**DVB CSA3 DESCRAMBLING SYSTEM
LICENCE AND NON-DISCLOSURE AGREEMENT**

**BETWEEN :**

(1) EUROPEAN TELECOMMUNICATIONS STANDARDS INSTITUTE, as Custodian (the "Custodian") named by the entities listed on Annex A hereto (the "Companies")

**and**

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

**WHEREAS :**

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

ii) The Companies, members of the DVB Project, have developed together a CSA3 Descrambling System which has been adopted by the Steering Board of the DVB Project;

iii) By a resolution of its Steering Board, the DVB Project 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 Standards and to license, in exchange for a nominal royalty, the CSA3 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 CSA3 Descrambling 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 under this Agreement by the Licensee and by other licensees of the CSA3 Descrambling System as a result of the decision of the Companies to make a contribution to the work of the DVB Project, with the hope that other holders of rights in technology incorporated in Standards will make a similar contribution;

vi) The Custodian, a recognized European standards-making organization, has entered into the CSA3 Descrambling 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 the royalty, to be a licensee of the CSA3 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 **"CSA3 Descrambling System" :** the descrambling system approved, on 11 April 2007, by the Steering Board of the DVB Project and any modifications and improvements thereof similarly specified which belong to the Companies.

1.3 **"Companies" :** the entities listed in the Annex A to this Agreement.

1.4 **"Confidential Information" :** (i) the CSA3 Descrambling System, together with the other elements of the technology commonly designated as “CSA3” (and approved by the Steering Board of the DVB Project), (ii) any information delivered or communicated by the Custodian or any Company to the Licensee under this Agreement or (iii) any other information of a confidential nature relating to the CSA3 Descrambling System, made available to the Licensee by the Custodian or by any Company, which, in the case of information described in (iii) 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 (A) is now, or later becomes, generally and rightfully known to the public (other than through the Licensee's fault) ; (B) is rightfully known by the Licensee at the time of receipt ; (C) 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 service, compatible with Standards and scrambled by the common scrambling system (approved by the Steering Board of the DVB Project for Standards) and any modifications and improvements thereof and which can be descrambled using the CSA3 Descrambling System.

1.7 **"DVB Project" :** the DVB Project or, if such project cease to exist, the body succeeding to its activities.

1.8 **"CSA3 Descrambling Custodian Agreement" :** the DVB CSA3 Descrambling Custodian Agreement between the Custodian and the Companies.

1.9 **"Standards" :** the digital video transmission systems specified by the DVB Project as approved from time to time by the Steering Board of the DVB Project and delivered for standardization to the competent standard-making organization.

1.10 **"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 CSA3 Descrambling Custodian Agreement.

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, non-assignable, non-sublicensable right and licence to use the CSA3 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 Standards and of components for Decoders ; conducting an evaluation of the commercial application of the CSA3 Descrambling System to Standards ; the sale or other disposal, servicing and maintenance of Decoders or components ; provided that

(A) any such activity is only in respect of full implementation of the CSA3 Descrambling System as described in the Confidential Information in the form of hardware unless the Companies shall have agreed, under Section 2 (iii) (D) of the CSAS3 Descrambling Custodian Agreement, that all or part of the Confidential Information may be implemented in the form of software ;

(B) 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; and

(C) the licence hereby granted is limited to use of the CSA3 Descrambling System for Decoders, each of which, when made available to the public, either (i) offers complete descrambling functionality including by means of a conditional access system provided by a licensee, listed as such by the Custodian, under a CSA3 Descrambling Licence and Non-Disclosure Agreement, or (ii) if not offered with such functionality, contains a disabled CSA3 Descrambling System. The commercialisation to the public of Decoders (or the knowing sale of Decoders, or components of Decoders, to an entity commercialising Decoders to the public) without complete descrambling functionality, or without such disabling, is outside the scope of the licence hereby granted.

2.2 In consideration of the rights granted under this Agreement, the Licensee has paid to the Companies the one-time 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 CSA3 Descrambling Custodian Agreement) such royalty shall be returned to the Licensee.

