

Date: **[TBD]**

**EXHIBITOR SERVICES AGREEMENT**

between

(1) **DIGITAL CINEMA DISTRIBUTION COALITION LLC**

and

(2) **[EXHIBITOR]**

This **EXHIBITOR SERVICES AGREEMENT** (this “**Agreement**”) is dated **[TBD]** (the “**Effective Date**”).

**PARTIES:**

- (1) **DIGITAL CINEMA DISTRIBUTION COALITION LLC**, a Delaware limited liability company, with offices at 1840 Century Park East, Suite 440, Los Angeles, CA 90067 (“**DCDC**”); and
- (2) **[Exhibitor]**, a company **[incorporated]** in **[ ]**, whose principal office is located at **[ ]** (“**Exhibitor**”).

**BACKGROUND:**

Exhibitor wishes to engage DCDC on a non-exclusive basis to (a) procure, install and maintain equipment for and in Exhibitor’s theatres related to digital cinema content delivery, and (b) perform digital cinema content delivery services as described in this Agreement, and DCDC is willing to provide such services for Exhibitor as set out in this Agreement. Capitalized terms used in this Background section have the meanings either set out in Paragraph 1.1 or above.

**OPERATIVE PROVISIONS:**

**1. DEFINITIONS**

- 1.1 For purposes of this Agreement the following capitalized terms shall have the following meanings:

“**Affiliate**” means any corporation, limited liability company, partnership, joint venture or other entity which, directly or indirectly, is owned or controlled by, owns or controls, or is under common ownership or control with a Party.

“**Booking**” means the booking of a Receive Site to play Content in such Receive Site pursuant to booking terms agreed between Exhibitor and the applicable Content Provider.

“**Catch Server**” means the server computer appliance located at each Receive Site that contains receivers which are tuned to (a) recognize and receive particular satellite transponder transmissions and other forms of digital signal input containing Content in digital form, and (b) either route that Content to other devices at the Receive Site or store such Content as backup for subsequent exhibition at the Receive Site.

“**Composition Play List**” means a self-contained representation of a single complete Content motion picture or trailer, as defined by the current version of SMPTE S429-7, as may be amended from time to time.

“**Confidential Information**” means either Party’s proprietary or confidential information, including without limitation (a) for DCDC, Content, marketing and release information, and information about non-released motion picture Content and other new Content, information about DCDC’s business plan, finances, and network, (b) for Exhibitor, the Exhibitor Work Records, and (c) for both Parties, information relating to the business of each Party and such Party’s Affiliates, and such Party’s

and its Affiliates' business processes, pricing, deployment plans, technology, and client and supplier lists.

**"Content Delivery Network"** means the digital content multicast or broadcast delivery network over which DCDC provides the Services comprised primarily of satellite links (including a network operations center, an uplink to satellites, a downlink to the antenna and Catch Server at the Receive Sites), and high-speed terrestrial cable or fiber links as may be required and as are feasible.

**"Content"** means the digital content, which may include without limitation advertisements and other pre-show materials, trailers, feature motion pictures, and so-called alternative content, such as Live Streaming Event/Programming, and Store and Forward Event Programming, that a Content Provider provides to DCDC for delivery over the Content Delivery Network and/or via hard drive to Receive Sites.

**"Content Provider"** means any third party that has engaged DCDC to deliver Content to any Receive Site.

**"Delivery Date"** means the date on or prior to which DCDC will endeavor to deliver Content to the designated Receive Sites. The Delivery Date shall be (a) with respect to all Recorded Content delivered via satellite or high speed terrestrial links, 48 hours prior to 12:01 a.m. of the release date specified by the applicable Content Provider, (b) with respect to all Recorded Content delivered via hard drive, 24 hours prior to 12:01 a.m. of the release date specified by the applicable Content Provider, and (c) with respect to Live Streaming, the date and time reflected in the applicable Booking.

**"Equipment"** means the equipment and hardware that DCDC installs at Receive Sites that is related to the distribution, receipt, and/or storage of Content.

**"Excess Revenues"** means DCDC's gross revenues in any calendar year that exceed DCDC's total expenses plus operating reserves, as reasonably determined by DCDC. Operating reserves will be capped at \$2,000,000.

**"Installation Schedule"** means the schedule for the installation of the Equipment at and on the Receive Sites.

**"Intellectual Property Rights"** means all rights, whether vested or contingent, registered or unregistered, in the nature of patents, copyrights, design rights, trademarks, service marks, trade names, trade secrets, know-how, database rights, actual property rights or any other intellectual property or proprietary rights and all applications, renewals, extensions, continuations, continuations-in-part, divisions or reissues for the same, all economic rights, neighboring rights, connected rights and rights of exploitation of whatever kind and in any manner, in the case of any of the foregoing now known or hereafter devised anywhere in the world or otherwise.

**"Live Streaming Event/Programming"** means a video and/or audio IP stream, however encoded, encapsulated, or encrypted, containing programmatic material which is (a) live at the source, and (b) captured electronically at the source for simultaneous transmission over the Content Delivery Network to Receive Sites for "real-time" exhibition there ("**Live Streaming**") or for storage at such Receive Sites for so-called "encore" or other performances at a later time.

**"MPAA"** means the Motion Picture Association of America.

**"Parties"** means Exhibitor and DCDC, and each shall be a "**Party**".

**“Receive Site(s)”** means Exhibitor’s motion picture theater(s) equipped to be part of the Content Delivery Network and/or receive Content via hard drive, as agreed by the Parties from time to time.

**“Recorded Content”** means all Content other than Live Streaming.

**“Repayment Obligation”** means the repayment of each DCDC member’s (a) aggregate capital contributions to DCDC, and (b) preferred return on such capital contributions accruing on such DCDC member’s unreturned capital contribution on a daily basis at the rate of 5% per annum.

**“Service Commencement Date”** means the date after which Equipment has been installed at a total of 300 theatres (comprised of Receive Sites and theatres of any third party motion picture exhibitor(s) equipped to be part of the Content Delivery Network).

**“Services”** shall have the meaning set forth in Paragraph 4.1.

**“Store and Forward Event Programming”** means audio and video programming transmitted on the Content Delivery Network and/or delivered via hard drive which is intended for short-term storage at the Receive Site(s) on either the Catch Server or some other digital storage device at such Receive Site(s) for later playback by the Receive Site in one or more of its auditoriums.

**“Supplemental Package”** means a unit of Content which does not contain a full set of assets required to play the associated Composition Play List, but refers to assets provided in another unit of Content (such other unit of Content known as the “OV” or “Original Version”).

**“Term”** means the duration of this Agreement as set out in Article 2.

**“Updates”** shall mean updates, error or bug fixes, patches, workarounds, minor improvements, additions and component parts to the Equipment.

All other capitalized terms have the meanings provided in this Agreement.

1.2 The headings in this Agreement do not affect the interpretation of this Agreement. References to any **“Schedules”** are to schedules to this Agreement. References to **“Articles”** and **“Paragraphs”** are, unless otherwise stated, to clauses in the main body of this Agreement and to paragraphs in any Schedules.

1.3 Unless the context otherwise so requires:

- (a) references to Exhibitor and DCDC include their permitted successors and assigns;
- (b) references to statutory provisions include those statutory provisions as amended or re-enacted; and
- (c) the singular shall mean the plural and vice-versa and any references to a person shall mean a partnership, limited liability company, incorporated body or other entity and vice-versa.

