**DVB SCRAMBLING TECHNOLOGY**

 **LICENCE AND NON-DISCLOSURE AGREEMENT**

**BETWEEN :**

(1) EUROPEAN TELECOMMUNICATIONS STANDARDS INSTITUTE, as 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 ;

**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 Scrambling Technology which has been adopted by the Steering Board of the EP-DVB ; and by a resolution of the 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 ;

iii) Directive 95/47/EC of the European Parliament and of the Council of 24 October 1995 on the use of standards for the transmission of television signals requires that all consumer equipment capable of descrambling digital television signals shall possess the capability to allow the descrambling of such signals according to common European scrambling algorithm administered by a recognized European standardization body ; the Scrambling Technology, together with the Common Descrambling System, is the common European scrambling algorithm referred to in such directive ;

iv) The Companies desire to promote the use of the DVBS and to license, in exchange for a nominal royalty, the Scrambling Technology for the development, manufacture and the other activities related to Scramblers, to certain bona fide users specified in Article 5.6 (and found suitable under the ST 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 Scrambling Technology Licensee under this Agreement and by other licensees of the Scrambling Technology 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 ST Custodian Agreement with the Companies which agreement specifies the terms of administration referred to in the directive mentionned in the third recital ; and under the ST Custodian Agreement 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, (B) issues unique identifying numbers to Scrambling Technology Licensees, and (C) undertakes to distribute and to ensure the confidentiality of the Confidential Information ;

vii) The Scrambling Technology 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 Scrambling Technology Licensee for the purposes set out in Article 5.6.;

viii) The Custodian, with the assistance of the Scrambling Technology 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 ;

ix) The Scrambling Technology Licensee intends to use the Confidential Information only for the purposes permitted in Article 2.1 and, pursuant to the terms of Scrambler Sublicence Agreement, to sublicense Scrambling Technology to End-users.

**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 Scrambling Technology Licensee, as well as any entity owned or controlled, directly or indirectly by the Scrambling Technology Licensee or by an entity owning or controlling the Scrambling Technology 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. **"Companies" :** the entities identified as such on the first page of this Agreement.

1.3. **"Confidential Information" :** any information delivered or communicated by the Custodian or any Company to the Scrambling Technology Licensee under this Agreement or any other information of a confidential nature relating to the Scrambling Technology made available to the Scrambling Technology 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 fault of the Scrambling Technology Licensee) ; (ii) is known by the Scrambling Technology Licensee at the time of receipt ; (iii) is lawfully obtained by the Scrambling Technology Licensee from any third party who has lawfully obtained such information. The Scrambling Technology Licensee shall bear the burden of showing that any of the foregoing exclusions applies to any part of the Confidential Information.

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

1.5. **"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.

1.6. **"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 Scrambling Technology Licensee is suitable under section 2 of the ST Custodian Agreement.

1.7. **"End-user" :** an undertaking offering conditional access by means of a Scrambler which enters into a Scrambler Sublicence Agreement with the Scrambling Technology Licensee.

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

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

1.10. **"Scrambler"** : a device, apparatus or mechanism designed or specifically adapted, totally or partially, to render unintelligible a DVBS-compatible service by the use of Scrambling Technology and any modifications and improvements thereof and which can be descrambled using the common descrambling system in the form approved by the Steering Board of the EP-DVB for DVBS.

1.11. **"Scrambler Sublicence Agreement" :** the Scrambler Sublicence Agreement in the form of Exhibit I.

1.12. **"Scrambling Technology" :** the scrambling 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.

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

1.14. **"ST Custodian Agreement" :** the DVB Scrambling Technology Custodian Agreement between the Custodian and the Companies.

**ARTICLE 2 - LICENCE**

2.1. The Custodian, on behalf of the Companies as licensors, hereby grants, as of the Effective Date, to the Scrambling Technology Licensee a non-exclusive, non-transferable right and licence to use the Scrambling Technology (including any intellectual property rights of the Companies directly related thereto), on world-wide basis, solely for the following purposes :

 (i) the design, development, testing, manufacture, sale or other disposal (within the limits herein specified) of Scramblers incorporating DVBS, and of components for Scramblers, for demonstration or display purposes ; conducting an evaluation of the commercial application of the Scrambling Technology to DVBS ;

 (ii) the sublicence of the Scrambling Technology, together with the sale and delivery of Scramblers or components to End-users pursuant to Article 2.6. ;

 provided that any such activity is only in respect of full compliance with the Scrambling Technology 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 Scrambling Technology Licensee and to applicable law.

