

HEMISPHERE MEDIA GROUP, INC.

Form 424B3

January 23, 2014

FILED PURSUANT TO RULE 424(B)(3)

File No. 333-186210

HEMISPHERE MEDIA GROUP, INC.

SUPPLEMENT NO. 6 TO

PROSPECTUS DATED MARCH 25, 2013

THE DATE OF THIS SUPPLEMENT IS JANUARY 23, 2014

This prospectus supplement (this Supplement No. 6) is part of the prospectus of Hemisphere Media Group, Inc. (the Company), dated March 25, 2013 (File No. 333-186210) (the Prospectus) as supplemented by Supplement No. 1, dated May 15, 2013 (Supplement No. 1), Supplement No. 2, dated May 15, 2013 (Supplement No. 2), Supplement No. 3, dated July 31, 2013 (Supplement No. 3), Supplement No. 4, dated August 14, 2013 (Supplement No. 4) and Supplement No. 5, dated November 13, 2013 (Supplement No. 5). This Supplement No. 6 supplements, modifies or supersedes certain information contained in the Prospectus, Supplement No. 1, Supplement No. 2, Supplement No. 3, Supplement No. 4 and Supplement No. 5. Any statement in the Prospectus, Supplement No. 1, Supplement No. 2, Supplement No. 3, Supplement No. 4 and Supplement No. 5 that is modified or superseded is not deemed to constitute a part of the Prospectus, Supplement No. 1, Supplement No. 2, Supplement No. 3, Supplement No. 4 or Supplement No. 5, except as modified or superseded by this Supplement No. 6. Except to the extent that the information in this Supplement No. 6 modifies or supersedes the information contained in the Prospectus, as previously supplemented, this Supplement No. 6 should be read, and will be delivered, with the Prospectus, Supplement No. 1, Supplement No. 2, Supplement No. 3, Supplement No. 4 and Supplement No. 5.

The purpose of this Supplement No. 6 is to update and supplement the information in the Prospectus, as previously supplemented, with the information contained in the Company's Current Report on Form 8-K, as filed with the Securities and Exchange Commission on January 23, 2014, and which is attached hereto.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D. C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15 (d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **January 22, 2014**

HEMISPHERE MEDIA GROUP, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or other jurisdiction of
Incorporation)

000-54925
(Commission File Number)

80-0885255
(I.R.S. Employer
Identification Number)

2000 Ponce de Leon Boulevard

Suite 500

Coral Gables, FL 33134

(Address of principal executive offices) (Zip Code)

(305) 421-6364

(Registrant's telephone number, including area code)

Not Applicable

(Former name or former address, if changed since last report)

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

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

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

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

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

Item 1.01. Entry into a Material Definitive Agreement.

On January 22, 2014, Hemisphere Media Holdings, LLC, a Delaware limited liability company (the Company), an indirect wholly owned subsidiary of Hemisphere Media Group, Inc. (Hemisphere), entered into an Asset Purchase Agreement (the Acquisition Agreement), with Media World, LLC, a Florida limited liability company (Seller) and the other signatories named therein, pursuant to which the Company will acquire Seller's Spanish-language television network business (the Acquisition).

The Acquisition includes the purchase by the Company of assets of Seller and its affiliates primarily used in, or held for use in connection with, the operation or conduct of Seller's Spanish-language television network business (the Business) including: (i) Pasioness, dedicated to showcasing the most-popular telenovelas and series, distributed to approximately 3.8 million subscribers in the U.S. and 7.2 million subscribers in Latin America; (ii) Centroatlanta TV, the leading network targeting the third largest U.S. Hispanic group, featuring the most popular news, entertainment and soccer programming from Central America with over 3.3 million subscribers in the U.S. and (iii) TV Dominicana, the leading network targeting Dominicans living in the U.S., featuring the most popular news, entertainment and baseball programming from the Dominican Republic, with over 2.2 million subscribers in the U.S.

Seller shall provide to the acquired Business (i) certain technical services, including, without limitation, playout, post-production, master control, traffic, uplink/transmission, etc., for a period of three years following the closing of the Acquisition (the Closing Date) and (ii) certain non-technical services, including, without limitation, personnel devoting time to general management, programming coordination, traffic coordination, marketing/sales coordination for a period of two years following the Closing Date. Pre-negotiated fees for specified technical and non-technical services shall be paid by the Company to Seller as such costs are incurred following the Closing Date. Additionally, certain key personnel of Seller and its affiliates shall enter into a consulting agreement with the Company, at no additional cost, for a period of one year following the Closing Date.

On the Closing Date, the Company will pay to Seller a purchase price of \$102,180,000 in cash to acquire the Business, subject to subject to certain post-closing adjustments.

The Acquisition Agreement, which is included as Exhibit 2.1 to this current report on Form 8-K and incorporated herein by reference, contains (i) customary representations and warranties of the parties (which have been qualified by confidential disclosures made to the Company in connection with the Acquisition Agreement), including, among others: corporate organization, corporate authority, absence of conflicts, third party consents and approvals, financial statements, compliance with law and legal proceedings, absence of certain changes, taxes, intellectual property, legal action and orders, insurance and certain material and interested party contracts, (ii) covenants of Seller to conduct the Business in the ordinary course until the Acquisition is completed, (iii) covenants of Seller not to take certain actions during this interim period (iv) covenants of Seller to obtain consents prior to and after the Closing Date, (vi) covenants of Seller and its affiliates not to compete with the Company and its affiliates in certain lines of business for a period of five years following the Closing Date and (vii) covenants of Seller to offer the Company an option to purchase a third party Spanish-language channel if Seller has the right or opportunity to acquire or cause a third party to acquire such channel at specified prices.

The Acquisition Agreement also provides for a bilateral indemnification following the Closing by the Company, on the one hand, and Seller, on the other hand, with respect to the accuracy of certain representations and warranties, breaches of covenants and certain specified matters, which in each case are subject to specified limitations on the amount of indemnifiable damages and the survival period during which a claim may be made.

Edgar Filing: HEMISPHERE MEDIA GROUP, INC. - Form 424B3

The Acquisition Agreement contains certain termination rights for each of Seller and the Company. In addition, subject to certain limitations, either party may terminate the Acquisition Agreement if the Closing Date is not consummated by March 31, 2014. The Company may terminate, in whole or in part, the non-technical services upon 90 days' written notice to Seller. Either party may terminate, in whole or in part, the technical services after the second anniversary of the Closing Date and the Company may terminate such services prior to the second anniversary of the Closing Date upon 120 days' written notice to Seller if the Company or any of its affiliates acquires a business that performs similar services.

The Acquisition is expected to close in the first quarter of 2014. The Acquisition is subject to limited closing conditions specified in the Acquisition Agreement, including, without limitation, delivery of combined audited financial statements of the Business on a consolidated basis as at and for the fiscal years ended December 31, 2013. The closing of the Acquisition is not subject to any financing condition. There can be no assurance as to when the closing conditions will be satisfied, if at all.

The Acquisition Agreement has been provided solely to inform investors of its terms. The representations, warranties and covenants contained in the Acquisition Agreement were made only for purposes of such agreement and as of specific dates, were made solely for the benefit of the parties to the Acquisition Agreement and may be intended not as statements of fact, but

rather as a way of allocating the risk to one of the parties if those statements prove to be inaccurate. In addition, such representations, warranties and covenants may have been qualified by certain disclosures not reflected in the text of the Acquisition Agreement, and may be subject to standards of materiality applicable to contracting parties that differ from what may be viewed as material by shareholders of, or other investors in, Hemisphere. Investors are not third-party beneficiaries under the Acquisition Agreement and should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of Hemisphere, Seller or any of their respective subsidiaries or affiliates. The assertions embodied in the representations and warranties of the Company are qualified by information contained in certain of Hemisphere's public filings. Information concerning the subject matter of such representations and warranties may change after the date of the Acquisition Agreement, which subsequent information may or may not be fully reflected in future public disclosures.

The foregoing description of the Acquisition Agreement is only a summary, does not purport to be complete and its qualified in its entirety by reference to the full text of the Acquisition Agreement which is filed as Exhibit 2.1 hereto and is incorporated herein by reference.

Forward Looking Statements

This report may contain certain statements that are forward-looking statements within the meaning of the U.S. Private Securities Litigation Reform Act of 1995. The forward-looking statements contained in this report may include statements about the anticipated benefits of the Acquisition including the Company's ability to consummate the transaction announced herein, the expected closing date for the Acquisition, the risk that the closing conditions to which the Acquisition is subject are not satisfied, the impact of the transaction on Hemisphere's operations and financial performance and other information and statements that are not historical facts. Without limitation, any statements preceded or followed by or that include the words targets, plans, believes, expects, intends, will, likely, may, anticipates, estimates, project, expect, positioned, strategy, future, or words, phrases or terms of similar substance or the negative thereof, are forward-looking statements. These statements are based on the current expectations of the management of Hemisphere and are subject to uncertainty and changes in circumstance and involve risks and uncertainties that could cause actual results to differ materially from those expressed or implied in such forward-looking statements. In addition, these statements are based on a number of assumptions that are subject to change. Such risks, uncertainties and assumptions include: (1) risks relating to any unforeseen liabilities of Hemisphere and the Business, (2) future capital expenditures, expenses, revenues, earnings, synergies, economic performance, indebtedness, financial condition, losses and future prospects, businesses and management strategies and the expansion and growth of the operations of Hemisphere; (3) Hemisphere's ability to successfully integrate the Businesses and achieve anticipated synergies; (4) the risk that disruptions from the transaction will harm Hemisphere's business; and (5) Hemisphere's plans, objectives, expectations and intentions generally. Additionally, factors that could cause actual results to differ materially from those expressed or implied by the forward-looking statements are discussed under the heading Risk Factors and

Forward-Looking Statements in Hemisphere's most recent registration statement on Form S-4 (File No. 333-186210) (the Registration Statement), post-effective amendment No. 1 on Form S-1 to the Registration Statement and Hemisphere's Quarterly Reports on Form 10-Q, each filed with the Securities and Exchange Commission (SEC), as they may be updated in any future reports filed with the SEC. Forward-looking statements included herein are made as of the date hereof, and Hemisphere does not undertake any obligation to update publicly such statements to reflect subsequent events or circumstances.