1.4 In the case of conflict or ambiguity between any provision contained in the body of this Agreement and any Booking, the provision in the body of this Agreement shall take precedence to the extent of such conflict or ambiguity.

## **2. TERM**

2.1 The term of this Agreement shall commence on the Effective Date and shall continue for a period of five (5) years expiring on the fifth anniversary of the Effective Date (the “**Initial Term**”), unless extended in accordance with Paragraph 2.2.

2.2 The Parties will have the option, upon mutual written agreement, to extend the Term for three (3) additional successive one (1) year periods (each an “**Extended Term**”) after expiration of the Initial Term of this Agreement or any Extended Term (as the case may be).

2.3 For each Receive Site receiving Services under this Agreement, Services shall begin on the later of: (a) the Service Commencement Date, and (b) the date the required Equipment has been installed and is ready for use at such Receive Site. Services at each Receive Site shall automatically terminate on termination or expiration of this Agreement.

## **3. EQUIPMENT**

3.1 DCDC shall, at its sole cost, procure and install Equipment needed to receive the Services at each Receive Site.

3.2 DCDC shall provide, deliver and install the Equipment at Receive Sites in accordance with the Installation Schedule. The Parties shall negotiate in good faith the initial Installation Schedule within thirty (30) days of the Effective Date. The Parties shall modify the Installation Schedule from time to time throughout the Term as mutually agreed and as reasonably needed to (a) change any Receive Site to a different Receive Site, (b) add Receive Sites (including without limitation Receive Sites built or acquired by Exhibitor at any time after the Effective Date) to or remove Receive Sites (including without limitation Receive Sites divested by Exhibitor at any time after the Effective Date) from the Installation Schedule, or (c) otherwise accommodate the changing business circumstances and needs of the Parties. To the extent a delay in meeting the Installation Schedule is caused by Exhibitor or its agents, or a force majeure (as defined in Article 25) event, DCDC shall be entitled to a reasonable extension of time in order to meet the Installation Schedule.

3.3 DCDC will deploy a non-penetrating mast antenna mount on rubber pads to avoid damages to roof membranes. All Equipment shall be installed by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised in similar circumstances and in accordance with all applicable local, state, and federal laws.

3.4 Exhibitor will conduct acceptance tests on the Equipment and Services upon completion of the installation of such Equipment by DCDC at each Receive Site. In the event that any Equipment or Services do not conform to any requirements of this Agreement, Exhibitor may reject any such non-conforming Equipment or Services by giving written notice thereof to DCDC within fifteen (15) calendar days after completion of the acceptance tests of such Equipment. In the event of any such rejection, DCDC shall re-perform or repair the installation of or exchange or repair any non-conforming Equipment, and Exhibitor shall notify DCDC in writing, within five (5) days after the completion of such re-performed or repaired installation, of any

Equipment or Services that remain non-conforming. In the event Exhibitor does not reject any Equipment or Services within the fifteen (15) or five (5) day periods permitted by this Paragraph 3.3, such Equipment and Services shall be deemed accepted by Exhibitor.

- 3.5 Exhibitor shall provide the necessary space for DCDC to install, maintain and operate the Equipment, as well as access to the site to accommodate telecom service, cable runs, satellite dish and utilities, including electrical power. Exhibitor shall, at its sole cost and expense, maintain proper interior environmental conditions for the Equipment, including, without limitation, heating and cooling according to installed Equipment manufacturers' specifications, and proper electrical connections as specified by DCDC, including but not limited to power outlets for Equipment on the roof. Exhibitor will promptly notify DCDC if any Equipment is not functioning properly.
- 3.6 Exhibitor shall:
- (a) provide DCDC with access to electrical power as required for DCDC to install the Equipment;
  - (b) ensure there is no unauthorized access, loss or damage to or theft of Equipment; and
  - (c) keep all Equipment clean and ensure that the location where any Equipment is located is maintained in a safe and suitable manner.
- 3.7 Notwithstanding the provisions of this Article 3 or Article 4 below, after installation and acceptance of the Equipment by Exhibitor, Exhibitor shall be responsible for costs to repair or replace Equipment to the extent any damage thereto or loss thereof results from (a) a breach of Exhibitor's obligations specified in this Agreement, or (b) the negligence, fault, accident or misconduct of Exhibitor or any party other than DCDC, its subcontractors or DCDC's Equipment suppliers, (c) the failure or malfunction of electrical power, air conditioning, or any equipment other than the Equipment, or (d) fire, flood or other water damage. Except as otherwise set forth herein, all such costs shall be borne by DCDC.
- 3.8 All Receive Site-level operational costs associated with use of the Equipment, such as the cost of electricity, shall be borne exclusively by Exhibitor.
- 3.9 Exhibitor shall:
- (a) provide DCDC with reasonable and timely access to conduct a pre-installation survey of each Receive Site and to install (in accordance with the Installation Schedule), support, maintain, modify, replace, upgrade and remove the Equipment at each Receive Site. In the event that Exhibitor delays or fails to provide such reasonable and timely access, then (i) to the extent DCDC incurs costs that are not reasonably avoidable at the time such delay or failure is actually discovered by DCDC, Exhibitor shall be responsible for all such costs, and (ii) upon DCDC's actual discovery of such delay or failure, DCDC shall inform Exhibitor of such delay or failure and provide Exhibitor an opportunity to cure such delay or failure before DCDC incurs additional costs, and Exhibitor shall be responsible for all such additional costs incurred by DCDC resulting from such delay or failure;

- (b) reasonably cooperate with and assist DCDC in the installation and maintenance of the Equipment, including without limitation making Receive Site personnel reasonably available to DCDC in connection therewith;
  - (c) make available adequate and suitable space for the Equipment on and in each Receive Site, including without limitation space for storage of the Equipment for limited durations (i.e. less than 30 calendar days) prior to the installation thereof;
  - (d) undertake reasonable modifications, at Exhibitor's cost, on and in the Receive Site to allow for the installation of the Equipment, provided that DCDC shall be relieved of its obligations hereunder to the extent any such modifications necessary to perform such obligations are not permitted by Exhibitor;
  - (e) use commercially reasonable efforts to obtain any consents necessary for the installation and use of the Equipment at each Receive Site, provided that DCDC shall be relieved of its obligations hereunder to the extent any such consent necessary to perform such obligations is not obtained by Exhibitor; and
  - (f) obtain on behalf of DCDC and its affiliates and subcontractors the rights reasonably necessary for DCDC to enter into the Receive Sites and to install the Equipment. Exhibitor shall be solely responsible, at its own cost and expense: (i) for verifying the existence of or creating a point at which the cable from the satellite dish enters the Receive Sites from the exterior of the Receive Sites; (ii) at or before the time the commercial site survey is performed, Exhibitor shall provide to DCDC that roof rights and closet access rights (where applicable) have been granted and the installation has been approved by the owner and lessee (if applicable) of the Receive Sites and any mortgagee; and (iii) for confirming a network interface with the equipment integrator (if any) to allow transfer of digital content from the Equipment to the Catch Server; and
  - (f) promptly notify DCDC of technical problems associated with the receipt of the Services.
- 3.10 DCDC shall retain ownership of all Equipment installed at the Receive Sites or otherwise used to perform the Services. Upon the earlier of the expiration or termination of this Agreement or the Services at any Receive Site, DCDC shall remove the Equipment from all Receive Sites at which Services will no longer be performed within sixty (60) days following such expiration, termination or cessation of Services, as applicable. DCDC shall use commercially reasonable efforts to remove the Equipment in a manner that does not materially disrupt Exhibitor's operations at the Receive Site, to the extent such operations are unrelated to the Services. To the extent DCDC fails to remove the Equipment within sixty (60) days after the expiration or earlier termination of this Agreement or such Services, as applicable, and provided that Exhibitor has provided reasonable access and cooperation to DCDC in connection with the removal of such Equipment during such sixty (60) day period, Exhibitor may dispose of the same in whatever manner Exhibitor may elect without liability to DCDC, in which case DCDC shall have no further obligation to Exhibitor in respect of such Equipment, including without limitation, any liability relating to such Equipment's removal or disposition.