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 CSA3 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 CSA3 Descrambling System or any improvement thereof, against any Company or any other licensee of the CSA3 Descrambling System who is bound by the same provision as in this Article 2.3.

2.4 If, at any time during this Agreement, any improvement specified by the Steering Board of the DVB Project shall become available to the Custodian, the Custodian shall, upon payment by the Licensee to the Custodian or to the Companies of further administrative, royalty or other charges, if any, 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 DVB Project, 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 to the Licensee. The Custodian and each Company 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 CSA3 Descrambling System.

2.6 The Licensee shall every year, on or before 31 March, submit to the Custodian its certificate (together where applicable the certificate of its independent auditor), substantially in the form of Annex B, in respect of the immediately preceding calendar year.

**ARTICLE 3 - CONFIDENTIAL INFORMATION; ANTIPIRACY**

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, or component of a Decoder, manufactured, tested or otherwise using or incorporating the CSA3 Descrambling System shall be designed and manufactured in such a way as to protect the confidentiality of the Confidential Information and to prevent the pirating or other compromise or misuse of the CSA3 Descrambling System including by ensuring the integrity of the Decoder, and each component thereof, and by adopting sufficiently robust manufacturing and other practices.

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 CSA3 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 action, using its own intellectual property, if infringed, as the basis for a claim in such action, 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 CSA3 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 CSA3 Descrambling System for Standards 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 CSA3 Descrambling System or breach of this Agreement.

3.6 If the Licensee has notice of (i) any audiovisual piracy in the forms addressed in Directive 98/84/EC of the European Parliament and of the Council of 20 November 1998 on the legal protection of services based on, or consisting of, conditional access, or (ii) any circumvention of a technological measure described in the WIPO Copyright Treaty (1996) incorporated in Decoders, whether of Licensee or of any other person, or (iii) other unauthorized use of the CSA3 Descrambling System, it shall forthwith give notice to the Custodian. The Licensee shall assist the Companies, the other users of the CSA3 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, using its own intellectual property, if infringed, as the basis for a claim in such action, and otherwise participating in any judicial proceeding. The Licensee has named on the signature page hereof its contact in antipiracy matters; it hereby authorises the Custodian to provide such information to the Companies and agrees to give notice if this person is replaced.

3.7 In no event shall the 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. 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. 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.

4.2 This Agreement may be terminated upon the occurrence of any of the following events:

(A) upon notice given by the Custodian:

 (i) the Licensee or any of its Affiliates breaches any of the terms hereof (including without limitation failure to deliver its annual certificate pursuant to Article 2.6), or

 (ii) the Licensee or any of its Affiliates 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) the Effective Date has not occurred before the first anniversary of the signature by the Licensee of this Agreement, or

(B) without any notice:

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

 (vi) the Licensee files a patent registration or claims a right in breach of the first sentence of article 2.3.

4.3 On the occurrence of termination for any reason under this Agreement, the Licensee shall forthwith cease its use of the CSA3 Descrambling System and return to the Custodian all Confidential Information in written, electronic or magnetic form and any copies thereof. At termination under this Agreement is without prejudice to the Licensee seeking a licence of industrial or intellectual property from any one or more of the Companies.

**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 Decoder or any component thereof 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 shall 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. The Licensee authorises the Custodian publicly to disclose its identity including by a listing on the Custodian’s website.

5.4 This Agreement shall be construed according to the laws of France without reference to the choice of law provisions thereof and the applicability of the United Nations Convention on Contracts for the International Sale of Goods 1980 is expressly excluded. 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). For the avoidance of doubt, this Agreement is limited to the CSA3 Descrambling System and does not affect any agreement of the Licensee in respect of any other version of common scrambling technology adopted in connection with Standards.