Item 7.01. Regulation FD Disclosure

On January 23, 2014, Hemisphere issued a press release announcing the Company's entry in the Acquisition Agreement. A copy of the press release is attached hereto as Exhibit 99.1 and incorporated by reference herein.

The information included in this Item 7.01, including Exhibit 99.1 attached hereto, is furnished solely pursuant to Item 7.01 of this Form 8-K. Consequently, it is not deemed filed for the purposes of Section 18 of the Securities Exchange Act of 1934, or otherwise subject to the liabilities

Edgar Filing: HEMISPHERE MEDIA GROUP, INC. - Form 424B3

of that section. It may only be incorporated by reference in another filing under the Exchange Act or Securities Act of 1933 if such subsequent filing specifically references this Form 8-K.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description of Exhibit
2.1	Asset Purchase Agreement, dated as of January 22, 2014, by and among Hemisphere Media

Holdings, LLC, Media World, LLC and the other parties named therein.

99.1 Press Release issued by Hemisphere Media Group, Inc. on January 23, 2014.

SIGNATURES

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

HEMISPHERE MEDIA GROUP, INC.

Date: January 23, 2014

By:

/s/ ALEX J. TOLSTON

Name: Alex J. Tolston

Title: General Counsel and Corporate Secretary

EXHIBIT INDEX

Exhibit No.	Description of Exhibit
2.1	Asset Purchase Agreement, dated as of January 22, 2014, by and among Hemisphere Media Holdings, LLC, Media World, LLC and the other parties named therein.
99.1	Press Release issued by Hemisphere Media Group, Inc. on January 23, 2014.

EXECUTION VERSION

ASSET PURCHASE AGREEMENT

BY AND BETWEEN

MEDIA WORLD, LLC

AND

HEMISPHERE MEDIA HOLDINGS, LLC

Dated as of January 22, 2014

TABLE OF CONTENTS

	Page	
SECTION 1	DEFINED TERMS	2
1.1	<u>Terms Defined in this Section</u>	2
1.2	<u>Interpretation</u>	14
1.3	<u>Terms Defined Elsewhere in this Agreement</u>	15
SECTION 2	SALE AND PURCHASE OF ASSETS	17
2.1	<u>Agreement to Sell and Buy</u>	17
2.2	<u>Excluded Assets</u>	18
2.3	<u>Assumption of Liabilities and Obligations</u>	19
2.4	<u>Purchase Price</u>	21
2.5	<u>Purchase Price Adjustments</u>	22
2.6	<u>Allocation of the Purchase Price</u>	24
SECTION 3	REPRESENTATIONS AND WARRANTIES OF THE SELLER	25
3.1	<u>Organization, Standing and Authority</u>	25
3.2	<u>Authorization and Binding Obligation</u>	25
3.3	<u>Absence of Conflicting Agreements</u>	25
3.4	<u>Books and Records</u>	26
3.5	<u>Ownership and Transfer of Assets</u>	26
3.6	<u>Exclusive Dealing</u>	26
3.7	<u>Contracts</u>	26
3.8	<u>Licenses</u>	28
3.9	<u>Channel Operations: Affiliation Agreements and Distribution</u>	28
3.10	<u>Financial Statements: No Undisclosed Liabilities</u>	29
3.11	<u>Taxes and Tax Returns</u>	30
3.12	<u>Legal Actions and Orders</u>	31
3.13	<u>Compliance with Legal Requirements</u>	31
3.14	<u>Conduct of Business in Ordinary Course</u>	31
3.15	<u>No Material Adverse Effect</u>	32
3.16	<u>Condition and Suitability of Assets</u>	32
3.17	<u>Intellectual Property</u>	32
3.18	<u>Audits</u>	34
3.19	<u>Commercial Relationships</u>	34
3.20	<u>Insurance</u>	34
3.21	<u>Affiliate Transactions</u>	34
3.22	<u>Certain Payments</u>	35
3.23	<u>No Broker</u>	35
3.24	<u>EXCLUSIVITY OF REPRESENTATIONS AND WARRANTIES</u>	35
SECTION 4	REPRESENTATIONS AND WARRANTIES OF THE BUYER	35
4.1	<u>Organization, Standing and Authority</u>	35
4.2	<u>Authorization and Binding Obligation</u>	35

4.3	<u>Absence of Conflicting Agreements</u>	35
4.4	<u>Litigation</u>	36
4.5	<u>No Broker</u>	36
4.6	<u>Sufficiency of Funds</u>	36
4.7	<u>Acknowledgment and Representations by Buyer</u>	36
SECTION 5	COVENANTS AND AGREEMENTS	37
5.1	<u>Pre-Closing Covenants of the Seller</u>	37
5.2	<u>Consents</u>	39
5.3	<u>Confidentiality; Press Releases</u>	39
5.4	<u>Antitrust Filings; Reasonable Best Efforts</u>	41
5.5	<u>Delivery of Required Information</u>	42
5.6	<u>Further Assurances</u>	43
5.7	<u>Non-Competition</u>	43
5.8	<u>Use of Brands</u>	45
5.9	<u>Collection of Accounts Receivable and Other Matters</u>	46
5.10	<u>La Familia Option</u>	46
5.11	<u>Employee Matters</u>	47
5.12	<u>FCC Matters</u>	48
SECTION 6	CONDITIONS TO CLOSING	48
6.1	<u>Conditions to Obligations of the Buyer</u>	48
6.2	<u>Conditions to Obligations of the Seller</u>	50
6.3	<u>Frustration of Closing Conditions</u>	51
SECTION 7	CLOSING AND CLOSING DELIVERIES	51
7.1	<u>Closing</u>	51
7.2	<u>Deliveries by the Seller</u>	51
7.3	<u>Deliveries by Buyer</u>	52
SECTION 8	TERMINATION	52
8.1	<u>Termination by Mutual Consent</u>	52
8.2	<u>Termination by Either the Buyer or the Seller</u>	52
8.3	<u>Termination by the Seller</u>	53
8.4	<u>Termination by the Buyer</u>	53
8.5	<u>Effect of Termination and Abandonment</u>	53
SECTION 9	SURVIVAL AND INDEMNIFICATION	53
9.1	<u>Survival</u>	53
9.2	<u>Indemnification by the Seller</u>	54
9.3	<u>Indemnification by the Buyer</u>	55
9.4	<u>Certain Limitations on Indemnification</u>	55
9.5	<u>Procedure for Indemnification</u>	57
9.6	<u>Exclusive Remedy</u>	58
9.7	<u>Adjustments to Purchase Price</u>	58

SECTION 10	TAX MATTERS	59
10.1	<u>Proration of Taxes</u>	59
10.2	<u>Transfer Taxes</u>	59
SECTION 11	MISCELLANEOUS	59
11.1	<u>Fees and Expenses</u>	59
11.2	<u>Damages</u>	59
11.3	<u>Notices</u>	60
11.4	<u>Benefit and Binding Effect</u>	61
11.5	<u>Governing Law</u>	61
11.6	<u>Venue</u>	61
11.7	<u>Waiver of Jury Trial</u>	61
11.8	<u>Entire Agreement; Amendments</u>	62
11.9	<u>Waiver of Compliance; Consents</u>	62
11.10	<u>Severability</u>	62
11.11	<u>Counterparts</u>	62
11.12	<u>No Third Party Beneficiaries</u>	62
11.13	<u>Specific Performance</u>	62

EXHIBITS

EXHIBIT A	Technical Services Agreement*
EXHIBIT B	Non-Technical Services Agreement*
EXHIBIT C	Consulting Agreement*
EXHIBIT D	DTV Amendment*
EXHIBIT E	Sports Rights Agreement*
EXHIBIT F	Keep Well Agreement*
EXHIBIT G	Pasiones Unit Purchase Agreement*
EXHIBIT H	Honduran Soccer Amendment*
EXHIBIT I	Form of IP Assignment Agreements*
EXHIBIT J	Form of Assignment and Assumption Agreement*
EXHIBIT K	Form of Consent*

* These exhibits have been omitted pursuant to Item 601(b)(2) of Regulation S-K. Hemisphere Media Group, Inc. hereby undertakes to furnish copies of any of the exhibits upon request by the U.S. Securities and Exchange Commission.

COMPANY DISCLOSURE LETTER

Schedule 1.1(a)	Intellectual Property Assets
Schedule 2.1(a)	Digital Receiver Decoders
Schedule 2.1(b)	Assumed Contracts
Schedule 2.1(c)	Customer Lists
Schedule 2.1(e)	Intellectual Property Assets and the IP Licenses
Schedule 2.1(k)	Other Assets
Schedule 2.2(h)	Imagina Marks
Schedule 2.2(j)	Other Excluded Assets
Schedule 2.3(a)	Assumed Liabilities and Obligations
Schedule 2.6	Tax Allocation
Schedule 3.3	Consents
Schedule 3.5	Title to Assets
Schedule 3.6	Exclusive Dealing
Schedule 3.7(a)	Material Contracts
Schedule 3.7(b)	Performance Exceptions, Defaults and Enforceability Exceptions
Schedule 3.9(a)	Channel Operations
Schedule 3.9(b)	Content Licenses
Schedule 3.9(c)	Television Distributors
Schedule 3.10(a)	Financial Statements
Schedule 3.10(d)	Undisclosed Liabilities
Schedule 3.11	Tax Audits
Schedule 3.12(a)	Legal Actions
Schedule 3.12(b)	Orders
Schedule 3.13	Compliance with Legal Requirements
Schedule 3.14	Conduct of Business
Schedule 3.15	Material Adverse Effects
Schedule 3.17(a)	Intellectual Property
Schedule 3.17(b)	IP Licenses
Schedule 3.17(f)	Exceptions to Rights to Developed IP
Schedule 3.18	Audits
Schedule 3.19(a)	Significant Advertisement Firm
Schedule 3.19(b)	Top 10 Content Suppliers
Schedule 3.19(c)	Terminated Commercial Relationships
Schedule 3.20	Insurance
Schedule 3.21	Affiliate Transactions
Schedule 5.9(c)	Response Certificate
Schedule 6.1(c)	Required Consents
Schedule 6.1(o)	Required Closing Information

ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT, dated as of January 22, 2014 (this **Agreement**), by and among (i) Hemisphere Media Holdings, LLC, a Delaware limited liability company (the **Buyer**), (ii) Media World, LLC, a Florida limited liability company (the **Seller**), and (iii) Roger Huguet, Marta Turon and Imagina Contenidos Audiovisuales SLU, in each case, solely for purposes of Section 5.7 (the **Non-Compete Parties**).