#### **4. SERVICES AND SERVICE LEVELS**

- 4.1 DCDC shall deliver Content to Receive Sites on a non-exclusive basis as specified in this Article 4 (the “**Services**”).
- 4.2 Subject to Paragraph 4.3, and in accordance with Booking terms, DCDC shall deliver Content via satellite or high speed terrestrial links to Receive Sites in the fifty (50) United States, the District of Columbia, and Canada that DCDC and Exhibitor agree are capable of (a) receiving Content via satellite or (b) receiving Content via high speed terrestrial link in an economically viable manner. Except as provided in Paragraph 4.3 below, and provided that the Content meets the specifications and requirements for validation and delivery as established by agreement between DCDC and the applicable Content Provider (collectively, the “**Content Delivery Prerequisite**”), DCDC shall deliver the Content to Receive Sites at a date and time so that each unit of Content will, by the Delivery Date, arrive on the Catch Server and appear on the visible partition of the Catch Server at the Receive Sites and be accessible by such Receive Sites’ theatre management system, in each case provided such Receive Site is subject to a Booking.
- 4.3 DCDC shall deliver the Recorded Content by hard drive in accordance with Bookings at Receive Sites that either (a) did not receive such Recorded Content due to a satellite or terrestrial delivery failure on or prior to the Delivery Date, or (b) that DCDC and Exhibitor agree are otherwise unable to (i) receive Content delivery via satellite or (ii) receive Content delivery via high speed terrestrial link in an economically viable manner. Provided that the Content Delivery Prerequisite is satisfied, DCDC shall ensure that such hard drives are delivered to such Receive Site(s) by the Delivery Date. DCDC shall not have any liability with respect to any such satellite or terrestrial delivery failure provided that DCDC has complied with its obligations under this Paragraph 4.3.
- 4.4 DCDC shall monitor the health of the Content Delivery Network twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year (“24x7x365”).
- 4.5 The Parties shall perform their respective additional obligations related to Live Streaming set forth in Schedule 2.
- 4.6 DCDC shall have no obligation to perform Services with respect to any Content labeled “XXX” by the distributor thereof. For the sake of clarity, DCDC shall perform Services for Content rated “NC-17” by the MPAA when such Content is subject to a Booking.

## **5. SUPPORT AND MAINTENANCE**

- 5.1 Prior to reporting any Service failures to DCDC, Exhibitor shall first use commercially reasonable efforts to determine whether such failures are caused by any hardware, software, or network equipment external to the Equipment or Services. Notwithstanding anything herein to the contrary, DCDC shall not be responsible for correcting failures to the extent caused by Exhibitor or any such external hardware, software, or network equipment.
- 5.2 Subject to the provisions of this Article 5, DCDC shall service, maintain, and support Equipment. Any of the foregoing may be provided in whole or in part by third parties contracted to DCDC. Subject to the provisions of this Article 5, DCDC shall provide preventative and emergency maintenance, replacement and restocking of spare parts (excluding consumables), labor and a network operations center. DCDC reserves the exclusive right, at its expense, to change, modify, update, or enhance



the Equipment and Content Delivery Network and its other technology and services from time to time.

- 5.3 DCDC shall provide customer support to Exhibitor by telephone in the English 24x7x365, with (a) Spanish language support available in American metropolitan areas and in Puerto Rico, and (b) French language support available in French-speaking Canadian areas. DCDC will, within five (5) minutes of a call, acknowledge and begin to address and resolve issues raised on such call made by Exhibitor.
- 5.4 DCDC will provide on-site maintenance to repair or replace malfunctioning Equipment. Prior to providing any on-site maintenance, DCDC's telephone support help desk will first verify the Equipment malfunction and work with Receive Site personnel to isolate the problem. Thereafter, DCDC will, as needed, dispatch a technician to Exhibitor's premises. DCDC's standard maintenance plan for Receive Sites is a next-calendar-day maintenance plan, pursuant to which DCDC will dispatch a technician to be on-site before the end of the next calendar day after receiving a call for maintenance.
- 5.5 DCDC will (a) restore Exhibitor's malfunctioning Equipment to good working condition, and (b) perform the following corrective maintenance, as required:
  - (uu) diagnostic testing to determine the existence and cause of the malfunction;
  - (vv) dispatch replacement Equipment to the Receive Site for replacement by the DCDC field technician;
  - (ww) if necessary, repair or replace interconnecting cables or reload initializing instructions and re-commission Equipment;
  - (xx) verify proper operation and complete a service report;
  - (yy) notify Exhibitor that Equipment has been restored to operational status; and
  - (zz) escalate issues to third party vendors, as necessary.
- 5.6 DCDC shall install all Updates within a reasonable amount of time following the commercial availability of such Updates to the extent necessary for the applicable Equipment to continue to operate and perform as contemplated hereunder.
- 5.7 Exhibitor shall ensure that Receive Site personnel reasonably cooperate with and assist DCDC as required for DCDC to install the Equipment and troubleshoot and isolate faults in the Equipment. Exhibitor shall also ensure that Receive Sites are adequately staffed during installation and service coverage hours to reasonably assist DCDC in DCDC's commission, troubleshooting, and isolation of faults in Equipment at the Receive Sites.
- 5.8 Exhibitor will be responsible for all costs incurred by DCDC to perform maintenance to the extent maintenance is needed as a result of:
  - (a) theft of Equipment or parts thereof by anyone other than DCDC or its subcontractors;
  - (b) accident, fault, negligence or misconduct of, or a breach of this Agreement by, Exhibitor;

- (c) failure or malfunction of electrical power, air conditioning, or any equipment other than the Equipment;
- (d) fire, flood or other water damage; or
- (e) use of or changes, modifications, or alterations in or to the Equipment that were not authorized by DCDC and made by anyone other than DCDC or its subcontractors.

In all other events, the cost of maintenance shall be borne exclusively by DCDC.

5.9 Notwithstanding anything to the contrary set forth herein, the sole and exclusive remedy of Exhibitor, and the entire liability of DCDC (or any Content Provider under this Agreement) for any failure to meet any obligation under Article 4 or this Article 5 (any of the foregoing, a "**Service Failure**") shall be: (a) relief from an obligation to pay (or the right to receive a credit for the payment of, as applicable) charges set forth on Schedule 1 applicable to the delivery of Content to a Receive Site if an exhibition of such Content at such Received Site was missed as a result of such Service Failure ("**Payment Relief**"), and (b) service credits in an amount equal to one-half of the service credits DCDC actually receives from its subcontractor(s) in connection with any such Service Failure ("**Service Credits**"), with the other half being allocated to the Content Provider whose Content is affected by such missed exhibition. Service Credits shall be issued to Exhibitor in the form of a credit against future charges payable by Exhibitor under this Agreement. Subject to Exhibitor's right to Payment Relief and Service Credits as expressly set forth in this Paragraph 5.9, DCDC and each Content Provider disclaims, and Exhibitor waives, any and all claims against DCDC or any Content Provider arising out of or related to a Service Failure, including without limitation any and all claims based on a non-delivery of Content to any Receive Site to the extent any such claim is based on a Service Failure. Nothing in this Agreement is intended to limit Exhibitor's direct contractual rights with any Content Provider.