5.6 The Licensee represents and warrants that it has been duly incorporated under the laws of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(with registry (or equivalent) no \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)[[1]](#footnote-1), its registered office is located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,[[2]](#footnote-2) its ultimate parent is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[[3]](#footnote-3) and its website is available at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and that it is a conditional access systems provider / conditional access designer / conditional access subsystem manufacturer / conditional access subsystem integrator / descrambling component designer / descrambling component manufacturer / descrambling component subcontract manufacturer /,[[4]](#footnote-4) and that it requires the Confidential Information for the purposes of developing solutions for manufacturing Decoders conforming to Standards 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 supported or authorized audiovisual piracy.

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

|  |  |
| --- | --- |
| **The Custodian,**on behalf of the Companies,EUROPEAN TELECOMMUNICATIONSSTANDARDS INSTITUTE\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_By :Title :Date : | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** [[5]](#footnote-5) at\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_By [[6]](#footnote-6):Title [[7]](#footnote-7):Date :Antipiracy contact under article 3.6Name:Email:Telephone: |

Annex A to the DVB

CSA3 Descrambling System

Licence and Non-Disclosure Agreement

**List of Companies developing the CSA3 Descrambling System**

CISCO

CONAX

IRDETO

NAGRA

ORANGE/VIACCESS

Annex B to the DVB

CSA3 Descrambling System

Licence and Non-Disclosure Agreement

**Form of Annual Certificate to be delivered pursuant to Article 2.6**

[[date: on or before 31 March next following

the calendar year for which the Annual Certificate is to be submitted]]

European Telecommunications

 Standards Institute, as Custodian

 Attention: ETSI Secretariat

Route des Lucioles

F-06921 Sophia Antipolis CEDEX

France

Ladies and Gentlemen :

DVB CSA3 Descrambling System

Licence and Non-Disclosure Agreement

We refer to the DVB CSA3 Descrambling System Licence and Non-Disclosure Agreement between you, as Custodian named by the Companies therein listed, and us (the “CSA3 Descrambling Licence Agreement”; all capitalized terms in this certificate have the same meanings as therein defined).

This is the certificate required by Article 2.6 of the CSA3 Descrambling Licence Agreement. This certificate may be disclosed by the custodian to the Companies.

The Licensee hereby certifies that

i. The person signing below on behalf of the Licensee has personal knowledge of the accuracy of this certificate;

ii. No event of termination, as specified in Article 4.2 of the CSA3 Descrambling Licence Agreement, has occurred,

iii. Set forth below is the name and contact information for the person responsible within the Licensee for antipiracy matters,

iv. The information furnished by the Licensee in Article 5.6 of the CSA3 Descrambling Licence Agreement is, as of the date of this certificate, accurate and complete, and

v. (In the case of a descrambling component manufacturer or a descrambling component subcontract manufacturer) during the course of the calendar year just ended, the Licensee manufactured \_\_\_\_\_\_\_\_ components.

 [THE LICENSEE] Name and coordinates of antipiracy contact

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name:

 Title:

The undersigned certifies that it is an independent auditor qualified under the laws of the country where the Licensee has been formed; that it has been named by the Licensee to prepare the financial statements of the Licensee for its most recently ended fiscal year; and that the statement of the Licensee contained in paragraph (v) of the attached Annual Certificate of the Licensee is true and complete.

[INDEPENDENT AUDITOR]

by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 name:

 title:

 date:

# SCHEDULE OF PAYMENTS

Non-refundable administrative 2 000 € (euros)

 charge paid by the Licensee

 Royalty paid by the Licensee 2 000 € (euros)

 TOTAL 4 000 € (euros)

# 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 country of incorporation or formation, together with further registry information. [↑](#footnote-ref-1)
2. Insert address of Company's registered office [↑](#footnote-ref-2)
3. Insert name of ultimate parent(s) [↑](#footnote-ref-3)
4. Strike out when irrelevant [↑](#footnote-ref-4)
5. Name of company [↑](#footnote-ref-5)
6. Name of authorized representative [↑](#footnote-ref-6)
7. Title of authorized representative [↑](#footnote-ref-7)