RECITALS

A. The Seller indirectly owns and operates Spanish-language television channels operated, produced and promoted by (i) Television Dominicana, LLC, a Florida limited liability company, which is a 24-hour channel dedicated to original content from the Dominican Republic (such channel, **TVD**); (ii) Pasioness TV, LLC, a Delaware limited liability company, which is a channel dedicated to telenovela programming operated in the United States and distributed in Latin America and Caribbean islands (such channel, **Pasioness**); and (iii) Centroamerica TV, LLC, a Florida limited liability company, which is a channel dedicated to original programming from El Salvador, Honduras, Guatemala, Nicaragua, Costa Rica and Panama (such channel, **CATV** and, together with TVD and Pasioness, the **Channels**) (collectively, the **Business**).

B. The Seller wishes to sell, convey, assign and otherwise transfer (or caused to be sold, conveyed, assigned and otherwise transferred) to the Buyer, and the Buyer wishes to purchase and obtain the assignment from the Seller of, certain of the Seller's assets used in the operation of the Business, together with certain obligations and liabilities relating thereto, on the terms and conditions set forth in this Agreement.

C. As a condition and inducement to the Buyer entering into this Agreement and incurring the obligations set forth herein, concurrently with the execution and delivery of this Agreement, the Buyer and the Seller are entering into (i) a technical services agreement in the form attached as Exhibit A (as amended or modified from time to time in accordance with its terms, the **Technical Services Agreement**), with effectiveness as of the Closing, and (ii) a non-technical services agreement in the form attached as Exhibit B (as amended or modified from time to time in accordance with its terms, the **Non-Technical Services Agreement** and together with the Technical Services Agreement, the **Transition Services Agreements**), with effectiveness as of the Closing.

D. As a condition and inducement to the Buyer entering into this Agreement and incurring the obligations set forth herein, concurrently with the execution and delivery of this Agreement, the Buyer and the Seller are entering into a consulting agreement in the form attached as Exhibit C (as amended or modified from time to time in accordance with its terms, the **Consulting Agreement**), with effectiveness as of the Closing.

E. As a condition and inducement to the Buyer entering into this Agreement and incurring the obligations set forth herein, concurrently with the execution and delivery of this Agreement, Pasionos TV, LLC and DIRECTV, Inc. have entered into an amendment agreement in the form attached as Exhibit D (as amended or modified from time to time in accordance with its terms, the **DTV Amendment**), with effectiveness as of the Closing.

F. As a condition and inducement to the Buyer entering into this Agreement and incurring the obligations set forth herein, concurrently with the execution and delivery of this Agreement, the Buyer and the Seller are entering into a sports rights agreement in the form attached as Exhibit E (as amended or modified from time to time in accordance with its terms, the **Sports Rights Agreement**), with effectiveness as of the Closing.

G. As a condition and inducement to the Buyer entering into this Agreement and incurring the obligations set forth herein, concurrently with the execution and delivery of this Agreement, US Imagina LLC and Seller have delivered a keep well agreement (the **Keep Well Agreement**), in the form attached as Exhibit F, in favor of the Buyer, with respect to the ongoing creditworthiness of the Seller.

H. As a condition and inducement to the Buyer entering into this Agreement and incurring the obligations set forth herein, concurrently with the execution and delivery of this Agreement, DIRECTV Latin America, LLC and Seller have entered into a unit purchase agreement (the **Pasionos UPA**), in the form attached as Exhibit G, pursuant to which, at the Closing, DIRECTV Latin America, LLC will transfer to Seller all of its limited liability company interest in Pasionos TV, LLC.

NOW, THEREFORE, in consideration of the mutual promises made herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and upon the terms and subject to the conditions set forth herein, the parties hereto hereby agree as follows:

SECTION 1 DEFINED TERMS

1.1 Terms Defined in this Section. The following terms shall have the following meanings in this Agreement:

Accounts Payable means all trade accounts payable and accrued expenses with respect to the Business reflected on the books and records of the Seller and the Channel Operators (excluding Taxes); except, for avoidance of doubt, Marketing Commitments and intercompany accounts payable (which intercompany accounts payable shall not include any amounts payable, pursuant to Section 2.4(b) of this Agreement, to DIRECTV Latin America, LLC solely as a result of its status as an equityholder of Pasionos TV, LLC).

Accounts Receivable means all rights of the Seller and its Affiliates to payment for goods or services provided in connection with the Business, including rights of the Seller and its Affiliates to payment pursuant to the Assumed Contracts. For the avoidance of doubt, Accounts Receivable shall include amounts recorded as Accrued income on the balance sheet of the Channel Operators.

Affiliate means, with respect to any specified Person, any other Person that directly or indirectly controls, is controlled by or is under common control with such specified Person. For the avoidance of doubt, Pasioness TV, LLC shall be deemed an Affiliate of the Seller.

Affiliation Agreement means all the carriage, affiliation, distribution and similar agreements for the distribution, sub-distribution, carriage or other transmission of the Channels on a linear or non-linear basis, in any or all media now known or hereafter developed, to which the Seller or the Channel Operators is a party, including new, replacement or extension agreements, in each case, solely to the extent relating to the Business.

Alternative Transaction means (a) a direct or indirect sale or other disposition of any portion of the Business or the Assets to any one or more purchasers other than the Buyer or an Affiliate of the Buyer, (b) a direct or indirect sale or other disposition of any equity interest or other securities of the Channel Operators or any of the Channels to any one or more purchasers other than the Buyer or an Affiliate of the Buyer, or (c) a merger, consolidation or other business combination of the Channel Operators or any of the Channels involving any Person other than the Buyer or an Affiliate of the Buyer.

Benefit Plan means any pension, profit-sharing, savings, retirement, employment, collective bargaining, consulting, severance, termination, executive compensation, incentive compensation, deferred compensation, bonus, stock purchase, stock option, phantom stock or other equity-based compensation, change-in-control, retention, salary continuation, vacation, sick leave, disability, death benefit, group insurance, hospitalization, medical, dental, life (including all individual life insurance policies as to which the Seller or any of its Affiliates is the owner, the beneficiary or both), Code Section 125 cafeteria or flexible benefit, employee loan, educational assistance or fringe benefit plan, program, policy, practice, agreement or arrangement, whether written or oral, formal or informal, including each employee benefit plan within the meaning of ERISA, Multiemployer Plan and other employee benefit plan, program, policy, practice, agreement or arrangement, whether or not subject to ERISA (including any funding mechanism therefor now in effect or required in the future as a result of the transactions contemplated by the Transaction Documents).

Books and Records means all of the books and records (if any), in all formats (both tangible and intangible), used or maintained by or on behalf of the Seller primarily in connection with the Business, including (a) executed copies of all of the Assumed Contracts, (b) all technical information and data, maps, computer files, diagrams, blueprints and schematics, (c) all filings made with or records required to be

kept by any Governmental Authority (including all backup information on which such filings are based), (d) all research and development reports, (e) all financial and accounting records, and (f) all creative, promotional, marketing or advertising materials.

Business Day means any day other than a Saturday, Sunday or other day on which commercial banks in New York, New York are required or authorized by Legal Requirements to close.

Caribbean means (a) the countries of Bahamas, Barbados, Cuba, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, and (b) the territories, commonwealths and constituent countries of Anguilla, Antigua and Barbuda, Aruba, Bermuda, Bonaire, British Virgin Islands, Cayman Islands, Curacao, French Guiana, Martinique, Montserrat, Puerto Rico, Saint-Martin, Sint Maarten, Turks and Caicos Islands and United States Virgin Islands.

Central America means the following countries and their respective territories, possessions and commonwealths, and any successor countries occupying in whole or in part the geographic territory thereof: El Salvador, Honduras, Guatemala, Nicaragua, Costa Rica and Panama.

Channel Operators means Television Dominicana, LLC, Pasiones TV, LLC and Centroamerica TV, LLC.

COBRA means the Consolidated Omnibus Budget Reconciliation Act of 1985.

Code means the United States Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder, or any subsequent legislative enactment thereof in effect from time to time.

Collective Bargaining Agreement means (a) any collective bargaining agreement of the Seller or any of its Affiliates or (b) any other agreements or understandings of the Seller or any of its Affiliates (including customs and past practices), in each case with any labor organization representing or purporting to represent all or any portion of the employees of the Seller or any of its Affiliates.

Company Disclosure Letter means the company disclosure letter, dated as of the date hereof, delivered by the Seller to the Buyer.

Competition Laws mean the HSR Act, the Sherman Antitrust Act of 1890, as amended, the Clayton Act of 1914, as amended, the Federal Trade Commission Act, as amended, and any other United States federal or state or foreign statutes, rules, regulations, Orders, administrative or judicial doctrines or other laws that are designed to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade.

Consents means all consents, permits, ratifications, authorizations or approvals of any Person necessary (a) to transfer any of the Assets to the Buyer or otherwise to consummate the transactions contemplated hereby, and (b) for the Buyer to assume any of the Assumed Contracts.

