**DVB COMMON DESCRAMBLING SYSTEM
LICENCE AND NON-DISCLOSURE AGREEMENT**

**BETWEEN :**

(1) EUROPEAN TELECOMMUNICATIONS STANDARDS INSTITUTE, as Custodian (the "Custodian") named by Canal+ SA, Centre Commun d'Etudes de Télédiffusion et Télécommunications, Irdeto BV and News Datacom Limited (the "Companies")

**and**

(2) the company whose name appears on the signature page hereof (the "Licensee");

**WHEREAS :**

i) The EP-DVB (all capitalized terms herein are defined in Article 1 of this Agreement) has been formed to develop a digital video broadcasting system to be used as the basis for digital television services;

ii) The Companies, members of the EP-DVB, have developed together a Common Descrambling System which has been adopted by the Steering Board of the
EP-DVB;

iii) By a resolution of its Steering Board, the EP-DVB has agreed on the necessity of defining the confidentiality rules to be applied for the distribution and use of Confidential Information;

iv) The Companies desire to promote the use of the DVBS and to license, in exchange for a nominal royalty, the Common Descrambling System for the development, manufacture and the other activities related to Decoders, to certain bona fide users specified in Article 5.6 (and found suitable under the DVB Custodian Agreement) on a non-discriminatory basis and without liability to the Companies for infringement of any patent or otherwise;

v) A nominal royalty only is payable by the Licensee under this Agreement and by other licensees of the Common Descrambling System as a contribution by the Companies to the work of the EP-DVB, with the hope that other holders of rights in technology incorporated in DVBS will make a similar contribution and as part of the implementation of the conditional access package of the EP-DVB adopted by the Steering Board of the EP-DVB on 27 September 1994;

vi) The Custodian, a recognized European standards-making organization, has entered into the DVB Custodian Agreement with the Companies under which the Custodian, on behalf of the Companies, (A) administers the grant by the Companies, as licensors, of a licence to certain bona fide users specified in Article 5.6 and (B) undertakes to distribute and to ensure the confidentiality of the Confidential Information;

vii) The Licensee, whose activities are described in Article 5.6, has applied, and paid to the Custodian a non-refundable administrative charge and to the Companies the royalty, to be a licensee of the Common Descrambling System for the purposes set out in Article 5.6; and

viii) The Custodian, with the assistance of the Licensee, intends to obtain any governmental licence, for export or otherwise, for the Confidential Information and further implementation of this Agreement and upon the grant of such governmental licence this Agreement shall become effective;

**IT IS HEREBY AGREED AS FOLLOWS :**

**ARTICLE 1 - DEFINITIONS**

For the purpose of this Agreement, the following words shall have the meanings ascribed to them below:

1.1 **"Affiliate" :** any subsidiary or parent company of the Licensee, as well as any entity owned or controlled, directly or indirectly by the Licensee or by an entity owning or controlling the Licensee in the same way.

 Ownership or control shall exist through the direct or indirect:

 - ownership of 50 percent or more of the nominal value of the issued equity share capital or of 50 percent or more of the shares entitling the holders to vote for the election of directors or persons performing similar functions, or

 - right by any other means to elect or appoint directors or persons who collectively can exercise such control.

1.2 **"Common Descrambling System" :** the descrambling system approved, on 19 May 1994, by the Steering Board of the EP-DVB for DVBS and any modifications and improvements thereof similarly specified which belong to the Companies.

1.3 **"Companies" :** the entities identified as such on the first page of this Agreement.

1.4 **"Confidential Information" :** any information delivered or communicated by the Custodian or any Company to the Licensee under this Agreement or any other information of a confidential nature relating to the Common Descrambling System, made available to the Licensee by the Custodian or by any Company, which is marked confidential or proprietary, or disclosed orally and identified as confidential at the time of disclosure and confirmed to be so in writing within 15 days of disclosure, or is known to be confidential. Confidential Information shall not include information that (i) is now, or later becomes, generally known to the public (other than through the Licensee's fault) ; (ii) is known by the Licensee at the time of receipt ; (iii) is lawfully obtained by the Licensee from any third party who has lawfully obtained such information. The Licensee shall bear the burden of showing that any of the foregoing exclusions applies to any part of the Confidential Information.

1.5 **"Custodian" :** the European Telecommunications Standards Institute, a recognized European standards-making organization, or any replacement custodian notified to the Licensee under Article 5.2.

1.6 **"Decoder" :** a device, apparatus or mechanism designed or specifically adapted, totally or partially, to enable access in the clear to a DVBS-compatible service scrambled by the common scrambling system (approved by the Steering Board of the EP-DVB for DVBS) and any modifications and improvements thereof and which can be descrambled using the Common Descrambling System.