2.2. In consideration of the licence and other rights granted under this Agreement, the Scrambling Technology Licensee shall pay to the Companies the royalties in the amounts, in the manner, and at the times specified in the Schedule. If the Custodian fails to obtain a governmental licence in respect of this Agreement (or the Scrambling Technology Licensee is found not suitable under section 2 (iv) of the ST Custodian Agreement) any royalties theretofor paid shall be returned to the Scrambling Technology 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 Scrambling Technology 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 Scrambling Technology 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 Scrambling Technology Licensee agrees that the Confidential Information and all other industrial or intellectual property rights in the Scrambling Technology remain the property of the Companies. The Scrambling Technology Licensee shall not assert any industrial or intellectual property right it owns or controls, covering any part of the Scrambling Technology or any improvement thereof, against any Company or any other licensee of the Scrambling Technology who is bound by the same provision as in this Article 2.3 unless and until the third sentence of Article 2.2 applies. The agreement containing the Repriced Royalties referred to in Article 2.2 shall provide that the Scrambling Technology Licensee offer any such industrial or intellectual property right under terms and conditions which are consistent with 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 Scrambling Technology 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 Scrambling Technology 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 Scrambling Technology Licensee and, to the extent the Companies have rights therein, grant the Scrambling Technology 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 Scrambling Technology 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 Scrambling Technology Licensee during the term of this Agreement any patent or other intellectual property right covering the Scrambling Technology.

2.6. The Scrambling Technology Licensee may sublicence the Scrambling Technology and sell or otherwise dispose of a Scrambler only to an End-user (i) which enters into a Scrambler Sublicence Agreement which incorporates the provisions set forth in Exhibit I hereto and (ii) after receipt by the Scrambling Technology Licensee of a governmental licence, if any, required for the export or use of the Scrambler. The Scrambling Technology Licensee shall

 (a) sell or otherwise dispose of any Scrambler only to an End-user which has entered into a Scrambler Sublicence Agreement with the Scrambling Technology Licensee,

 (b) not agree to amend, or consent to any waiver of, any Scrambler Sublicence Agreement,

 (c) deliver to an End-user only that part of Confidential Information strictly necessary to the operation of the Scrambler, and

 (d) deliver to the End-user, upon its request, any information, including Confidential Information, to ensure compatibility or interoperability with other equipment.

At the time of payment of the annual royalties specified in the Schedule, the Scrambling Technology Licensee shall give notice to the Custodian of the number of Scramblers sold or otherwise disposed of during the relevant royalty period. At the request of the Custodian, the Scrambling Technology Licensee shall deliver to the Custodian or its designated representative the Scrambler Sublicence Agreements in respect of Scramblers sold or transferred to End-users.

**ARTICLE 3 - CONFIDENTIAL INFORMATION**

3.1. The Custodian shall on the Effective Date deliver the Confidential Information held by the Custodian to the Scrambling Technology 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 Scrambling Technology 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 Scrambling Technology Licensee agrees that the Confidential Information shall be used solely for the purposes specified in Article 2.1 and any Scrambler manufactured, tested or otherwise using or incorporating the Scrambling Technology shall be designed in such a way as to protect the confidentiality of the Confidential Information.

3.3. The Scrambling Technology Licensee shall disclose the Confidential Information only to its Affiliates, and to its employees (who under the terms of their employment by the Scrambling Technology Licensee are subject to an obligation not to disclose confidential information of the Scrambling Technology 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 Scrambling Technology 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 Scrambling Technology Licensee shall, at the Custodian's request, provide written assurances concerning the steps taken by the Scrambling Technology Licensee and its Affiliates to preserve the confidentiality of the Confidential Information.

3.5. If the Scrambling Technology Licensee has notice of any unauthorized use, infringement or misappropriation of the Confidential Information or the Scrambling Technology, it shall forthwith give notice to the Custodian. The Scrambling Technology 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, on behalf of the Companies, and the Scrambling Technology 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 Scrambling Technology Licensee or any third party of unauthorized use, infringement or misappropriation by the Confidential Information or the Scrambling Technology 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 Scrambling Technology for DVBS or any other application. The Scrambling Technology Licensee shall indemnify the Custodian and the Companies for any loss, damage or costs suffered or incurred as a result of misuse by the Scrambling Technology Licensee of the Scrambling Technology or as a result of its breach of this Agreement.