Content Agreements means, to the extent primarily used in connection with or otherwise related to the Business, any Contract (a) granting to the Seller and/or any of its Affiliates, including the Channel Operators, any rights to broadcast, record, exploit or otherwise use any event, series of events, programming or other content of any kind or nature, (b) granting to the Seller and/or any of its Affiliates, including the Channel Operators, any rights to the services of, or content developed or produced by, any talent, whether on-air or otherwise, (c) relating to the development, financing or production of any programming by the Seller and/or any of its Affiliates, including the Channel Operators, and (d) whereby the Seller and/or any of its Affiliates, including the Channel Operators, grants to any third party the right to distribute, broadcast, exploit or otherwise use any such programming (other than Affiliation Agreements).

Contracts means all contracts, commitments, leases, purchase orders or other agreements, including IP Licenses, to which the Seller and/or any of its Affiliates, including the Channel Operators is or are parties that are used in connection with or otherwise related to the Business, whether written or oral.

Control or **control** (including, with correlative meaning, the terms **controlled by** and **under common control with**) means, with respect to a Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of securities or as trustee or executor, by Contract or otherwise.

Customer Lists means all lists, documents, records, written information, computer files and other computer readable media in the Seller's or its Affiliates', including the Channel Operators, possession primarily in connection with or otherwise primarily related to the Business, concerning Television Distributors, advertisers and content suppliers.

Debt means, with respect to any Person, all obligations of such Person, without duplication (a) for borrowed money, (b) evidenced by letters of credit and bankers' acceptances (only to the extent drawn, called or matured), notes, bonds, debentures or similar instruments, but in no event including operating leases, (c) in respect of leases which have been or should be, in accordance with GAAP, recorded as capital leases, (d) in respect of purchase money obligations for the acquisition of equipment and fixed assets, but in no event including Ordinary Course trade payables (e) all interest rate and currency swaps, caps, collars and similar agreements or hedging services under which payments are obligated to be made by such Person, whether periodically or upon the happening of a contingency, (f) created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the Seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (g)

secured by any Lien (other than a Permitted Lien) on any property or asset owned or held by such Person regardless of whether the obligations secured thereby shall have been assumed by that Person, or are non-recourse to the credit of that Person, (h) owed to any Affiliate of such Person and (i) any obligation, contingent or otherwise, to guarantee any payment obligation of any other Person; in each case, excluding Accounts Payable.

Distribute means to exhibit, distribute, transmit, broadcast, reproduce, advertise, promote and/or otherwise exploit.

Effective Time means 11:59 p.m., New York City time, on the Closing Date.

Electronic Sell Through means the right to Distribute any programs or other content by any and all means, methods, and/or manners now known or hereafter devised (including broadcast, cable, wire, satellite, wireless, Internet, IPTV, virtual private networks, closed systems, etc.) by which a consumer is authorized to receive, retain and/or have access to a permanent copy of any programs or any other content for viewing on any and all audiovisual devices, whether or not a fee is charged.

ERISA means the United States Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations thereunder, as in effect from time to time.

ERISA Affiliate means any Affiliate of the Seller and any other entity that, together with the Seller, would be treated as a single employer under Section 4001 of ERISA or Section 414 of the Code.

ERISA Affiliate Liability means any actual or contingent Liability of the Seller or any of its ERISA Affiliates under or in respect of any employee benefit plan pursuant to any statute or regulation that imposes Liability on a controlled group or similar basis (as used in Code Sections 52 and 414 or the Coal Industry Retiree Health Benefit Act of 1992, as amended (the **Coal Act**)) as a result of being an ERISA Affiliate, an affiliate under Section 52 of the Code or the Coal Act, or successor prior to the Closing Date with respect to any other Person.

Estimated Marketing Commitments means the estimated Marketing Commitments that remain outstanding at the Effective Time as set forth on the Closing Date Certificate.

Estimated Outstanding Accounts Payable means the estimated Accounts Payable that remain outstanding at the Effective Time as set forth on the Closing Date Certificate, prepared in a manner consistent with the Sellers' books and records.

Exchange Act means the U.S. Securities Exchange Act of 1934, as amended, and all of the rules and regulations promulgated thereunder.

FCC means the Federal Communications Commission.

Final Purchase Price means the sum of (i) One Hundred Two Million One Hundred Eighty Thousand United States dollars (\$102,180,000), *minus* (ii) the amount of Accounts Payable as finally determined pursuant to Section 2.5(c), *minus* (iii) the amount of Marketing Commitments as finally determined pursuant to Section 2.5(c).

Free TV means the right to Distribute any programs or other content as part of a regularly scheduled program service by any and all means, methods, and/or manners now known or hereafter devised (including broadcast, cable, wire, satellite, wireless, Internet, IPTV, virtual private networks, closed systems, etc.) for viewing on any and all audiovisual devices (including televisions, computers, handheld (including mobile) devices, etc.) now known or hereafter devised, and no charge is made for viewing programs or other content (other than any compulsory fees charged by a government or government agency on those who use television sets or for receiving the program service via satellite or cable). For purposes of clarification, Free TV includes (i) simulcast rights (i.e., the right to simultaneously transmit any programs or other content over the Internet); and (ii) on demand rights (i.e., the right to make available any programs or other content to authorized subscribers for on demand viewing).

GAAP means generally accepted accounting principles in the United States as set forth in pronouncements of the Financial Accounting Standards Board (and its predecessors) and the American Institute of Certified Public Accountants and, unless otherwise specified, as in effect on the date hereof or, with respect to any financial statements, the date such financial statements were prepared.

Governmental Authority means (a) any United States federal, state or local or foreign government (or political subdivision thereof), (b) any agency or instrumentality of any such government (or political subdivision thereof), (c) any non-governmental regulatory or administrative authority, body or other organization (to the extent that the rules, regulations, standards, requirements, procedures and Orders of such authority, body or other organization have the force of law), and (d) any United States federal, state or local or foreign court, tribunal, arbitrator or arbitration panel.

Honduran Soccer Amendment means the amendment and restatement to the agreement, dated October 2, 2011, by and between the Seller and Centroamerica TV, LLC concerning the *liga nacional de fútbol de Honduras*, entered into concurrently with the execution and delivery of this Agreement by the Seller and Centroamerica TV, LLC, with effectiveness as of the Closing, in the form attached as Exhibit H.

HSR Act means the Hart Scott Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

Intellectual Property means all right, title and interest in or relating to intellectual property protected, created or arising under any Legal Requirements, in any jurisdiction, including: (i) all patents and applications therefor, including all

continuations, divisionals, revisions, extensions, reexaminations, and continuations-in-part thereof and patents issuing thereon, along with all reissues, reexaminations and extensions thereof; (ii) all trademarks, service marks, trade names, service names, brand names, trade dress rights, logos, corporate names, trade styles, logos and other source or business identifiers, together with the goodwill associated with any of the foregoing, along with all applications, registrations, renewals and extensions thereof (and any embodiments thereof, *e.g.*, graphics files or logo designs) (**Trademarks**); (iii) all Internet addresses and domain names; (iv) all copyrights and all mask works, databases, original works of authorship, design rights and programming, web site and other content of any kind or nature, whether or not registered or published, all registrations and recordings thereof and all applications in connection therewith, along with all reversions, extensions and renewals thereof and any moral rights, and rights equivalent thereto, including the rights of attribution, assignment and integrity; (iv) all trade secrets, confidential business information and other proprietary information, designs, research or development information, processes, procedures, techniques, data, technical information, specifications, operating and maintenance manuals, engineering drawings, methods, know-how, technical data and databases, discoveries, inventions, modifications, extensions, improvements, and other proprietary rights (whether or not patentable or subject to copyright or trade secret protection) (**Trade Secrets**); (v) intellectual property and similar intangible proprietary rights in Software; and (vi) other similar intellectual property or intangible proprietary rights to the foregoing (in whatever form or medium).

Intellectual Property Assets means: (a) all Intellectual Property primarily used or held for use in the operation of the Business in the manner and to the extent currently conducted by the Seller or any of its Affiliates, including the Channel Operators; and (b) all rights to sue at law or in equity for any infringement or other impairment of any such Intellectual Property described in clause (a), including the right to collect damages and proceeds therefrom, and including the Intellectual Property set forth on Schedule 1.1(a) of the Company Disclosure Letter, but excluding any Excluded Assets.

IP Assignment Agreements means the intellectual property assignment agreements to be executed by the parties thereto on the Closing Date in the form of Exhibit I.

Knowledge means, with respect to the Seller, the actual knowledge, after reasonable due inquiry, of Roger Huguet, Marta Turon, Robert Cardenas, Ken Tolle, and Francisco Gimenez.

La Familia Agreement means the Services and Purchase Option Agreement, dated as of November 5, 2012, by and between The Inspirational Network, Inc. (**TIN**) and the Seller.

Labor Laws means any Legal Requirements relating to employment, employment standards and practices, employment of minors, employment discrimination,

immigration, workplace health and safety, collective bargaining, labor relations, wages, hours, family and medical and other leave of absence workplace insurance or pay equity.

Latin America means all of Central America, South America, and the Caribbean, including the following countries and their respective territories, possessions and commonwealths, and any successor countries occupying in whole or in part the geographic territory thereof: Anguilla, Antigua, Antilles, Argentina, Aruba, Bahamas, Barbados, Belize, Bermuda, Bolivia, Bonaire, Brazil, British Virgin Islands, Cayman Islands, Chile, Colombia, Costa Rica, Cuba, Curacao, Dominica, Dominican Republic, El Salvador, Ecuador, French Guiana, Granada, Guatemala, Guadalupe, Haiti, Honduras, Isla de Maiz, Jamaica, Leeward Islands, Martinique, Mexico, Montserrat, Nicaragua, Panama, Paraguay, Peru, Providencia Island, Saba, San Andrés Island, St. Christopher, St. Eustatius, St. Kitts and Nevis, St. Lucia, St. Maarten, St. Vincent & Grenadines, Trinidad & Tobago, Tortola, Turks & Caicos, Surinam, Uruguay, Venezuela, Virgin Gorda and Windward Islands.