1.7 **"DVB Custodian Agreement" :** the DVB Descrambling Custodian Agreement between the Custodian and the Companies.

1.8 **"Effective Date" :** the date on which occurs the later of (i) the grant of all governmental licences, if any, for the delivery of the Confidential Information and further implementation of this Agreement and (ii) the finding that the Licensee is suitable under section 2 of the DVB Custodian Agreement.

1.9 **"DVBS" :** the digital video broadcasting systems specified by the EP-DVB for digital one-way broadcasting (including without limitation video-on-demand) as approved from time to time by the Steering Board of the EP-DVB and delivered for standardization to the competent standard-making organization.

1.10 **"EP-DVB" :** the European Project - Digital Video Broadcasting or, if such project cease to exist, the body succeeding to its activities.

1.11 **"Licensee" :** the company whose name appears on the signature page of this Agreement.

1.12 **"Schedule" :** the schedule attached to this Agreement.

**ARTICLE 2 - LICENCE**

2.1 The Custodian, on behalf of the Companies as licensors, hereby grants, as of the Effective Date, to the Licensee a non-exclusive, non-transferable right and licence to use the Common Descrambling System (including any intellectual property rights of the Companies directly related thereto), on world-wide basis, solely for the following purposes : the design, development, testing and manufacture of Decoders incorporating DVBS and of components for Decoders ; conducting an evaluation of the commercial application of the Common Descrambling System to DVBS ; the sale or other disposal, servicing and maintenance of Decoders or components ; provided that any such activity is only in respect of full implementation of the Common Descrambling System as described in the Confidential Information. The licence granted hereby (including its territory, field of use and implementation and the Effective Date) is subject to the terms of the governmental licence, if any, required in respect of the Licensee and to applicable law.

2.2 In consideration of the rights granted under this Agreement, the Licensee shall pay to the Companies the one-term royalty in the amount, in the manner, and at the time specified in the Schedule. If the Custodian fails to obtain a governmental licence in respect of this Agreement (or the Licensee is found not suitable under section 2 (iv) of the DVB Custodian Agreement) such royalty shall be returned to the Licensee. Notwithstanding the first sentence of this Article 2.2 and the Schedule, if a directive or other instrument is adopted by the European Union which substantially limits the implementation of one or more elements of the conditional access package adopted by the Steering Board of the EP-DVB on 27 September 1994, the Companies and the Licensee shall, during a period of 60 days following notice by the Custodian of such limitation, renegotiate the amount, the manner and time of further royalties (the "Repriced Royalties") in consideration of the rights granted under this Agreement. The Repriced Royalties shall be consistent with other common arrangements for the licence of intellectual property rights in respect of other specifications of the EP-DVB (or, in the absence of such arrangements, based on terms which are fair, reasonable and non discriminatory) and shall upon agreement by the Companies and the Licensee replace the provisions of the first sentence of this Article 2.2.

2.3 The Licensee shall not file any patent registration or claim any industrial or intellectual property right incorporating all or any part of the Confidential Information. The Licensee agrees that the Confidential Information and all other industrial or intellectual property rights in the Common Descrambling System remain the property of the Companies. The Licensee shall not assert any industrial or intellectual property right it owns or controls, covering any part of the Common Descrambling System or any improvement thereof, against any Company or any other licensee of the Common Descrambling System who is bound by the same provision as in this Article 2.3. The agreement containing the Repricing Royalties referred to in Article 2.2 shall provide that the Licensee shall offer any such industrial or intellectual property right under the common arrangements for the licence of such rights in respect of other specifications of the EP-DVB (or, in the absence of such arrangements, on terms which are fair, reasonable and non-discriminatory) to the Companies and to any other Licensee of the Common Descrambling System on a reciprocal basis.

2.4 If, at any time during this Agreement, any improvement specified by the Steering Board of the EP-DVB shall become available to the Custodian, the Custodian shall, upon payment by the Licensee to the Custodian of any further administrative charge, assist in obtaining an governmental licence, if any, required for the improvement, fully disclose the improvement to the Licensee and shall, to the extent the Companies have rights therein, grant the Licensee a licence thereto on the basis of Article 2.1. In respect of any improvement, the Custodian may require that its implementation be introduced on a coordinated basis, consistent with the objectives of the EP-DVB, with all persons who have entered into agreements similar to this Agreement.