## **6. PRICES AND PAYMENT**

- 6.1 DCDC shall charge Exhibitor for the Services performed under this Agreement as set forth on Schedule 1 attached hereto and incorporated by reference (the "Service Fee"). The Service Fee does not include federal, state or local sales, use, excise, services or other taxes now or hereafter levied. Exhibitor shall remit such taxes directly to the applicable taxing authorities. Any taxes or amounts in lieu thereof paid or payable by DCDC in respect of any such taxes or the charges invoiced in accordance with this Agreement (excepting only taxes on DCDC's net income) shall be for Exhibitor's account and shall be reimbursed to DCDC upon DCDC's invoice to Exhibitor therefor and reasonable proof of payment of the same. Subject to the following sentence and the other terms and conditions of this Agreement, the Service Fee shall be the same whether delivery occurs via satellite, hard drive or terrestrial delivery. The Service Fee is for delivery of Content and will be the sole fee for such Service even in cases where DCDC is required under the terms hereof to send a hard drive for such Content, unless there is an error or failure in the satellite or terrestrial delivery of such Content because of Exhibitor's willful or negligent acts or omissions, in which case, an additional Service Fee may be charged.
- 6.2 DCDC shall invoice Exhibitor monthly for Services after Content Provider's notification to DCDC of a Booking. DCDC shall, after each calendar quarter, conduct a review of amounts invoiced to Exhibitor in such quarter to determine (a) whether any amounts were invoiced for Bookings for which Services were not subsequently

performed (including, without limitation, due to cancellation of the Booking by Exhibitor or the Content Provider or DCDC's failure to deliver any Content in accordance with Article 4 hereof), or (b) whether Services were performed for which amounts associated therewith were not invoiced hereunder. To the extent any such review demonstrates that DCDC's invoices to Exhibitor are inconsistent with the Services actually performed, DCDC shall reconcile such inconsistency on its next invoice to Exhibitor with a credit or additional charge to Exhibitor, as the case may be.

- 6.3 Subject to the following sentence, Exhibitor agrees to pay invoices within thirty (30) days following the date of such invoice. If any charges invoiced hereunder are disputed in good faith by Exhibitor, Exhibitor may suspend payment solely of the disputed portion of such invoice by: (a) paying the undisputed amount; (b) promptly sending a written explanation of the dispute to DCDC; and (c) using its reasonable efforts to promptly resolve any such dispute. Exhibitor shall pay the amount established to be due under any such disputed portion of an invoice within thirty (30) days after resolution of the dispute, which shall be the applicable due date for any such disputed portion of an invoice.
- 6.4 Interest shall accrue on all payments received after their applicable due date at the rate of the lesser of one (1%) per month or the highest rate allowable by applicable law.
- 6.5 DCDC will provide Exhibitor quarterly and annual revenue reports. Following satisfaction of the Repayment Obligation, DCDC shall issue to Exhibitor either rebates that may be applied to future charges payable hereunder or, in DCDC's sole discretion, cash rebates, in each case in the amount of Exhibitor's pro-rata share of ninety-eight percent (98%) of Excess Revenues. One-half of such pro-rata share shall be determined by multiplying forty-nine percent (49%) of Excess Revenues by the quotient derived by dividing (a) the charges paid by Exhibitor for its usage of the Content Delivery Network and/or hard drive deliveries in the immediately preceding calendar year by (b) the charges paid by all of DCDC's customers (including Exhibitor) for usage of the Content Delivery Network and/or hard drive deliveries in such immediately preceding calendar year. The other half of such pro rata share shall be determined by multiplying forty-nine percent (49%) of Excess Revenues by the quotient derived by dividing (x) the charges paid by Exhibitor for its usage of the Content Delivery Network and/or hard drive deliveries in all prior calendar years by (y) the charges paid by all of DCDC's customers (including Exhibitor) in all prior calendar years. DCDC will in good faith review the amount of rebates credited and paid over the Term and shall, as appropriate, adjust rebates to the extent warranted by such review. Exhibitor shall have the right during the Term to audit and examine the books and records of DCDC, during normal business hours and upon at least thirty (30) days' advance written notice to DCDC, to the extent necessary to determine the accuracy of rebates credited and/or paid to Exhibitor hereunder. All information derived from such books and records shall be deemed to be DCDC's Confidential Information, will be held in strict confidence by Exhibitor, and will be used by Exhibitor only for purposes of determining the accuracy of rebates credited and/or paid to Exhibitor under this Agreement. In the event the audit reveals an adjustment required hereunder to the rebates credited and/or paid to Exhibitor, DCDC shall implement such adjustment on an invoice to Exhibitor within thirty (30) days of such determination. Any audit conducted hereunder may be performed no more than once annually. Upon termination of this Agreement by DCDC pursuant to Article 20, Exhibitor's right to any rebates under this Agreement shall immediately terminate and Exhibitor shall have no future right to such rebates.

**7. NO PREFERENTIAL TREATMENT**

DCDC's members shall not be eligible for more favorable charges than the charges available to Exhibitor or any other exhibitor customer of DCDC, subject to the Repayment Obligation. To the extent that DCDC, on or after the date hereof, agrees to any superior or more favorable charges with any exhibitor customer of DCDC (with respect to the same services that are provided hereunder and subject to the Repayment Obligation) than those agreed to hereunder with Exhibitor, any such superior or more favorable charges shall also be deemed to have been agreed simultaneously with Exhibitor, and DCDC shall prepare and execute such documents to reflect and provide Exhibitor with the benefit of such superior or more favorable charges.

**8. PUBLICITY**

Any press releases or publicity relating to this Agreement by either Party shall be subject to the other Party's prior written approval in each instance. Neither Party may engage in publicity of any kind regarding the Services without the other Party's express prior written consent. By the operation of this Agreement, neither Party acquires any right to use, and must not use, the other Party's name or any derivation of such name, or trademarks, trade names or designs of such other Party or its Affiliates in advertising, publicity or promotion, to express or to imply endorsement of products or services, nor in any other manner whatsoever without the prior written approval of such other Party.

**9. STANDARD OF PERFORMANCE**

- 9.1 DCDC represents and warrants that: (a) all Services shall be performed (i) in a professional and workmanlike manner, with reasonable skill and ability and to generally accepted industry standards, (ii) in compliance with all applicable federal, state and local laws, regulations and ordinances, and (iii) with due care and regard for safety; and (b) upon installation of the Equipment, all Equipment and Services shall substantially operate and perform in good and working order and otherwise as contemplated hereunder.
- 9.2 DCDC shall, at DCDC's sole option and as Exhibitor's sole remedy for any breach of Paragraph 9.1, replace, re-perform, issue a Service Credit, or refund amounts paid for any Services that do not conform to the requirements of Paragraph 9.1. Any replaced or re-performed Services or Equipment will be at no additional cost to Exhibitor.
- 9.3 EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH HEREIN, DCDC HEREBY DISCLAIMS AND EXHIBITOR WAIVES ALL REPRESENTATIONS AND WARRANTIES (WHETHER EXPRESS, IMPLIED, OR STATUTORY), INCLUDING WITHOUT LIMITATION, ANY WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OR TITLE. EXHIBITOR ACKNOWLEDGES THAT THERE ARE RISKS ASSOCIATED WITH LIVE STREAMING AND THAT DCDC CANNOT GUARANTEE UNINTERRUPTED TRANSMISSION SERVICES.
- 9.4 Exhibitor acknowledges and agrees that DCDC's obligations set forth in this Agreement are subject to the applicable Content Providers' satisfaction of the Content Delivery Prerequisite and Exhibitor's compliance with its obligations set forth in this Agreement. DCDC shall have no liability hereunder, including without limitation any obligation to issue Service Credits, to the extent that DCDC's failure to meet any

obligation set forth in this Agreement is caused by or attributable to such Content Providers' failure to satisfy the Content Delivery Prerequisite or Exhibitor's failure to comply with its obligations set forth in this Agreement. Nothing in this Agreement is intended to limit Exhibitor's direct contractual rights with any Content Provider.