3.6. If the Scrambling Technology 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 Scrambling Technology, it shall forthwith give notice to the Custodian. The Scrambling Technology Licensee shall assist the Companies, the other users of the Scrambling Technology 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 Scrambling Technology 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 Scrambling Technology 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 Scrambling Technology 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 Scrambling Technology Licensee or any of its Affiliates breaches any of the terms hereof, or

 (ii) the Scrambling Technology Licensee fails to enforce its remedies for a breach by an End-user of Articles 2 or 3 of any Scrambler Sublicence Agreement, or

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

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

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

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

 or upon notice by either the Custodian or the Scrambling Technology Licensee if the Companies and the Scrambling Technology Licensee 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, (A) the Scrambling Technology Licensee shall forthwith cease its use of the Scrambling Technology and return to the Custodian all Confidential Information in written, electronic or magnetic form and any copies thereof and (B) assign all its rights (but not its obligations) under any Scrambler Sublicence Agreement to which it is party to the Custodian or to an undertaking designated by the Custodian.

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

5.1. The Scrambling Technology Licensee may after written notice to the Custodian disclose the Confidential Information (but may not sublicense its rights hereunder) to any Affiliate. The Scrambling Technology 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 Scrambling Technology 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 Scrambling Technology Licensee, the Scrambling Technology Licensee shall cause such Affiliate forthwith to return to the Scrambling Technology Licensee all Confidential Information disclosed to the Affiliate.

5.2. Except as otherwise provided in Article 5.1, the Scrambling Technology 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 Scrambling Technology Licensee may not assign or, except as otherwise provided in Article 2.6, sublicense this Agreement. The Custodian may upon notice to the Scrambling Technology Licensee assign this Agreement to a replacement custodian which shall have the rights and obligations as the Custodian hereunder. Any Company may assign its rights and obligations hereunder upon notice to the Scrambling Technology Licensee delivered by such Company or the Custodian.

5.3. The Scrambling Technology 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 Scrambling Technology 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 Scrambling Technology Licensee and the Custodian, and between the Scrambling Technology Licensee and any Company (except in respect of protection of confidential information).

5.6. The Scrambling Technology Licensee represents and warrants that its registered office is located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_1 its VAT number is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[[1]](#footnote-1), and its ultimate parent is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[[2]](#footnote-2) and that it is a conditional access systems provider / conditional access subsystem manufacturer / conditional access designer / Scrambler component manufacturer / Scrambler manufacturer [[3]](#footnote-3), it requires the Confidential Information for the purposes herein permitted and excluding any other use, it is capable itself of using the Confidential Information for such purposes and neither the Scrambling Technology 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,

**The Custodian**, **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**5at

on behalf of the Companies,

EUROPEAN TELECOMMUNICATIONS **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

STANDARDS INSTITUTE

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

By : By 6:

Title : Title7:

Date: Date:

 ST Licence Agreement

**SCRAMBLER SUBLICENCE AGREEMENT**

 **Standard Terms and Provisions**

**RECITALS :**

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 including specifications for Scrambling Technology ;

ii) Directive 95/47/EC of the European Parliament and of the Council of 24 October 1995 on the use of standards for the transmission of television signals requires that all consumer equipment capable of descrambling digital television signals shall possess the capability to allow the descrambling of such signals according to common European scrambling algorithm administered by a recognized European standardization body ; the Scrambling Technology sublicensed hereby, together with the Common Descrambling System, is the common European scrambling algorithm referred to in such directive ;

iii) Scrambling Technology has been licensed to the Sublicensor for the development, manufacture and the other activities related to Scramblers and the Sublicensor is permitted to grant sublicences for the use of the Scrambling Technology in conjunction with the Scrambler under the terms set forth herein;

iv) The Sublicensor wishes to grant, and the Sublicensee wishes to obtain, under the terms of this Agreement, a sublicence for the use of the Scrambling Technology and the operation of the Scrambler ;

v) Before operation of the Scrambler and exploitation of the sublicence granted by this Agreement, a governmental licence, if any, shall have been obtained, for export or otherwise, in respect of the Scrambling Technology and the Scrambler for the benefit of the Sublicensee as end-user ;

**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 Sublicensee, as well as any entity owned or controlled, directly or indirectly by the Sublicensee or by an entity owning or controlling the Sublicensee 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. **"Companies" :** the entities identified as such in Article 2.5.