2.5 Neither the Custodian nor any Company is required under this Agreement to provide technical support. The Custodian and each Company shall deliver such additional documents as the Licensee may reasonably request in order to implement the licence granted under this Agreement and shall not assert, so as to limit the licence granted hereby, against the Licensee during the term of this Agreement any patent or other intellectual property right covering the Common Descrambling System.

**ARTICLE 3 - CONFIDENTIAL INFORMATION**

3.1 The Custodian shall on the Effective Date deliver the Confidential Information held by the Custodian to the Licensee and shall, during the term of the Agreement, deliver such additional Confidential Information which the Custodian may from time to time receive from the Companies. The Licensee agrees to keep the Confidential Information strictly confidential and shall not disclose Confidential Information to any other person except to an Affiliate or a court of law when required by a court order.

3.2 The Licensee agrees that the Confidential Information shall be used solely for the purposes specified in Article 2.1 and any Decoder manufactured, tested or otherwise using or incorporating the Common Descrambling System shall be designed in such a way as to protect the confidentiality of the Confidential Information.

3.3 The Licensee shall disclose the Confidential Information only to its Affiliates, and to its employees (who under the terms of their employment by the Licensee are subject to an obligation not to disclose confidential information of the Licensee), who have a "need to know" for the purposes specified in Article 3.2, and are made aware of the requirements of this Article 3 and Article 5.1.

3.4 The Licensee shall protect the Confidential Information with the same degree of care as it normally uses in the protection of its own confidential and proprietary information, but in no case with any less degree than reasonable care. The Licensee shall, at the Custodian's request, provide written assurances concerning the steps taken by the Licensee and its Affiliates to preserve the confidentiality of the Confidential Information.

3.5 If the Licensee has notice of any unauthorized use, infringement or misappropriation of the Confidential Information or the Common Descrambling System, it shall forthwith give notice to the Custodian. The Licensee shall, where required (and to the extent it would take action in respect of its own valuable patent), assist the Custodian (or any Company) in any action brought against such use, infringement or misappropriation, including being named as a party in such actions and otherwise participating in such action. The Custodian and the Licensee shall coordinate the prosecution of any such action, including the desirability of including other parties or participants in the action. Neither the Custodian nor any Company shall be liable for (A) any claim asserted by the Licensee or any third party of unauthorized use, infringement or misappropriation of the Confidential Information or the Common Descrambling System of any patent, trademark, copyright, industrial or other intellectual property right or (B) any representation or warranty, implied or otherwise, as to the suitability or fitness of the Common Descrambling System for DVBS or any other application. The Licensee shall indemnify the Custodian and the Companies for any loss, damage or costs suffered or incurred as a result of the misuse by the Licensee of the Common Descrambling System or breach of this Agreement.

3.6 If the Licensee has notice of any audiovisual piracy in the forms addressed in Recommendation N° R 88 (2) or Recommendation N° R 91 (14) of the Council of Europe or other unauthorized use of the Common Descrambling System, it shall forthwith give notice to the Custodian. The Licensee shall assist the Companies, the other users of the Common Descrambling System and the Custodian to combat, by technical, judicial and other means, any such piracy or unlawful use, including being named as a party and otherwise participating in any judicial proceeding.

3.7 In no event shall Custodian, the Companies or the Licensee be liable to other parties for exemplary, incidental, special or consequential damages of any kind, including without limitation loss of profit, savings or revenue, or the claims of third parties, whether or not advised of the possibility of such loss, however caused and on any theory or liability, arising out of this Agreement or the relationship of the parties.

**ARTICLE 4 - DURATION, BREACH**

4.1 This Agreement shall become effective on the Effective Date and expire on the fifth anniversary thereof. This Agreement shall be extended for successive three year renewal terms under the terms of this Agreement unless the Licensee shall have given written notice of termination three months before the end of the initial term or any renewal term. Expiration of this Agreement (or earlier termination) shall not relieve the Licensee of any of its obligations under Articles 2 and 3 or any governmental licence.

4.2 This Agreement may be terminated upon notice given by the Custodian upon the occurrence of any of the following events:

 (i) the Licensee or any of its Affiliates breaches any of the terms hereof, or

 (ii) the Licensee engages in or authorizes any activity which could be considered as audiovisual piracy (in the forms described in Article 3.6), or

 (iii) any of the representations in Article 5.6 is or becomes untrue, or

 (iv) there is a voluntary or involuntary filing of bankruptcy by, or similar event affecting, the Licensee, or

 (v) the Effective Date has not occurred before the first anniversary of the signature by the Licensee of this Agreement;

 or upon notice by either the Custodian or the Licensee if they fail to agree on the Repriced Royalties within the 60 day period specified in Article 2.2.