Liability means any liability, debt, obligation, loss, damage, claim, cost or expense (including costs of investigation and defense and attorney's fees, costs and expenses), in each case, whether direct or indirect, whether absolute or contingent, whether known or unknown, whether asserted or unasserted, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due.

Legal Actions means all legal actions, suits, litigations, condemnation actions, eminent domain actions, claims, demands, charges, complaints, investigations, grievances, arbitrations, indictments, grand jury subpoenas, other legal, administrative or similar proceedings initiated by any Person or Governmental Authority.

Legal Requirements means applicable common law and any applicable law, international treaty, statute, ordinance, zoning ordinance or variance, subdivision ordinance, rule, regulation, code, executive order, standard, official norm, criteria, guideline, requirement or procedure enacted, adopted, promulgated or applied by any Governmental Authority, including any applicable Order.

Licenses means all licenses, registrations, franchises, qualifications, permits and authorizations issued by any Governmental Authority, and all pending applications therefor or renewals thereof, used in connection with or otherwise related to the Business; excluding, for avoidance of doubt, Intellectual Property.

Liens means any liens, pledges, mortgages, security interests, claims, leases, licenses, charges, options, easements, servitudes, transfer restrictions, encumbrances or other restrictions or limitations of any nature whatsoever; excluding, licenses to Intellectual Property.

Loss means any loss, damage, liability, claim, penalty, fine, judgment, award, cost or settlement payment, fee (including reasonable investigation fees), expense (including reasonable fees, costs and expenses of attorneys, accountants and other outside consultants) or disbursement.

Material Adverse Effect means any event, circumstance, fact, change, development or effect that would reasonably be expected to (a) be materially adverse to the operations, assets, financial condition, or results of operations of the Business (taken as a whole) or (b) adversely affect the ability of the Seller to consummate the transactions contemplated hereby; provided, however, that any event, circumstance, fact, change, development or effect arising from or related to any of the following shall not be taken into account in determining whether a Material Adverse Effect has occurred (unless, with respect to any matter described in the following clauses (i), (ii) and (iii), such matter has a disproportionate effect on the Business relative to other comparable businesses operating in the industry in which the Channel Operators operate): (i) conditions affecting the United States economy generally, (ii) financial, banking or securities markets, (iii) changes in any Legal Requirements, (iv) the public announcement of the transactions contemplated by this Agreement, or (v) the taking of any action required by this Agreement (other than Sections 5.1(b)(viii) and 5.2(b)) or the Transaction Documents.

Multiemployer Plan means a plan as defined in Section 3(37) of ERISA or Section 4001(a)(3) of ERISA.

Orders means any orders, judgments, injunctions, awards, stipulations, permits, authorizations, policies, pronouncements, opinions, agency requirements, administrative resolutions, decrees or writs handed down, issued, adopted or imposed by any Governmental Authority.

Ordinary Course or **ordinary course** means in the ordinary course of business consistent with the past practices of the Seller and its Affiliates primarily relating to the Business.

Pasiones Transaction means the transactions contemplated in the Pasiones UPA, pursuant to which DIRECTV Latin America, LLC will transfer to Seller all of its limited liability company interest in Pasiones TV, LLC.

Pay TV means the right to Distribute any programs or other content (available as part of the program service and/or on an on demand basis) by any and all means, methods, and/or manners now known or hereafter devised (including broadcast, cable, wire, satellite, wireless, Internet, IPTV, virtual private networks, closed systems, etc.) for viewing on any and all audiovisual devices (including televisions, computers, handheld (including mobile) devices, etc.), whether now known or hereafter devised, and which program service is available for purchase alone or in a package with other program services for which a consumer is required to pay a fee to receive such service(s) or a package of services on a periodic basis, and shall include basic subscription television, premium subscription television, previews, etc.

Permitted Lien means (a) Liens for Taxes not yet delinquent or which are being contested in good faith by appropriate proceedings; and (b) with respect to leased or licensed personal property, the terms and conditions of the lease or license applicable thereto.

Person means any individual, corporation, company, partnership, firm, joint venture, association, limited liability company, limited liability partnership, joint-stock company, trust, unincorporated organization, Governmental Authority, or other entity.

Personal Data means data comprised confidential customer information or a natural person's name, street address, telephone number, e-mail address, photograph, social security number or tax identification number, driver's license number, passport number, credit card number, bank information, or biometric identifiers or any other piece of information that, alone or in combination with other information held by the Seller, allows the identification of or contact with a natural person or can be used to identify a natural person, in each case, primarily related to the Business.

Personal Property means all of the equipment, tools, leasehold improvements, plant, inventory, spare parts, supplies and other tangible personal property that are, as of the date hereof, owned or leased by the Seller primarily for use in connection with the Business, plus such additions thereto and less such deletions therefrom arising between the date hereof and the Closing Date in accordance with Section 5.1 hereof, in each case, primarily related to the Business.

Prepaid Expenses means all credits, prepaid expenses, deferred charges, advance payments, security deposits, and prepaid items arising primarily in connection with the operation or conduct of the Business, in each case which are prepaid by the Seller or the Channel Operators, on or prior to the Closing Date and that correspond to a period after the Closing Date. For the avoidance of doubt, Prepaid Expenses shall include amounts recorded as Prepaid expenses and other current assets on the balance sheet of the Channel Operators.

Purchase Price Deficit means the amount by which the Final Purchase Price is less than the Purchase Price paid by the Buyer pursuant to Section 2.4(b).

Purchase Price Surplus means the amount by which the Final Purchase Price exceeds the Purchase Price paid by the Buyer pursuant to Section 2.4(b).

Qualified Representations means the representations and warranties set forth in Sections 3.7(a), 3.7(b)(i)(B), 3.7(b)(iii), 3.7(b)(iv), 3.7(c)(iii), 3.7(c)(iv), 3.10(b), 3.10(c) and 3.15.

Retained Employee Liabilities means each of the following, prior to, on or after the Closing Date:

(a) the Seller's or any of its Affiliates' obligations to contribute to, make payments with respect to or provide benefits under any Seller Benefit Plan, including any arrangement that provides severance-type, stay pay or change-in-control payments or benefits;

(b) any obligation to provide continuation coverage pursuant to COBRA under any Benefit Plan that is a group health plan (as defined in Section 5000(b)(1) of the Code) to the Seller Employees and/or their qualified beneficiaries with respect to a COBRA qualifying event;

(c) any and all Liabilities arising out of, relating to or resulting from any Legal Action with respect to any current or former Seller Employee relating to his/her employment or services, or termination of employment or services, with any of the Seller or any of its Affiliates;

(d) any and all Liabilities arising out of, relating to, or resulting from any defined benefit pension plans, defined contribution plans, post-employment health, welfare or death benefits (and associated Liabilities), any ERISA Affiliate Liability or any non-qualified deferred compensation plans; and

(e) any and all other Liabilities arising out of, relating to or resulting from any current, former or prospective Seller Employees with respect to their employment or termination of employment with the Seller and its Affiliates, including: (i) payments or entitlements that the Seller or any of its Affiliates may owe or have promised to pay to any current, former or prospective Seller Employee, including wages, other remuneration, holiday, bonus, vacation, severance pay (statutory or otherwise), commission, insurance premiums, (ii) any and all Liabilities relating to any employment agreement or Contract, any current, former or negotiated Collective Bargaining Agreement, or the employment practices of Seller or any of its Affiliates, (iii) any Liabilities under the WARN Act relating to actions, inactions or practices of the Seller or any of its Affiliates, (iv) any and all Liabilities relating to workers' compensation claims and occupational health claims against the Seller or any of its Affiliates for accidents or injuries, and (v) any and all Liabilities under any Labor Laws relating to actions, inactions or practices of the Seller or any of its Affiliates.

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

Securities Act means the U.S. Securities Act of 1933, as amended, and all of the rules and regulations promulgated thereunder.

Seller Benefit Plan means any Benefit Plan (a) under which any current or former Seller Employee has any present or future right to benefits; or (b) with respect to which the Seller or any of its ERISA Affiliates has, or may in the future have, any Liability, provided, that Seller Benefit Plan shall not include the Consulting Agreement or the Transition Services Agreements.

Seller Employee means any director, officer, employee, consultant or other independent contractor of the Seller or any of its Affiliates.

Software means, to the extent protectable anywhere in the world under applicable Legal Requirements, computer software, firmware, microcode, embedded

application or similar program, including all source code, object code, specifications, databases and documentation related thereto.

Straddle Period means any taxable period that begins before and ends after the Closing Date.

Subscription Video On Demand means the right to Distribute any programs or other content by any and all means, methods, and/or manners now known or hereafter devised (including broadcast, cable, wire, satellite, wireless, Internet, IPTV, virtual private networks, closed systems, etc.) for viewing on any and all audiovisual devices (including televisions, computers, handheld (including mobile) devices, etc.) whether now known or hereafter devised, at a variable time that the consumer selects, and where a subscription fee is charged (including Hulu Plus, Netflix and/or similar services now known or hereafter devised).

Taxes means (a) any and all federal, state, provincial, local, foreign and other taxes, levies, fees, imposts, duties, and similar governmental charges (including any interest, fines, assessments, penalties or additions to tax imposed in connection therewith or with respect thereto) including taxes imposed on, or measured by, income, franchise, profits or gross receipts, net worth, ad valorem, value added, capital gains, sales, goods and services, use, real or personal property, capital stock, license, branch, payroll, estimated withholding, employment, social security (or similar), unemployment, compensation, utility, severance, production, excise, stamp, occupation, premium, windfall profits, transfer and gains taxes, and customs duties, and (b) any contractual or transferee liability in respect of any items described in clause (a) above.

Tax Return means any return, report, statement, exhibit, attachment or other similar information required to be supplied to or filed with a Governmental Authority with respect to Taxes.