1.3. **"Confidential Information" :** any information delivered or communicated by the Sublicensor to the Sublicensee under this Agreement or any other information of a confidential nature relating to the Scrambling Technology, made available to the Sublicensee by the Sublicensor, 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 fault of the Sublicensee) ; (ii) is known by the Sublicensee at the time of receipt ; (iii) is lawfully obtained by the Sublicensee from any third party who has lawfully obtained such information. The Sublicensee shall bear the burden of showing that any of the foregoing exclusions applies to any part of the Confidential Information.

1.4. **"Custodian" :** the European Telecommunications Standards Institute, a recognized European standards-making organization, or any replacement custodian.

1.5. **"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.

1.6. **"Effective Date" :** the date on which occurs the event specified in Article 2.2.

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

1.8. **"Scrambler" :** the Scrambler identified on the face of this Agreement.

1.9. **"Scrambling Technology" :** the scrambling system approved, on 19 May 1994, by the Steering Board of the EP-DVB for DVBS and any modifications and improvements thereof.

**ARTICLE 2 - SALE OF SCRAMBLER ; CONDITIONS**

2.1. The Sublicensor hereby grants to the Sublicensee as of the Effective Date and subject to the conditions set forth in Articles 2.2 and 2.3 a non-exclusive, non-transferable right and licence to use the Scrambling Technology (including any intellectual property rights of the Companies directly related thereto), solely in conjunction with the operation of the Scrambler in the country specified on the face of this Agreement. The licence granted hereby (including its territory, field of use and implementation), the timing and method of delivery of the Scrambler, the Effective Date, the conditions of the use or other exploitation of the Scrambler and its disposal are subject to the terms of the governmental licence, if any, required in respect of the Sublicensee and to applicable law.

2.2. The Sublicensee shall operate the Scrambler and use the Scrambling Technology no earlier than the date specified in the governmental licences if any, for export or otherwise, of the Scrambler, Scrambling Technology or both.

2.3. In consideration of the licence granted hereby and the delivery of the Scrambler, the Sublicensee shall pay to the Sublicensor the sales price specified on the face of this Agreement.

2.4. The Sublicensee shall use the Scrambler only for the purposes specified in this Agreement and in the governmental licence, if any, obtained for the Scrambler and Scrambling Technology. The Sublicensee shall not tamper, harm, reverse engineer, modify, decompile, disassemble or otherwise attempt to extract information from, the Scrambling Technology, the Scrambler, or any component thereof. If the Sublicensee gives notice of a compatibility or interoperability problem, the Sublicensor shall provide such relevant information as the Sublicensee may require. The Sublicensee shall make use of the Scrambler and of the Confidential Information only according to the operational guidelines from time to time delivered by the Sublicensor. The Sublicensee shall not sell, lease, lend, assign, hypothecate or grant a security interest in or otherwise dispose of the Scrambling Technology sublicensed hereby or the Scrambler to any other person except to an Affiliate (after written notice to the Custodian) or to the Sublicensor (or an entity named by the Sublicensor).

2.5. The Sublicensee shall not file any patent registration or claim any industrial or intellectual property right incorporating all or any part of the Confidential Information. The Sublicensee agrees that the Confidential Information and all other industrial or intellectual property rights in Scrambling Technology remain the property of Canal+ SA, Centre Commun d'Etudes de Télédiffusion et Télécommunications, Irdeto BV and News Datacom Limited (the "Companies"). The Sublicensee shall not assert any industrial or intellectual property right it owns or controls, covering any part of the Scrambling Technology or any improvement thereof, against any Company, Scrambling Technology Licensee, Sublicensor, or any other Sublicensee who is bound by the same provision as in this Article 2.5.

2.6. If, at any time during this Agreement, any improvement specified by the Steering Board of the EP-DVB shall become available to the Sublicensor, the Sublicensor shall, upon payment by the Sublicensee, assist in obtaining an governmental licence, if any, required for the improvement, and shall, once the governmental licence has been obtained, deliver to the Sublicensee a licence to such improvement on the terms of this Agreement on the basis of Article 2.1. In respect of any improvement, the Sublicensee shall follow any instruction 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.