## **10. INSURANCE**

- 10.1 DCDC shall provide and maintain, at its own expense, during its rendition of Services (a) Worker's Compensation insurance prescribed by the law applicable to the employees performing the Services; (b) employer's liability insurance with limits of not less than five million dollars (\$5,000,000) for each occurrence; (c) comprehensive/commercial general liability insurance including products liability with combined single limit for bodily injury and property damage of not less than five million dollars (\$5,000,000) per occurrence, including coverage for contractor protective liability, products liability and completed operations, and not containing an exclusion for explosion, collapse and underground coverage; (d) comprehensive motor vehicle liability insurance, including coverage for owned, hired, leased, rented and non-owned vehicles of not less than five million dollars (\$5,000,000) for combined single limit for bodily injury, including death and/or property damage; and (e) professional liability insurance covering the effects of errors and omissions in the performance of professional duties with limits of not less than five million dollars (\$5,000,000) for each claim. Exhibitor shall be named as an additional insured under the DCDC comprehensive/commercial general liability insurance policy, and such insurance shall be primary to any liability insurance carried by Exhibitor solely with respect to DCDC's liability hereunder. Further, DCDC's comprehensive/commercial general liability policy shall provide for a waiver of subrogation and the insurer shall provide Exhibitor with 30 days written notice of policy cancellation or non-renewal of such insurance. DCDC shall provide Exhibitor with certificates of insurance evidencing the coverages required herein upon request of Exhibitor.
- 10.2 Exhibitor, at its expense, shall maintain, during any period in which any Equipment is at or on any Receive Site, comprehensive general liability insurance (and/or excess/umbrella liability insurance), written on an occurrence basis with minimum policy limits of \$1,000,000 per occurrence and \$1,000,000 in the aggregate. Such insurance shall be available to DCDC to satisfy all obligations and liabilities of Exhibitor hereunder with respect to the Equipment, which may include without limitation costs to replace Equipment, costs to install such replacement Equipment, and costs to perform on-site maintenance with respect to any Equipment. All such insurance shall be provided by insurers having a rating of "A-" or better by A.M. Best Company. Exhibitor shall have DCDC named as an additional insured and loss payee under all such insurance. Any deductibles or retentions with respect to such insurance shall be disclosed to DCDC and shall not exceed customary amounts in the industry. DCDC shall be provided not less than thirty (30) days written notice of any reduction in limits or scope of coverage, cancellation, or non-renewal of such insurance. DCDC shall be named as an additional insured under the Exhibitor comprehensive/commercial general liability insurance (and, when maintained by Exhibitor, the excess/umbrella liability insurance) policy, and such insurance shall be primary to any liability insurance carried by DCDC solely with respect to Exhibitor's liability hereunder. Further, Exhibitor's comprehensive/commercial general liability insurance (and, when maintained by Exhibitor, the excess/umbrella liability insurance) policy shall provide for a waiver of subrogation, and the insurer shall provide DCDC with 30 days written notice of policy cancellation or non-renewal of such insurance. Exhibitor shall provide DCDC with certificates of insurance evidencing the coverages required herein upon request of Exhibitor.

## 11. **BUSINESS CONTINUITY**

DCDC shall (a) develop, submit to Exhibitor for review, and implement a business continuity plan (“**BCP**”) that meets generally accepted industry standards; (b) update and test the operability of the BCP to ensure that the BCP is fully operational; (c) certify to Exhibitor upon request by Exhibitor (but no more than once every year during the Term) that the BCP is fully operational; and (d) implement the BCP upon the occurrence of a disaster or other circumstances that have a substantial adverse effect on DCDC's business.

## 12. **RIGHT OF AUDIT**

DCDC shall keep complete and accurate records and documentation relating to Services performed for Exhibitor pursuant to this Agreement in accordance with generally accepted industry standards (“**Exhibitor Work Records**”). Upon reasonable advance written notice, and subject to Article 23, DCDC shall make Exhibitor Work Records available, during normal business hours, to Exhibitor or any authorized representative of Exhibitor for inspection during the Term and for twelve (12) months following termination of this Agreement, provided that Exhibitor agrees not to audit such Exhibitor Work Records more than one (1) time during any twelve (12) month period.

## 13. **GENERAL REPRESENTATIONS AND WARRANTIES OF THE PARTIES**

13.1 Each Party represents and warrants that:

- (a) such Party:
  - (i) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization;
  - (ii) has the power and authority to carry on its business as proposed and as now conducted;
  - (iii) has the power to execute, deliver and perform this Agreement;
- (b) the execution, delivery and performance by such Party of this Agreement:
  - (i) has been duly authorized by all requisite company action of such Party;
  - (ii) will not violate or be in conflict with any applicable law, any judgment, order, writ, injunction, decree or consent of any court or other judicial authority applicable to such Party, or any material instrument, agreement, document, arrangement or other understanding to which such Party is a party or by which such Party may be bound;
- (c) there are no actions, suits or proceedings pending or threatened affecting such Party that involves the transactions contemplated in this Agreement or the ability of such Party to perform its obligations under this Agreement; and
- (d) this Agreement is the legal, valid and binding obligation of such Party, enforceable in accordance with its terms and conditions.

**14. OWNERSHIP**

- 14.1 All Content shall at all times be and remain the property of the applicable Content Provider. Exhibitor agrees not to assert any ownership rights (including, without limitation, any Intellectual Property Rights) in Content pursuant to this Agreement during the Term or at any time thereafter.

**15. DELETION OF CONTENT; RETURN OF HARD DRIVES**

Exhibitor will not assert against DCDC, any Content Provider, or any of their respective successors, licensees or assignees any lien however arising against any Content delivered to or held by Exhibitor under this Agreement for any reason. If DCDC notifies Exhibitor that a Content Provider has requested the deletion of any or all Content in Exhibitor's possession at any time, Exhibitor shall promptly delete such Content (at no cost to DCDC). Exhibitor shall, at its sole cost and expense, return all hard drives to DCDC within ten (10) days after Exhibitor's receipt of such hard drive. All files on local or standalone servers used for servicing and files on servicing archives will be deleted upon DCDC's request. Upon written request, Exhibitor will supply a certificate confirming compliance with such requirements on a by-title basis.