Television Distributor means any Person with whom the Seller or its Affiliates has entered into an Affiliation Agreement or whom the Seller has otherwise permitted to distribute, sub-distribute, carry or otherwise transmit the Channels on a linear or non-linear basis, in any or all media now known or hereafter developed, to which the Seller or any of its Affiliates, including the Channel Operators, is a party, including new, replacement or extension agreements, in each case, solely to the extent relating to the Business.

Transaction Documents means this Agreement, the Transition Services Agreements, the IP Assignment Agreements, the Assignment and Assumption Agreement, the DTV Amendment, the Sports Rights Agreement, the Keep Well Agreement, the Consulting Agreement and the Honduran Soccer Amendment.

Treasury Regulations means the regulations promulgated under the Code.

Videogram means the right to Distribute any programs or other content by any and all video devices now known or hereafter devised, including any and all forms, formats and sizes of videocassette, cartridge, phonogram, tape, video disc, laser disc, 8mm recording, DVD (including standard, down-res and high definition (e.g., Blu Ray and HD DVD)), DVD-ROM, Internet access-ready DVD, CD-I and CD-ROM, Video Compact Disc, UMD or other game console or game device medium, memory stick, memory card, any and all forms of embedding, computer hard drive or microprocessor, together with any other form or format of audio-visual recording or storage medium, now known or hereafter devised.

Video On Demand means the right to Distribute any programs or other content by any and all means, methods, and/or manners now known or hereafter devised (including broadcast, cable, wire, satellite, wireless, Internet, IPTV, virtual private networks, closed systems, etc.) for viewing on any and all audiovisual devices (including televisions, computers, handheld (including mobile) devices, etc.) whether now known or hereafter devised, at a variable time that the consumer selects, and whether or not a fee is charged (including any service that charges a transactional fee such as currently charged by CinemaNow, iTunes, Amazon Instant Video and/or similar services now known or hereafter devised, any service that charges a subscription fee for Subscription Video On Demand (as defined above) such as currently charged by Hulu Plus, Netflix, and/or similar services now known or hereafter devised, and/or any free and/or advertising financed services such as Crackle, Youtube, Hulu and/or similar services now known or hereafter devised).

WARN Act means the Worker Adjustment and Retraining Notification Act (29 USC § 2101 et seq.) and any similar foreign, state or local Law.

1.2 Interpretation. Unless otherwise indicated to the contrary in this Agreement by the context or use thereof:

(a) the words, herein, hereto, hereof and words of similar import refer to this Agreement as a whole and not to any particular Section or paragraph hereof;

(b) words importing the masculine gender shall also include the feminine and neutral genders, and vice versa;

(c) words importing the singular shall also include the plural, and vice versa;

(d) reference to any Person includes such Person's heirs, executors, personal representatives, administrators, successors and assigns; provided, however, that nothing contained in this clause (d) is intended to authorize any assignment or transfer not otherwise expressly permitted by this Agreement;

- (e) reference to a Person in a particular capacity or capacities excludes such Person in any other capacity;
- (f) reference to any Contract means such Contract as amended, supplemented or modified from time to time in accordance with the terms thereof;
- (g) all references to Sections shall be deemed to be references to the Sections of this Agreement;
- (h) all references to Exhibits shall be deemed to be references to the Exhibits attached hereto which are made a part hereof and incorporated herein by reference;
- (i) with respect to the determination of any period of time, the word from means from and including and the words to and until each means to but excluding;
- (j) reference to any Legal Requirements or any License means such Legal Requirements or License as amended, modified, codified, reenacted, supplemented or superseded in whole or in part, and in effect from time to time on or prior to the Closing Date;
- (k) references to sections of any Legal Requirements shall be construed to also refer to any successor sections thereto in effect on or prior to the Closing Date;
- (l) accounting terms used but not defined herein shall be construed in accordance with GAAP or where different as consistently applied by the Seller in its Financial Statements and noted in such statements;
- (m) where any provision of this Agreement refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person;
- (n) references to any financial statement includes the notes thereto; and
- (o) whenever the words include, includes or including are used in this Agreement they shall be deemed to be followed by the words without limitation.

1.3 Terms Defined Elsewhere in this Agreement. The following is a list of additional terms used in this Agreement and a reference to the Section hereof in which such term is defined:

Term	Section
Agreement	Preamble
Allocation Schedule	2.6(b)
Assets	2.1
Assignment and Assumption Agreement	7.2(a)
Assumed Contracts	2.1(b)
Assumed Liabilities	2.3(a)
Basket	9.4
Brands	5.8
Business	Recitals
Buyer	Preamble
Buyer Fundamental Representations	9.1
Buyer Indemnified Parties	9.2
Cap	9.4
CATV	Recitals
Channels	Recitals
Claimant	9.5(a)
Closing	7.1
Closing Date	7.1
Closing Date Certificate	2.5(a)
Competing Business	5.7(a)
Confidentiality Agreement	5.3(a)
Consulting Agreement	Recitals
Disputing Party	2.5(c)
DTV Amendment	Recitals
Enforceability Exceptions	3.2
Exchange Act Information	5.5
Excluded Assets	2.2
Financial Statements	3.10(a)
Form 8-K Information	5.5
Imagina Marks	2.2(h)
Inbound License Agreements	3.17(b)
Indemnifier	9.5(a)
Independent Accounting Firm	2.5(c)
IP Licenses	3.17(b)
Keep Well Agreement	Recitals
Licensed Intellectual Property	3.17(a)
Marketing Commitments	5.1(b)(viii)
Material Contracts	3.7(a)
Non-Compete Parties	Preamble
Non-Technical Services Agreement	Recitals
Nonassignable Asset	5.2(a)
Objections Notice	2.6(b)
Outbound License Agreements	3.17(b)
Owned Intellectual Property	3.17(a)
Pasionos	Recitals

Term	Section
Pasionos UPA	Recitals
PCAOB	5.5
Post-Closing Collection Amounts	5.9(b)
Post-Closing Statement	2.5(b)
Purchase Price	2.4(a)
Required Consents	6.1(c)
Residual Assets	5.6
Response Period	2.6(b)
Retained Liabilities	2.3
Restricted Party	5.7(a)
Restricted Sports Programming	5.7(b)
Restrictive Covenants	5.7(d)
Required Closing Information	5.5
Seller	Preamble
Seller Fundamental Representations	9.1
Seller Indemnified Parties	9.3
Significant Advertisement Firm	3.19
Significant Supplier	3.19
Sports Rights Agreement	Recitals
Tax Representations	9.1
Technical Services Agreement	Recitals
Termination Date	8.2(b)
Third Party Claim	9.5(b)
TIN	1.1
Transition Services Agreements	Recitals
TVD	Recitals

SECTION 2 SALE AND PURCHASE OF ASSETS

2.1 Agreement to Sell and Buy. Subject to the terms and conditions set forth in this Agreement, the Seller hereby agrees to sell, convey, assign and otherwise transfer (or cause to be sold, conveyed, assigned and otherwise transferred) to the Buyer at the Closing, and the Buyer agrees to purchase from the Seller or its Affiliate, including the Channel Operators, free and clear of all Liens (other than Permitted Liens of the type described in clause (b) of the definition of Permitted Liens), all of the Seller's and its Affiliates' right, title and interest in and to all of the following property and assets, whether or not reflected on the books and records of the Seller and its Affiliates and wherever located, used in connection with the Business, other than the Excluded Assets (collectively, the **Assets**):

(a) the list of Integrated Receiver Decoders (IRDs), including serial numbers (if available) and locations, set forth on Schedule 2.1(a) of the Company Disclosure Letter;

(b) all Affiliation Agreements and all Content Agreements, in each case, set forth on Schedule 2.1(b) of the Company Disclosure Letter, and all other

Contracts set forth on Schedule 2.1(b) of the Company Disclosure Letter (the **Assumed Contracts**);

- (c) the Customer Lists set forth on Schedule 2.1(c) of the Company Disclosure Letter;
- (d) the Prepaid Expenses;
- (e) the Intellectual Property Assets and the IP Licenses, including those set forth on Schedule 2.1(e) of the Company Disclosure Letter;
- (f) the Books and Records, except as specifically provided by Section 2.2(e);
- (g) all of the Seller's goodwill primarily associated with the Business;
- (h) all claims-made insurance benefits of the Seller or any of its Affiliates existing on the date hereof, and rights to make future claims and collect proceeds therefrom, in each case, to the extent primarily arising from or primarily relating to the conduct of the Business, the Assets or the Assumed Liabilities;
- (i) all rights under all warranties, representations, and guarantees made by suppliers, distributors and contractors primarily associated with the Business;
- (j) any claims or causes of action of the Seller or any of its Affiliates against any third party primarily relating to the Business or the Assets, whether choate or inchoate, known or unknown, contingent or non-contingent; and
- (k) all other Assets listed on Schedule 2.1(k) of the Company Disclosure Letter.