4.3 On the occurrence of termination for any reason under this Agreement, the Licensee shall forthwith cease its use of the Common Descrambling System and return to the Custodian all Confidential Information in written, electronic or magnetic form and any copies thereof.

**ARTICLE 5 -** **MISCELLANEOUS**

5.1 The Licensee may after written notice to the Custodian disclose the Confidential Information (but may not sublicense its rights hereunder) to any Affiliate. The Licensee shall ensure that both it and such Affiliate shall comply with Articles 2.3 and 3 and this Article 5.1 in respect of the Confidential Information disclosed to such Affiliate. The Licensee shall cause such Affiliate not to disclose Confidential Information to any other Affiliate. The ability and extent of disclosure may be subject to a governmental licence. If the Affiliate ceases to be an Affiliate of the Licensee, the Licensee shall cause such Affiliate forthwith to return to the Licensee all Confidential Information disclosed to the Affiliate.

5.2 Except as otherwise provided in Article 5.1, the Licensee shall not subcontract any part of the design or manufacture of its equipment or the provision of its service which requires knowledge of any part of the Confidential Information to any entity which has not signed an agreement in the form hereof with the Custodian. The Licensee may not assign or sublicense this Agreement. The Custodian may upon notice to the Licensee assign this Agreement to a replacement custodian which shall have the rights and obligations on the Custodian hereunder. Any Company may assign its rights and obligations hereunder upon notice to the Licensee delivered by such Company or the Custodian.

5.3 The Licensee agrees that, in addition to the Custodian, the Companies, jointly or severally, shall have the right to enforce this Agreement.

5.4 This Agreement shall be construed according to the laws of France and, in case of disagreement that cannot be settled amicably, the Tribunal de Grande Instance de Grasse (Alpes Maritimes, France) shall have exclusive jurisdiction of any claim brought by the Licensee and non-exclusive jurisdiction of any claim brought by the Custodian or the Companies. The Custodian or any Company may seek to enforce in any jurisdiction any judgment entered by such tribunal.

5.5 This Agreement is the only agreement between the parties on the subject matter described herein and replaces in all respects any prior agreement, written or oral, on the subject matter between the Licensee and the Custodian, and between the Licensee and any Company (except in respect of protection of confidential information).

5.6 The Licensee represents and warrants that its registered office is located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[[1]](#footnote-1) ,and its ultimate parent is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[[2]](#footnote-2) and that it is a conditional access systems provider / conditional access designer / conditional access subsystem manufacturer / conditional access subsystem integrator / descrambling component manufacturer[[3]](#footnote-3) , it requires the Confidential Information for the purposes of manufacturing Decoders compatible with DVBS and excluding any other use, it is capable itself of using the Confidential Information for such purposes and neither the Licensee nor any Affiliate has engaged directly or indirectly in or authorized audiovisual piracy.

Executed in two originals as of the later of the two dates set out below,

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| --- | --- |
| **The Custodian,**on behalf of the Companies,EUROPEAN TELECOMMUNICATIONSSTANDARDS INSTITUTE\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_By :Title :Date : | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** [[4]](#footnote-4) at\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_By [[5]](#footnote-5):Title [[6]](#footnote-6):Date : |

# SCHEDULE OF PAYMENTS

 **EUROS**

 **Administrative charge paid by the Licensee** 1 000

 **Royalty paid by the Licensee**  1 000

**TIMING AND MANNER OF PAYMENTS**

**Non refundable administrative charge by the Custodian (ETSI)**

At the time the Scrambling Technology Licence Agreement (executed by the proposed Scrambling Technology Licensee), is submitted to the Custodian, the fee is to be paid to the **account of European Telecommunications Standards Institute.**

**BNP PARIBAS, 06210 Mandelieu La Napoule France.
SWIFT/BIC: BNPAFRPPXXX.
IBAN:FR76 3000 4020 3700 0100 7151 054**

# Royalties fee

At the time the Scrambling Technology Licence Agreement (executed by the proposed Scrambling Technology Licensee), is submitted to the Custodian, the billing details cannot be issued. **For this reason the royalties fee invoice will be issued to your company at a later stage.**

**Any payment shall be paid exclusive of value-added taxes, bank charges, withholding and other taxes and duties, all which shall be borne by the Licensee.**

1. Insert address of Company's registered office [↑](#footnote-ref-1)
2. Insert name of ultimate parent(s) [↑](#footnote-ref-2)
3. Strike out when irrelevant [↑](#footnote-ref-3)
4. Name of company [↑](#footnote-ref-4)
5. Name of authorized representative [↑](#footnote-ref-5)
6. Title of authorized representative [↑](#footnote-ref-6)