**16. CONFLICTING ORDERS**

- 16.1 In the event DCDC receives any instructions, demands or claims from any person, firm or corporation other than Exhibitor or the applicable Content Provider ("**Other Claimant**") with respect to any Content delivered to or held by DCDC under this Agreement which are inconsistent with the then current instructions from Exhibitor or the applicable Content Provider, DCDC shall not take any action, but shall promptly request in writing additional instructions from Exhibitor or the applicable Content Provider, and Exhibitor shall promptly respond to such request to Exhibitor.
- 16.2 If Exhibitor instructs DCDC to act in a manner inconsistent with the Other Claimant's demands referred to in Paragraph 16.1, or if Exhibitor fails to respond to such request for additional instructions within seven (7) days of receipt of such request, DCDC may comply with Exhibitor's original instructions and Exhibitor shall indemnify, defend and hold harmless DCDC against any claims, loss, liability, cost or expense in connection with DCDC's failure to honor the demands of such Other Claimant.
- 16.3 Nothing contained in this Article 16 shall require DCDC to act in contravention of any applicable law, regulation, decree or order.

**17. COMPLIANCE WITH APPLICABLE LAWS**

The Services (including, without limitation, the engagement of any subcontractors for the provision of the Services) shall be provided by DCDC (or its subcontractors) in compliance with all laws, relevant legislation, regulations, and other requirements of any relevant government or governmental agency applicable to the subject territory ("**Laws**").

**18. INDEMNITY**

- 18.1 DCDC agrees to indemnify, defend and hold harmless Exhibitor and Exhibitor's Affiliates and their respective owners, principals, directors, officers, employees, agents and representatives from any liabilities, damages, losses, expenses, demands, or judgments, including without limitation reasonable legal fees and

expenses (collectively "Expenses") to the extent arising out of any claim or suit brought by a third party alleging:

- (a) that the Services infringe the Intellectual Property Rights of such third party (other than claims derived from the Content and DCDC's use of the Content); or
- (b) bodily injury, including without limitation death, or loss of or damage to property, in each case to the extent resulting from negligent acts or omissions or willful misconduct of DCDC or any of its subcontractors in providing the Services to Exhibitor.

Notwithstanding the foregoing, DCDC shall have no obligations or liability under subsection (a) above to the extent any such claim or suit results from (x) DCDC's compliance with Exhibitor's written designs, specifications, or instructions, (y) use of any item provided by DCDC in combination with products not supplied, recommended or authorized by DCDC, or (z) instances where Exhibitor is responsible for indemnifying DCDC (e.g., Paragraph 18.2).

- 18.2 Exhibitor agrees to indemnify, defend and hold harmless DCDC and DCDC's Affiliates and their respective owners, principals, directors, officers, employees, agents and representatives from any and all Expenses, to the extent arising out of any claim or suit brought by a third party alleging bodily injury, including without limitation death, or loss of or damage to property, in each case to the extent resulting from Exhibitor's negligent acts or omissions or willful misconduct under this Agreement.

## **19. ANTI PIRACY**

- 19.1 Exhibitor may not (and shall not authorize any third party to) access, copy, sublicense, or provide any third party with access to any Content except as permitted by the terms of a Booking or to return such Content to DCDC, or to a third party designated by DCDC, according to DCDC's written instructions. Physical assets containing Content, if any, shall be stored by Exhibitor in environments that conform to the security requirements of an MPAA site security survey.
- 19.2 Exhibitor shall establish and employ security procedures that protect against any theft or unauthorized access, copying, exhibition, transmission or removal of Content from Exhibitor's possession.
- 19.3 Exhibitor shall notify each of DCDC, the applicable Content Provider and a representative of the MPAA by telephone and e-mail or fax regarding any loss or theft or unauthorized access, copying, distribution or use of Content (a "**Security Failure**") promptly after any of the foregoing actually becomes known to Exhibitor.
- 19.4 Upon receipt by DCDC of written notice from Exhibitor that a Security Failure has occurred and is continuing, the Parties will promptly meet and confer in good faith to discuss an appropriate solution to remedy such Security Failure and will use reasonable commercial efforts to reach a remedy acceptable to each Party.

## **20. TERMINATION**

- 20.1 Notwithstanding Article 2, this Agreement may be terminated immediately by notice in writing without penalty:



- (a) By either Party if the other Party is in material breach of any of its obligations under this Agreement and fails to remedy the breach (if capable of remedy) within a period of thirty (30) days after written notice by the other Party; or
- (b) By either Party with immediate effect if the other Party is insolvent or fails to pay its debt obligations generally when due, makes an assignment for the benefit of creditors, seeks relief under any bankruptcy law or similar law for the protection of debtors, or a bankruptcy petition is filed against such Party or a receiver or trustee is appointed (privately or judicially) for such Party or a substantial portion of such Party's assets and is not discharged or otherwise resolved to the other Party's satisfaction within thirty (30) days of such filing or appointment, as the case may be.

## **21. EFFECT OF TERMINATION**

- 21.1 Upon termination of this Agreement, Exhibitor shall remit payment to DCDC for Services performed prior to the effective date of termination.
- 21.2 Any termination of this Agreement under Paragraph 20.1 shall be without prejudice to any other rights or remedies of either Party under this Agreement or at law and shall not affect any accrued rights or liabilities of either Party at the date of termination.
- 21.3 All payment obligations and the following Articles and Paragraphs shall survive any termination or expiration of this Agreement: Articles and Paragraphs **1, 3.6(b) and (c), 3.9(a) and (c), 3.10, 6.5** (except with respect to any termination of this Agreement by DCDC pursuant to Article 20), **12, 14, 15, 18, 21, 22, 23, 26, 27, 28.1, 29, 30 and 32.**

## **22. LIMITATION OF LIABILITY**

- 22.1 IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST REVENUES OR LOST PROFITS) REGARDLESS OF WHETHER SUCH LIABILITY ARISES IN CONTRACT, TORT, BREACH OF WARRANTY, INDEMNIFICATION OR OTHERWISE, EVEN IF SUCH PARTY SHOULD HAVE BEEN AWARE OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL DCDC'S AGGREGATE LIABILITY ARISING OUT OF CLAIMS OF ANY KIND OR NATURE (WHETHER IN CONTRACT, TORT, BREACH OF WARRANTY OR OTHERWISE) ARISING OUT OF OR RESULTING FROM DCDC'S PERFORMANCE OR FAILURE OF PERFORMANCE UNDER THIS AGREEMENT EXCEED THE AMOUNTS PROVIDED IN PARAGRAPH 22.2. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE EXPIRATION OR TERMINATION OF THIS AGREEMENT FOR ANY REASON OR NO REASON INDEFINITELY.
- 22.2 Subject to Paragraph 22.1 above, but except for (a) damages arising from either Party's gross negligence or intentional misconduct or (b) indemnification liability arising under Paragraph 18.1(a), the liability of either Party to the other Party arising out of or in connection with this Agreement shall not exceed the aggregate amounts actually paid and/or payable to DCDC by Exhibitor in the twelve (12) months preceding the events or circumstances giving rise to the liability.