2.2 Excluded Assets. Notwithstanding Section 2.1 of the Company Disclosure Letter, the Assets shall exclude the following property and assets (the **Excluded Assets**):

- (a) the Accounts Receivable outstanding as of the Effective Time;

- (b) all equity interests in the Seller and its Affiliates;
- (c) all rights and interests of the Seller under this Agreement and the other Transaction Documents;
- (d) any cash or cash equivalents (including bank accounts) owned or held by the Seller or any of its Affiliates;
- (e) any Books and Records (i) which the Seller or its Affiliates are required by applicable Legal Requirements to retain; (ii) exclusively related to Taxes paid

or payable by Seller or any of its Affiliates; or (iii) which relate to the process of the sale of the Business and are not otherwise used in connection with or otherwise related to the Business; provided, however, that from time to time upon the prior request of the Buyer, the Seller shall provide the Buyer with access to such books and records to the extent (x) reasonably required by the Buyer, (y) such access would not result in a waiver or breach of any attorney/client privilege, and (z) such access would not reasonably be expected to result in violation of applicable law;

(f) any claims, rights and interest in and to any refunds or credits of Taxes for taxable periods ending on or prior to the Closing Date and all beneficial interests in any portion of a refund or credit for a Straddle Period that is allocable to the portion of such Straddle Period ending on or before the Closing Date;

(g) any assets, properties and rights used for the purpose of providing the services and licenses contemplated by the Transition Services Agreements, the Consulting Agreement and the Sports Rights Agreement;

(h) any asset of the Seller or its Affiliates that is (x) not used primarily in the Business, including (i) certificates of incorporation or organizational documents, qualifications to conduct business as a foreign corporation, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, stock transfer books, stock certificates and other documents relating to the organization, maintenance and existence of Seller and its Affiliates; (ii) records related to Taxes paid or payable by Seller and its Affiliates; (iii) any real property interests; (iv) Software, and (v) the marks Imagina and Media World and any other marks set forth on Schedule 2.2(h) of the Company Disclosure Letter, and any name, trademark, service mark, trade name, logo, trade dress, internet domain name or other indicia of origin or other Trademark containing or comprising the foregoing, or any related derivatives, abbreviations, translations, acronyms or other formatives based on such marks, whether alone or in combination with any other words, phrases, or designs, in each case, confusingly similar thereto, and all registrations, applications and renewals thereof and all rights and goodwill associated therewith (collectively, the **Imagina Marks**);

(i) except to the extent provided in Section 2.1(h), all insurance policies and binders and all claims, refunds and credits from insurance policies or binders due or to become due with respect to such policies or binders; and

(j) any other assets specifically identified on Schedule 2.2(j) of the Company Disclosure Letter.

2.3 Assumption of Liabilities and Obligations.

(a) As of the Closing, the Buyer shall assume the following (and only the following) obligations and liabilities of the Seller (collectively, the **Assumed Liabilities**):

(i) all Liabilities of the Seller and its Affiliates under the Affiliation Agreements listed on Schedule 2.1(b) of the Company Disclosure Letter, in each case, regardless of whether arising or related to the period of time after or prior to the Effective Time; including, for avoidance of doubt, those arising out of a breach of contract, breach of warranty, fraud, tort, infringement, whether based on negligence, strict liability or otherwise;

(ii) all Liabilities of the Seller and its Affiliates under the Assumed Contracts, in each case to the extent arising after, and related to the period of time after, the Effective Time;

(iii) Liabilities that relate to the Buyer's ownership of the Assets or conduct of the Business, in each case, after the Effective Time;

(iv) all Accounts Payable outstanding as of the Effective Time; and

(v) such other obligations or liabilities specifically identified on Schedule 2.3(a) of the Company Disclosure Letter.

(b) Except as set forth in Section 2.3(a) above, the Assumed Liabilities shall not include (and the Seller or its respective Affiliates shall retain):

(i) any Liability related to or arising out of any of the Excluded Assets;

(ii) any Liability related to or arising out of any Asset to the extent such Liability relates to or arises out of the time period prior to the Effective Time;

(iii) any Liability related to or arising out of Legal Actions pending as of the Closing Date against the Seller, any of its Affiliates or otherwise relating to the Business;

(iv) any Liability (including any future Legal Actions) related to or arising out of the conduct of the Business or ownership of the Assets prior to the Effective Time;

(v) any Liability of the Seller or any of its Affiliates or otherwise of the Business owed to the Seller or any of its Affiliates (except with respect to Liabilities under the Transaction Documents) or to any of its or their members, directors, managers, officers or employees;

(vi) any Liability under any Assumed Contract (other than the Affiliation Agreements listed on Schedule 2.1(b) of the Company Disclosure Letter) that arises after the Effective Time but that arises out of or relates to any breach thereof prior to the Effective Time;

- (vii) all Retained Employee Liabilities;

- (viii) any fees and expenses incurred by or on behalf of the Seller or any of its Affiliates in connection with or related to the transactions contemplated hereunder, including the fees and expenses of investment bankers, lawyers, accountants (including, with respect to the preparation of the Financial Statements) and other professional advisors;

- (ix) any Liability of the Seller or any of its Affiliates arising out of or in connection with the negotiation and preparation of this Agreement and the other Transaction Documents or the Seller's or its Affiliates' consummation and performance of the transactions contemplated by this Agreement and the other Transaction Documents;

- (x) any Debt of the Seller or any of its Affiliates;

- (xi) any Liability related to or arising out of any agreement or understanding between or among the Seller and any of its Affiliates;

- (xii) any Liability related to or arising out of the Seller's or its Affiliates' failure to obtain any License necessary for the conduct of the Business at any time prior to the Closing;

- (xiii) any Liability of any kind or nature for Taxes of the Seller and, with respect to the Assets, for any period ending on or before the Closing Date (including any obligation or liability pursuant to any tax sharing agreement, tax indemnification or similar arrangement) and any Taxes payable by the Seller in connection with the transactions contemplated hereby; and

- (xiv) any Liability that is not expressly assumed by the Buyer under Section 2.3(a) of this Agreement (in each case other than any Taxes that are the responsibility of Buyer pursuant to Section 10).

All Liabilities of the Seller and its Affiliates other than the Assumed Liabilities (collectively, the **Retained Liabilities**) shall remain and be the Liabilities solely of the Seller and/or its applicable Affiliate. The Seller shall, or shall cause its Affiliates to, discharge and satisfy, and pay when due, all Retained Liabilities.

2.4 Purchase Price.

Edgar Filing: HEMISPHERE MEDIA GROUP, INC. - Form 424B3

(a) Subject to adjustments pursuant to Section 2.5, the purchase price for the Assets (the **Purchase Price**) shall be an amount equal to the sum of (i) One Hundred Two Million One Hundred Eighty Thousand United States dollars (\$102,180,000), *minus* (ii) the amount of Estimated Outstanding Accounts Payable, *minus* (iii) the amount of Estimated Marketing Commitments.

(b) At the Closing, the Buyer shall pay or cause to be paid to or for the account of the Seller an amount equal to the Purchase Price, by wire transfer of

immediately available funds pursuant to wire instructions which shall be delivered by the Seller to the Buyer no later than three (3) Business Days prior to the Closing Date; provided, that the Buyer, at the direction of the Seller, shall pay \$13,333,334 of the Purchase Price to DIRECTV Latin America, LLC pursuant to the terms of the Pasionos UPA. The parties agree that the Purchase Price shall be paid at the Closing to the Seller for and in consideration of Seller's transfer and assignment of the Assets to the Buyer hereunder and shall be reported by all parties for all Tax purposes in a manner consistent with this provision. In addition to the foregoing payment, as consideration for the grant, sale, assignment, transfer and delivery of the Assets, Buyer shall assume the Assumed Liabilities.

2.5 Purchase Price Adjustments.

(a) Not less than five (5) days prior to the Closing Date, Seller shall deliver to Buyer a statement (the **Closing Date Certificate**), which sets forth Seller's reasonable, good faith estimate of the Estimated Outstanding Accounts Payable and the Estimated Marketing Commitments, including a reasonably detailed supporting calculation thereof. The Closing Date Certificate shall be based upon the books and records of Seller and shall be prepared in accordance with the accounting principles, methods and practices utilized in preparing the audited Financial Statements, applied on a consistent basis. The Seller shall consult with the Buyer in the preparation of such Closing Date Certificate, shall provide the Buyer with a draft thereof (together with any supporting work papers) prior to the Closing Date and shall take into account the reasonable comments of the Buyer prior to preparing the final Closing Date Certificate to be delivered pursuant to this Section 2.5(a).

(b) Within 60 days after the Closing Date, the Buyer shall in good faith prepare and deliver to the Seller a statement of the Accounts Payable and the Marketing Commitments outstanding as of the Effective Time (the **Post-Closing Statement**), including a reasonably detailed supporting calculation thereof. The Post-Closing Statement shall (a) be based upon the books and records of the Seller, (b) shall be prepared in accordance with the accounting principles, methods and practices utilized in preparing the audited Financial Statements, applied on a consistent basis, and (c) shall not include amounts for Marketing Commitments that were not included in the Estimated Marketing Commitments and to the extent the applicable marketing department of the distributor provided evidence, prior to the Closing, of the satisfaction of such Marketing Commitment pursuant to Section 5.1(b)(viii).

(c) The Post-Closing Statement shall be final and binding on the parties unless the Seller, within 45 days following the delivery of the Post-Closing Statement, delivers to the Buyer written notice of disagreement with such Post-Closing Statement, which notice shall (i) describe in detail the nature of any such disagreement, (ii) identify the specific items involved and the dollar amount of such disagreement and (iii) only include good faith disagreements based on (A) components not being calculated in accordance with the accounting principles, methods and practices utilized in preparing the audited Financial Statements, applied on a consistent basis or (B) mathematical errors. If the Seller delivers a written notice of disagreement within the aforesaid 45-day