**ARTICLE 3 - CONFIDENTIAL INFORMATION**

3.1 The Sublicensee 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 Sublicensee agrees that the Confidential Information shall be used solely for the purposes specified in this Agreement and any use of the Scrambler and the Scrambling Technology shall be designed in such a way as to protect the confidentiality of the Confidential Information.

3.3 The Sublicensee shall disclose the Confidential Information only to its employees (who under the terms of their employment by the Sublicensee are subject to an obligation not to disclose confidential information of the Sublicensee or third parties), 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 Sublicensee shall protect the Confidential Information with utmost care. The Sublicensee shall, at the request of either the Custodian or the Sublicensor, provide written assurances concerning the steps taken by the Sublicensee to preserve the confidentiality of the Confidential Information.

3.5. If the Sublicensee has notice of any unauthorized use, infringement or misappropriation of the Confidential Information or the Scrambling Technology, it shall forthwith give notice to the Custodian. The Sublicensee shall, where required (and to the extent it would take action in respect of its own valuable patent), assist the Sublicensor or 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, on behalf of the Companies, and the Sublicensee shall coordinate the prosecution of any such action, including the desirability of including other parties or participants in the action. Neither the Custodian, the Sublicensor nor any Company shall be liable for (A) any claim asserted by the Sublicensee or any third party of unauthorized use, infringement or misappropriation by the Confidential Information, the Scrambling Technology or the Scrambler of any 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 Scrambling Technology or the Scrambler, for DVBS or any other application. The Sublicensee shall indemnify the Custodian, the Companies and the Sublicensor for any loss, damage or costs suffered or incurred as a result of the misuse by the Sublicensee of the Scrambling Technology or the Scrambler, or as a result of breach of this Agreement.

3.6. If the Sublicensee 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 Scrambling Technology, a Scrambler, a SAM or its technology, it shall forthwith give notice to the Custodian. The Sublicensee shall assist the Companies, the other users of the Scrambling Technology 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, the Sublicensor or the Sublicensee 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 placing out of service of the Scrambler (but in any event no later than the 15th anniversary of the Effective Date). Expiration of this Agreement (or earlier termination) shall not relieve the Sublicensee 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 Sublicensee breaches any of the terms hereof, or

 (ii) the Sublicensee 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 5.4 is or becomes untrue, or

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

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

 or upon the occurrence of any of the events specified on the face of this Agreement.

4.3. On the occurrence of termination for any reason under this Agreement, the Sublicensee shall forthwith cease its use of the Scrambling Technology, and the Scrambler and return to the Sublicensor (or to an entity designated by the Sublicensor), all Confidential Information in written, electronic or magnetic form and any copies thereof and, upon request by the Sublicensor, the Scrambler.

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

5.1. The Sublicensee may not assign or sublicense this Agreement. The Sublicensor may upon notice to the Sublicensee assign this Agreement and the rights and obligations hereunder upon notice to the Sublicensee delivered by the Sublicensor.

5.2. The Sublicensee agrees that, in addition to the Sublicensor, the Custodian and the Companies, jointly or severally, shall have the right to enforce this Agreement.

5.3. 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 Sublicensee and the Sublicensor (except in respect of protection of confidential information).

5.4. The Sublicensee represents and warrants that the face of this Agreement accurately sets forth its registered office, its ultimate parent, and the location in which the Scrambler will be used and that neither the Scrambling Technology Licensee nor any Affiliate has engaged directly or indirectly in or authorized audiovisual piracy.

5.5. Notices to the Custodian shall be delivered to the following address :

 European Telecommunications Standards

 Institute, as DVB Custodian

 Route des Lucioles

 FR - 06921 Sophia Antipolis Cedex

 France

 Fax : 33/(0)4 93/654716

 Schedule to the ST Custodian

 Agreement and to the Scrambling

 Technology Licence Agreement

 **SCHEDULE OF PAYMENTS**

 EUROS

 **Initial royalty 1 000**

 Royalty for each Scrambler 30

 sold during prior 12 months

 **Administrative charge 2 000**

 **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. 1 Insert address of registered office of the Scambling Technology Licensee

2 Insert the VAT number of the Scrambling Technology Licensee [↑](#footnote-ref-1)
2. 3Insert name of ultimate parent(s) [↑](#footnote-ref-2)
3. 4Delete inapplicable categories

5 Name of company

6 Name of authorized representative

7 Title of authorized representative [↑](#footnote-ref-3)