**23. CONFIDENTIALITY**

- 23.1 Except as required by law, both Parties shall ensure that all Confidential Information disclosed by one Party (“**Disclosing Party**”) to the other Party (“**Receiving Party**”) in accordance with this Agreement or which may at any time until termination of this Agreement come into the Receiving Party’s knowledge, possession or control shall not be used for any purposes other than those reasonably required or permitted by this Agreement and shall remain confidential and shall not be disclosed by the Receiving Party to any third party (including, without limitation, the press, media, friends, family, acquaintances and the general public) except insofar as such disclosure may be required for the proper operation of this Agreement and then only under appropriate confidentiality provisions approved by the Disclosing Party.
- 23.2 The obligations of confidentiality in Paragraph 23.1 shall (a) cease to apply to any particular item of Confidential Information once it becomes public knowledge other than by any act or default of the Receiving Party, and (b) not apply to any display of Content permitted by the terms of a Booking.
- 23.3 Exhibitor acknowledges that no reproduction or dissemination of Content is permitted except as expressly set out in this Agreement and pursuant to Exhibitor’s contract with any Content Provider. Exhibitor shall ensure that all employees and independent sub-contractors of Exhibitor will be made aware of this Article 23 and shall ensure that all such persons are bound by obligations of confidentiality no less stringent than contained in this Article 23.
- 23.4 The existence of this Agreement and of any relationship between the Parties concerning the subject matter of this Agreement is Confidential Information, and neither Party will publish or permit to be published any information about their relationship, unless that information has first been approved for publication by the other Party.

**24. NOTICES**

- 24.1 Any notice or other communication to be given under this Agreement shall be in writing and signed by or on behalf of the Party giving it and may be served by leaving it at or sending it by fax, registered mail or via a courier to the address and for the attention of the relevant Party set out in Paragraph 24.2 (or as otherwise notified by that Party under this Agreement). Notices may not be sent by E-mail. Any notices so served by fax, mail or courier shall be deemed to have been received:
  - (a) In the case of fax, four (4) hours after the time of dispatch;
  - (b) In the case of registered mail, forty-eight (48) hours from the date of mailing; and
  - (c) In the case of a courier, on the next business day.
- 24.2 The addresses of the Parties for the purposes of Paragraph 24.1 are as follows:

For Exhibitor:


[REDACTED]

For DCDC:

Digital Cinema Distribution Coalition LLC  
1840 Century Park East, Suite 440  
Los Angeles, CA 90067  
Attn: Chief Executive Officer

- 24.3 In proving such service it shall be sufficient to prove that the envelope containing such notice was properly addressed and delivered either to the address shown on it or into the custody of the courier or postal authorities as a pre-paid recorded delivery or registered post letter, or transmitted by fax to that address.

**25. FORCE MAJEURE**

- 25.1 In this Agreement “**force majeure**” shall mean any cause preventing either Party (including its subcontractors and agents) (the “**Excused 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 Excused Party, including without limitation any act of God, war, riot, terrorism, fire, or act of government.

- 25.2 If an Excused Party is prevented or delayed in the performance of any of its obligations under this Agreement by force majeure, the Excused Party shall have no liability (including without limitation any obligation to issue Service Credits) with respect to the performance of such of its obligations, and the Other Party shall have no right to exercise any remedy hereunder (including without limitation any right to terminate this Agreement) to the extent such obligations are prevented by the force majeure events during the continuance of such events and for such time after they cease as is necessary for the Excused Party using commercially reasonable efforts to recommence its affected operations in order for it to perform its obligations.

**26. WAIVER**

No failure or delay by either Party in enforcing its respective rights will prejudice or restrict the rights of that Party and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

**27. CUMULATIVE REMEDIES**

Subject to the specific limitations set out in this Agreement, no remedy conferred by any provision of this Agreement is intended to be exclusive of any other remedy except as expressly provided for in this Agreement and each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or existing at law or in equity by statute or otherwise.

**28. SEVERABILITY AND FURTHER ASSURANCE**

- 28.1 If any of the provisions of this Agreement are judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions will not be prejudiced unless the substantive purpose of this Agreement is then frustrated, in which case either Party may terminate this Agreement immediately on written notice.

- 28.2 Exhibitor shall do or procure to be done all such further acts and things and execute or procure the execution of all such other documents as DCDC may from time to time reasonably require for the purpose of giving DCDC the full benefit of the provisions of this Agreement.
- 28.3 DCDC shall do or procure to be done all such further acts and things and execute or procure the execution of all such other documents as Exhibitor may from time to time reasonably require for the purpose of giving Exhibitor the full benefit of the provisions of this Agreement.

**29. NO PARTNERSHIP OR AGENCY**

The relationship between the Parties is that of independent contractors. Neither Party is agent for the other Party, and neither Party has any authority to make any contract, whether expressly or by implication, in the name of the other Party, without such other Party's prior written consent for express purposes connected with the performance of this Agreement.

**30. ENTIRE AGREEMENT AND VARIATIONS**

- 30.1 This Agreement and the documents referred to herein constitute the entire agreement and understanding of the Parties and supersede any previous agreement between the Parties relating to the subject matter of this Agreement.
- 30.2 Each of the Parties acknowledges and agrees that in entering into this Agreement and the documents referred to in it, it does not rely on and shall have no remedy in respect of any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether a Party or not) other than as expressly set out in this Agreement as a warranty. The only remedy available to it for breach of any such warranty shall be for breach of contract under the terms of this Agreement. Nothing in this Article 30 shall however operate to limit or exclude any liability for fraud.
- 30.3 No variation of the terms and conditions of this Agreement will be valid unless confirmed in writing by authorized signatories of both Parties on or after the date of this Agreement.

**31. ASSIGNMENT AND SUBCONTRACTING**

- 31.1 Either Party may assign this Agreement to any other party, in whole (but not in part, and any assignment in part shall require the other Party's prior written consent), on thirty (30) days written notice and without the other Party's prior written consent, except in the case of an assignment to a direct competitor of the other Party (in which event, such Party's consent may be withheld in its sole discretion) and provided that the assignee executes and delivers an assignment and assumption agreement under which it agrees to be bound by and perform all obligations of the assigning Party under this Agreement. For purposes of clarity, a Party may assign this Agreement without the other Party's prior written consent to any (a) person or entity with which such Party is merged or consolidated, (b) person or entity that acquires all or substantially all of such Party's assets or equity securities of whatever type, (c) a 100% owned affiliate of such Party, or (d) in the case of Exhibitor, to a Party acquiring all of Exhibitor's Receive Sites; provided, however, that in each such case, no assignment under this Paragraph 31.1 will relieve the assigning Party of its obligations hereunder.

- 31.2 Exhibitor expressly acknowledges and agrees that DCDC may subcontract, in whole or in part, the Services under this Agreement. Without limiting the generality of the foregoing, Exhibitor acknowledges and agrees that ingest, delivery and customer service may be subcontracted to a third party service provider. DCDC agrees that it will be responsible for the fulfillment of its obligations hereunder notwithstanding the performance of such obligations by its subcontractor(s). However, notwithstanding the foregoing or anything else contained in this Agreement to the contrary, to the extent that DCDC utilizes Midnight Express Courier, FedEx, UPS or another unaffiliated subcontractor requested by Exhibitor or any Content Provider to ship hard drives or electronically deliver Content, DCDC shall have no liability whatsoever for the acts or omissions of such entity or unaffiliated subcontractor in connection with such shipment or electronic delivery.