period, then the Seller and the Buyer shall seek in good faith to resolve in writing the disputed matters set forth in such notice of disagreement within 30 days of receipt by the Buyer of a written notice of disagreement from the Seller, or such longer period as may be agreed by the Buyer and the Seller. If the Seller and the Buyer are unable to resolve all disagreements within such 30-day period, then the Seller and the Buyer (each, a **Disputing Party** and together the **Disputing Parties**) shall submit such remaining disagreements to the Miami office of Ernst & Young LLP or such other nationally-recognized accounting, valuation or consulting firm as is acceptable to the Disputing Parties (the **Independent Accounting Firm**) for arbitration, in accordance with the standards set forth in this Section 2.5. Each of the parties represents and warrants that neither it nor any of its Affiliates has a material relationship with the Independent Accounting Firm. The Independent Accounting Firm so selected will consider only those items and amounts set forth in the Post-Closing Statement as to which the Disputing Parties have disagreed within the time periods and on the terms specified above and must resolve the matter in accordance with the terms and provisions of this Agreement. Each Disputing Party may furnish to the Independent Accounting Firm such information and documents as it deems relevant, with copies of such submission and all such documents and information being concurrently given to the other Disputing Party. Neither Disputing Party shall have or conduct any communication, either written or oral, with the Independent Accounting Firm without the other Disputing Party either being present or receiving a concurrent copy of any written communication. The Independent Accounting Firm may conduct a conference concerning the disagreements between the Disputing Parties, at which conference each Disputing Party shall have the right to (i) present its documents, materials and other evidence (previously provided to the Independent Accounting Firm and the other Disputing Party) and (ii) have present its or their advisors, accountants, counsel and other representatives. The Independent Accounting Firm shall resolve each item of disagreement based solely on the presentations and supporting material provided by the Disputing Parties and not pursuant to any independent review and may not assign a value to any particular item greater than the greatest value for such item claimed by either Disputing Party or less than the lowest value for such item claimed by either Disputing Party, in each case as presented to the Independent Accounting Firm. The Independent Accounting Firm shall issue a detailed written report that sets forth the resolution of all items in dispute and that contains a final Post-Closing Statement. Such report shall be final and binding upon the Disputing Parties. The fees and expenses of the Independent Accounting Firm shall initially be borne equally between the Seller, on the one hand, and the Buyer, on the other hand; provided, that such fees and expenses shall ultimately be allocated in accordance with Section 2.5(e). The Disputing Parties shall cooperate fully with the Independent Accounting Firm and respond on a timely basis to all requests for information or access to documents or personnel made by the Independent Accounting Firm or by the Disputing Parties, all with the intent to fairly and in good faith resolve all disputes relating to the Post-Closing Statement as promptly as reasonably practicable.

(d) Within five (5) Business Days following the final determination of the Accounts Payable and the Marketing Commitments outstanding as of the Effective Time in accordance with Section 2.5(c), if there is a Purchase Price Deficit, then the Seller shall pay to the Buyer an amount equal to such excess. If there is

a Purchase Price Surplus, then the Buyer shall pay to the Seller an amount equal to the Purchase Price Surplus.

(e) The fees, costs and expenses of the Independent Accounting Firm (i) shall be paid by the Buyer in the proportion that the aggregate dollar amount of such disputed items so submitted that are successfully disputed by Seller (as finally determined by the Independent Accounting Firm) bears to the aggregate dollar amount of such items so submitted, and (ii) shall be paid by the Seller in the proportion that the aggregate dollar amount of such disputed items so submitted that are unsuccessfully disputed by the Seller (as finally determined by the Independent Accounting Firm) bears to the aggregate dollar amount of such items so submitted.

2.6 Allocation of the Purchase Price.

(a) Allocation of the Purchase Price among the Channels. The Buyer and the Seller agree that, for the Buyer's and Seller's respective U.S. federal, state and local income tax purposes, the sum of the Purchase Price and the Assumed Liabilities assumed by the Buyer, to the extent such Assumed Liabilities constitute part of the purchase price for Tax purposes, shall be allocated among the Channels consistent with the allocation contained in Schedule 2.6 of the Company Disclosure Letter. The allocation contained in Schedule 2.6 of the Company Disclosure Letter will be adjusted to reflect adjustments to the purchase price pursuant to this Agreement. For all Tax purposes, the Buyer and the Seller will report the transactions contemplated by this Agreement in a manner consistent with Schedule 2.6 of the Company Disclosure Letter, including adjustments described in the prior sentence, and neither will take any position inconsistent therewith in any Tax Return.

(b) Negotiation of Asset Allocation Schedule Method.

(i) Within 90 days after the Closing, the Buyer shall prepare and deliver to the Seller a schedule (an **Allocation Schedule**) allocating the purchase price allocated to each Channel pursuant to Section 2.6(a) among the Assets of such Channel, in such amounts reasonably determined by the Buyer to be consistent with Section 1060 of the Code. For this purpose, the intangible assets of the Channels shall include only their goodwill, going concern value, unregistered copyrights, domain names, Affiliation Agreements, Trademarks and Trade Secrets.

(ii) The Seller shall have a period of ten (10) Business Days after the delivery of the Allocation Schedule (the **Response Period**) to present in writing to the Buyer notice of any objections the Seller may have to the allocations set forth therein (an **Objections Notice**). Unless the Seller timely objects, such Allocation Schedule shall be binding on the parties without further adjustment, absent manifest error.

(iii) If the Seller shall raise any objections within the Response Period, the Buyer and the Seller shall negotiate in good faith and use their reasonable best efforts to resolve such dispute. If the parties fail to agree within fifteen

days after the delivery of the Objections Notice, then the disputed items shall be resolved by the Independent Accounting Firm, in accordance with the procedural principles of Section 2.5(c).

(iv) For all Tax purposes, the Buyer and the Seller shall report the transactions contemplated by this Agreement in a manner consistent with the terms of this Agreement, and none of them will take any position inconsistent therewith in any Tax Return, unless otherwise required by applicable Law.

SECTION 3 REPRESENTATIONS AND WARRANTIES OF THE SELLER

The Seller hereby represents and warrants to the Buyer that the following representations and warranties are true and complete as of the date hereof and as of the Closing Date. For purposes of these representations and warranties (other than those in Section 3.2), the term the Seller shall include the Channel Operators.

3.1 Organization, Standing and Authority. The Seller is a limited liability company duly organized, validly existing and in good standing under the laws of its jurisdiction of formation and the Seller and the Channel Operators have, together, all requisite power and lawful authority to own, lease and operate the Business and the Assets, to carry on the Business as now conducted and to execute, deliver and perform this Agreement and the other Transaction Documents to which it is a party in accordance with their terms. The Seller is qualified to transact business and is in good standing in each jurisdiction in which the nature of the Business or location of the Assets requires such qualification, except where the failure to be so qualified would not have or reasonably be expected to have a Material Adverse Effect.

3.2 Authorization and Binding Obligation. The execution and delivery of this Agreement and the other Transaction Documents to which the Seller is a party and the performance by the Seller of the transactions contemplated hereby and thereby have been duly authorized by all necessary actions on the part of the Seller. This Agreement and the other Transaction Documents to which the Seller is a party have been duly executed and delivered by the Seller and constitute the legal, valid and binding obligation of the Seller, enforceable against the Seller in accordance with their terms, except to the extent such enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally, and the application of general principles of equity (collectively, the **Enforceability Exceptions**).

3.3 Absence of Conflicting Agreements. Assuming the accuracy of the Buyer's representations and warranties in Section 4, the execution and delivery of this Agreement and the other Transaction Documents to which the Seller is a party and the performance by the Seller of the transactions contemplated hereby and thereby (with or without the giving of notice, the lapse of time, or both): (a) do not require the Consent of any Person, other than the Consents set forth on Schedule 3.3 of the Company Disclosure Letter; (b) will not conflict with any of the Seller's organizational documents, other than as set forth on Schedule 3.3 of the Company Disclosure Letter; (c) are not prohibited or

restricted by any Employee Plan or Collective Bargaining Agreement; (d) will not conflict with, result in a breach or violation of, or constitute a default under any material Order applicable to the Seller, the Assets or the Business; (e) except as set forth on Schedule 3.3 of the Company Disclosure Letter, will not conflict with, result in a material breach, impairment, loss or violation of, or constitute a default under any of the Assets (including any of the Assumed Contracts or any Material Contract to which the Seller is a party); (f) except as set forth on Schedule 3.3 of the Company Disclosure Letter, will not give rise to a right of termination, amendment, cancellation or acceleration of any right or obligation of the Seller (including any right or obligation of the Seller under any of the Assumed Contracts) or a loss of any material benefit to which the Seller is entitled; (g) will not result in the creation of any Lien upon any of the Assets, except as contemplated herein or with respect to Permitted Liens; and (h) will not violate in any material respect any applicable Legal Requirements applicable to the Seller, the Assets or the Business.

3.4 Books and Records. The Books and Records, copies of which have been made available to the Buyer, (i) have been kept in the Ordinary Course, and (ii) to Seller's Knowledge, are true, complete and correct in all material respects.

3.5 Ownership and Transfer of Assets. The Seller or the Channel Operators own and have good title to each of the Assets, free and clear of all Liens (other than Permitted Liens), and other than as set forth on Schedule 3.5 of the Company Disclosure Letter, have full power and authority to convey the Assets free and clear of any and all Liens (other than Permitted Liens of the type described in clause (b) of the definition of Permitted Liens). Upon execution and delivery of the Assignment and Assumption Agreement or such other agreement as may be required by local Legal Requirement in form and substance reasonably satisfactory to the Buyer and the receipt of the applicable Consents, the Seller will convey to the Buyer good title to the Assets free and clear of any and all Liens (other than Permitted Liens of the type described in clause (b) of the definition of Permitted Liens).

3.6 Exclusive Dealing. Other than as set forth on Schedule 3.6 of the Company Disclosure Letter, neither the Seller nor any of its Affiliates is party to any contract, commitment, lease or other agreement, whether written, oral or implied, relating to any Alternative Transaction.

3.7 Contracts.

(a) Schedule 3.7(a) of the Company Disclosure Letter sets forth a true, correct and complete list of all of the Contracts that are material to the Business and that are of a type or category listed below (the **Material Contracts**):

(i) Contracts (i) involving payments or other consideration in excess of \$50,000 in any twelve (12) month period or \$250,000 over the life of the Contract or (ii) which, if cancelled by Seller, would require Seller's making payments totaling more than \$100,000 as a result thereof;

- (ii) Contracts subjecting Seller or the Channel Operators to a covenant not to compete or otherwise restricting Seller's or the Channel Operators' ability to conduct any business anywhere in the world;
- (iii) Contracts containing a right of first refusal, first offer or first negotiation with respect to the Business or the Assets;
- (iv) Contracts relating to any joint venture, partnership, strategic alliance or similar arrangements;
- (v) Contracts between the Seller and employees of, or consultants to, the Business that provides for annual payments in excess of \$75,000;