ARISING FROM, OR RELATED TO, ANY SERVICES OR EQUIPMENT PROVIDED BY OTHER PARTIES ON CUSTOMER'S BEHALF (INCLUDING, BUT NOT LIMITED TO, INTERNET SERVICE PROVIDERS

OR INDEPENDENT CONTRACTORS), ANY EQUIPMENT PROVIDED BY CUSTOMER, OR ANY TRANSPONDER, OR FOR CUSTOMER'S RELIANCE ON ANY SUCH SERVICES, EQUIPMENT OR ANY TRANSPONDER.

12.DISCLAIMER OF WARRANTIES. THE APPLICATIONS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT OR ANY ORDER FORM, HITS MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, IN CONNECTION WITH THIS AGREEMENT OR ANY ORDER FORM OR THE APPLICATIONS, SERVICES, HARDWARE, CONTENT OR OTHER EQUIPMENT PROVIDED OR USED IN CONNECTION WITH THIS AGREEMENT, AND EXPRESSLY DISCLAIMS ANY WARRANTY OF NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR OF MERCHANTABILITY OR ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. CUSTOMER SHALL BEAR THE RISK OF ANY LOSS OR DAMAGE TO THE HARDWARE UPON DELIVERY OF THE HARDWARE TO CUSTOMER.

13.MEDIA RELEASES. The parties agree that either party may use the other's name in marketing materials, press releases or otherwise and indicate that that Customer is a customer of HITS as well as what Applications are being provided by HITS. At HITS's request, Customer shall provide to HITS such materials, statistics, or information that Customer does not consider to be confidential to Customer's business for use in HITS's press releases, marketing and sales initiatives.

14.CONFIDENTIALITY. During the Term and thereafter, Customer agrees that any information that is disclosed by HITS to Customer that is marked or otherwise identified as confidential information of HITS, including this Agreement and any Order Form, shall not be disclosed to any person other than the Customer and Customer's employees that have a "need-to-know" such confidential information to view, access or otherwise use the Applications. Customer further agree to take all commercially reasonable measures to maintain the confidentiality of such information.

15.CHANGES IN LEGAL REQUIREMENTS. This Agreement is subject to all applicable federal, state and local laws and regulations and orders of governmental agencies, as in effect from time to time. If at any time during the term of this Agreement, any law, regulation, order, permit, consent or variance requires the modification of HITS's performance of its obligations hereunder or otherwise requires HITS to stop performing any of its obligations hereunder, HITS may prepare an amendment to this Agreement or an Order Form regarding such modifications, and the parties will negotiate in good faith to reach a mutually satisfactory amendment. If the parties have not entered into such amendment within thirty (30) days after the submission by HITS of the proposed amendment, HITS may, at its election and upon notice to Customer, terminate this Agreement or any applicable Order Form.

16.FORCE MAJEURE. Neither party will be in default or otherwise liable for any delay in or failure of its performance under this Agreement or an Order Form, where such delay or failure arises by reason of any occurrence outside of the reasonable control of the affected party, including without limitation any act of nature, any act of war or terrorism, the elements, electrical storms, sun spots, cosmic disturbances, earthquake, floods, fires, epidemics, quarantine restrictions, riots, strikes, sabotage, governmental authority, failure or delay in transportation, freight embargoes, import or export regulations, willful or criminal misconduct of third parties or other circumstances beyond such party's control that makes it inadvisable, illegal or impossible to perform its obligations under this Agreement or an Order Form. Additionally, HITS shall not be liable for satellite, broadcast or Internet disruptions, outages, interruptions, computer failure or any similar events or occurrences related to or arising out of any act of nature, act or omission of a third-party or other

circumstance beyond HITS's control, including without limitation any satellite or Internet service provider or operator whether due to human error, technical failure, accident or otherwise.

17. MISCELLANEOUS.

17.1. HITS shall not be responsible or liable for the disclosure, transmission or use of any personally identifiable information submitted by Customer's subscribers to Customer or any other third party.

17.2. No waiver under this Agreement shall be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of such waiver is sought.

17.3. If any provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such provision shall be deemed amended to conform to applicable laws so as to be valid and enforceable, or, if it cannot be so amended without materially altering the intention of the parties, it shall be stricken, and the remainder of this Agreement shall remain in full force and effect.

17.4. Customer shall promptly inform HITS of any information related to this Agreement that could reasonably lead to a claim, demand or liability of or against HITS by any third party.

17.5. Customer shall not assign this Agreement or any right, interest or benefit under this Agreement, nor delegate any of its duties or obligations hereunder, without the prior written consent of HITS, and any change of ownership or control of Customer shall be deemed an assignment hereunder.

17.6. Section headings and captions are for convenience only and are not part of this Agreement.

17.7. Notices and communications required to be given by one party to the other will be in writing and will be delivered personally, by overnight delivery service or facsimile, to the addresses provided in an Order Form. Each notice, demand, request or communication shall be deemed given, served, sent or received for all purposes at such time as it is delivered to the address provided in such Order Form.

17.8. Sections 1, 7 to 12, 14 and 17 of this Agreement and any provisions of this Agreement that, by their sense and context, are intended to survive performance by either or both parties shall survive termination of this Agreement.

17.9. The grant of any license or the conveying of any information under this Agreement shall not convey any license by implication or otherwise of any intellectual property rights except as expressly otherwise granted herein.

17.10. The parties act as independent contractors, and do not intend to create a joint venture, partnership or any agency relationship.

17.11. This Agreement will be governed and interpreted by the laws of the State of Colorado, without regard to its conflict of law rules. In the event any litigation or dispute arises in connection with this Agreement, jurisdiction and exclusive venue for such litigation or dispute shall be in the federal and state courts located in Denver, Colorado; provided, however, that the parties shall also have the right to enforce a judgment in any court of competent jurisdiction. The parties hereby submit to the jurisdiction of such courts and waive any defense of forum non conveniens.

17.12. This Agreement sets forth the entire agreement of the parties and supersedes any and all prior agreements of the Parties with respect to the transactions set forth herein.