### 32. **GOVERNING LAW AND JURISDICTION**

This Agreement shall be construed in accordance with the laws of the State of California of the United States of America without regard to its conflicts of laws provisions. Any and all controversies, claims or disputes arising out of or related to this Agreement or the interpretation, performance or breach hereof, including, but not limited to, alleged violations of state or federal statutory or common law rights or duties, and the determination of the scope or applicability of this Agreement to arbitrate (“**Dispute**”), except as set forth in subparagraphs (b) and (c), below, shall be resolved according to the procedures set forth in subparagraph (a), below, which shall constitute the sole dispute resolution mechanism hereunder:

- (a) **Arbitration:** In the event that the Parties hereto are unable to resolve any Dispute informally, then such Dispute shall be submitted to final and binding arbitration. The arbitration shall be initiated and conducted according to either the JAMS Streamlined (for claims under \$250,000) or the JAMS Comprehensive (for claims over \$250,000) Arbitration Rules and Procedures, except as modified herein, including the Optional Appeal Procedures, at the Los Angeles, California office of JAMS, or its successor (“**JAMS**”) in effect at the time the request for arbitration is made (the “**Arbitration Rules**”). The arbitration shall be conducted in Los Angeles County, California before a neutral arbitrator appointed in accordance with the Arbitration Rules. The arbitrator shall follow California law and the Federal Rules of Evidence in adjudicating the Dispute. The Parties waive the right to seek punitive damages and the arbitrator shall have no authority to reward such damages. The arbitrator will provide a detailed written statement of decision, which will be part of the arbitration award and admissible in any judicial proceeding to confirm, correct or vacate the award. Unless the Parties hereto agree otherwise, the neutral arbitrator and the members of any appeal panel shall be former or retired judges or justices of any California state or federal court with experience in matters involving the entertainment industry. If either Party refuses to perform any or all of its obligations under the final arbitration award (following appeal, if applicable) within thirty (30) days of such award being rendered, then the other Party may enforce the final award in any such court of competent jurisdiction in Los Angeles County, California. The Party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including reasonable attorneys’ fees, incurred in enforcing the award, to be paid by the Party against whom enforcement is ordered.

- (b) Injunctive Relief: Notwithstanding the foregoing, either Party shall be entitled to seek injunctive relief in the state and federal courts of Los Angeles County, California.
- (c) Other Matters: Any Dispute or portion thereof, or any claim for a particular form of relief (not otherwise precluded by any other provision of this Agreement) that may not be arbitrated pursuant to applicable state or federal law may be heard in any court of competent jurisdiction in Los Angeles County, California.

**33. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, which may be delivered by facsimile or portable document format, all of which counterparts taken together will constitute one and the same instrument.

Signed for and on behalf of

**EXHIBITOR:**

Signature .....

Name (print) .....

Title .....

Signed for and on behalf of

**DIGITAL CINEMA DISTRIBUTION COALITION LLC:**

Signature .....

Name (print) .....

Title .....

**SCHEDULE 1**

**PRICES**

<b>CONTENT TYPE</b>	<b>TRANSMISSION FEE PER BOOKED RECEIVE SITE</b>
Theatrical Motion Pictures Single 2D, Single 3D or 2D/3D (sent concurrently) (including up to 10 Supplemental Packages)	
Up to 300 GB	\$18.33
301GB to 350 GB	\$20.83
351GB to 400 GB	\$23.33
401GB to 600 GB	\$25.83
401GB to 600 GB	\$25.83 plus \$0.04 for each additional GB (or portion thereof) greater than 600 GB
Theatrical Trailers (unlimited versions) Up to 38 GB	No cost to Exhibitor.
Pre-Shows & Advertising	No cost to Exhibitor.
Live Streaming Event/Programming	No cost to Exhibitor.
Store and Forward Event Programming	
Up to 300 GB	\$18.33
301GB to 350 GB	\$20.83
351GB to 400 GB	\$23.33
401GB to 600	\$25.83
401GB to 600 GB	\$25.83 plus \$0.04 for each additional GB (or portion thereof) greater than 600 GB

## SCHEDULE 2

### **CERTAIN LIVE STREAMING OBLIGATIONS AND SPECIFICATIONS**

Certain terms and conditions with respect to Live Streaming are set forth below. Additional terms and conditions with respect to Live Streaming may be agreed to by the Parties on a case-by-case basis depending on the nature of the Live Streaming Event/Programming, the nature of the equipment located at the Receive Sites where the Live Streaming Event/Programming is scheduled to play, and the nature of any additional services that Exhibitor may request of DCDC in connection with such Live Streaming Event/Programming.\*

(a) Scheduling.

- (i) DCDC shall consult with Exhibitor in connection with any Live Streaming to coordinate: (1) logistics and requirements to provide an IP stream input of source Live Streaming at the DCDC head-end teleport, including hardware, software, and transport recommendations for converting source Live Streaming into an IP stream; and (2) satellite time to facilitate testing, setup, implementation and clean-up.
- (ii) DCDC and Exhibitor shall coordinate Live Streaming scheduling and testing. Such coordination shall be undertaken among on-site technical personnel at the applicable Receive Site, other Receive Site personnel, and DCDC's uplink and monitoring personnel. DCDC will schedule a minimum of 2 hours for pretest to calibrate the video feed.
- (iii) DCDC shall test the Live Streaming infrastructure, delivery and display at designated Receive Sites: (1) at least seventy (70) hours prior to any transmission of Live Streaming to any Receive Site; and (2) again at least twenty-four (24) hours prior to any such transmission of Live Streaming.
- (iv) At least seventy-two (72) hours prior to any transmission of Live Streaming, Exhibitor shall provide DCDC a list of Receive Sites authorized to receive the applicable Live Streaming transmission. DCDC will use the head-end device to authorize the transmission of Live Streaming only to Receive Sites authorized by Exhibitor in accordance with this paragraph (iv) to receive such Live Streaming.

(b) Methods of Delivery. Live Streaming shall be delivered to DCDC's uplink via satellite or other agreed upon method. Exhibitor will provide DCDC twenty-one (21) days advance notice (based on date/time of Live Streaming Event/Programming event) to ensure a satellite downlink is available to receive source Live Streaming. If Exhibitor's satellite input is not available for receipt by DCDC, DCDC will recommend an alternative satellite input.

(c) Live Event Specifications: MPEG over IP.

(d) Transport and Monitoring:

- (i) DCDC shall transmit and monitor the transmission of Live Streaming between the DCDC head-end teleport and the Receive Sites: (1) in accordance with the specifications set forth below under the headings "Transmission Specifications" and "Components Monitored by DCDC"; and (2) in accordance with any additional terms agreed to by the Parties.\*



During any transmission of Live Streaming to a Receive Site, DCDC shall allow management (i.e. pause, play, record) of the device receiving the Live Streaming from the Catch Server.

(ii) *Transmission Specifications:*

- (1) Source Live Streaming is inserted in and processed by the head-end device at the DCDC head-end teleport.
- (2) The head-end device produces a FEC protected IP stream containing source Live Streaming which is then inserted into the outbound satellite carrier for transport.
- (3) The DCDC modem demodulates the outbound satellite transmission and sends the protected IP stream containing the source Live Streaming to the Catch Server.
- (4) The Catch Server processes the FEC IP stream and provides the original IP stream containing the source Live Streaming, as received at the DCDC head-end teleport, to the Receive Site network.

(iii) *Components Monitored by DCDC:*

- (1) Source Live Streaming received at the DCDC head-end teleport.
- (2) IP stream of source Live Streaming inserted into the DCDC head-end.
- (3) IP stream output into the outbound satellite carrier.
- (4) Outbound satellite carrier.
- (5) HN7700 modem at each Receive Site location.
- (6) Catch Server at each Receive Site location.

(iv) *Components Monitored by DCDC at Exhibitor's Request:\**

- (1) Receive Site auditorium screen decoders (by separate agreement with exhibitor).
- (2) Actual display (by separate agreement with exhibitor) on screen.
- (3) Actual audio playback (by separate agreement with exhibitor).

(v) *Live Streaming Management Services at Exhibitor's Request:\**

- (1) DCDC shall provide Live Streaming management services as mutually agreed with Exhibitor.