**DVB CSA3 SCRAMBLING TECHNOLOGY**

 **LICENCE AND NON-DISCLOSURE AGREEMENT**

**BETWEEN :**

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

**and**

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

**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 Scrambling Technology which has been adopted by the Steering Board of the DVB Project on 11 April 2007 ; and by a resolution of the 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 ;

iii) The Companies desire to promote the use of the Standards and to license, in exchange for a nominal royalty, the CSA3 Scrambling Technology for the development, manufacture and the other activities related to CSA3 Scramblers, to certain bona fide users specified in Article 5.6 (and found suitable under the CSA3 Scrambling Technology Custodian Agreement) on a non-discriminatory basis and without liability to the Companies for infringement of any patent or otherwise;

iv) A nominal royalty only is payable by the CSA3 Scrambling Technology Licensee under this Agreement and by other licensees of the CSA3 Scrambling Technology as a result of a 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 Standards will make a similar contribution ;

v) The Custodian, a recognized European standards-making organization, has entered into the CSA3 Scrambling Technology 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, (B) issues unique identifying numbers to CSA3 Scrambling Technology Licensees, and (C) undertakes to distribute and to ensure the confidentiality of the Confidential Information ;

vi) The CSA3 Scrambling Technology Licensee, whose activities are described in Article 5.6., has applied to be a CSA3 Scrambling Technology Licensee for the purposes set out in Article 5.6, and paid to the Custodian a non-refundable administrative charge and, for the account of the Companies, the initial royalty ;

vii) The Custodian, with the assistance of the CSA3 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 ;

viii) The CSA3 Scrambling Technology Licensee intends to use the Confidential Information only for the purposes permitted in Article 2.1 and, pursuant to the terms of CSA3 Scrambler Sublicence Agreement, to sublicense CSA3 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 CSA3 Scrambling Technology Licensee, as well as any entity owned or controlled, directly or indirectly by the CSA3 Scrambling Technology Licensee or by an entity owning or controlling the CSA3 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 listed on Exhibit I to this Agreement.

1.3. **"Confidential Information" :** (i) the CSA3 Scrambling Technology, 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 CSA3 Scrambling Technology Licensee under this Agreement or (iii) any other information of a confidential nature relating to the CSA3 Scrambling Technology made available to the CSA3 Scrambling Technology 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 fault of the CSA3 Scrambling Technology Licensee) ; (B) is rightfully known by the CSA3 Scrambling Technology Licensee at the time of receipt ; (C) is lawfully obtained by the CSA3 Scrambling Technology Licensee from any third party who has lawfully obtained such information. The CSA3 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 CSA3 Scrambling Technology Licensee under Article 5.2

.

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

1.6. **"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.

1.7. **"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 CSA3 Scrambling Technology Licensee is suitable under section 2 of the CSA3 Scrambling Technology Custodian Agreement.

1.8. **"End-user" :** an undertaking offering conditional access by means of a CSA3 Scrambler which enters into a CSA3 Scrambler Sublicence Agreement with the CSA3 Scrambling Technology Licensee.

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

1.10. **"CSA3 Scrambler"** **:** a device, apparatus or mechanism (whether implemented as hardware or software) designed or specifically adapted, totally or partially, to render unintelligible a service compatible with Standards by the use of CSA3 Scrambling Technology and any modifications and improvements thereof and which can be descrambled using a common descrambling system in the form approved by the Steering Board of the DVB Project for Standards.

1.11. **"CSA3 Scrambler Sublicence Agreement" :** the CSA3 Scrambler Sublicence Agreement in the form of Exhibit II.

1.12. **"CSA3 Scrambling Technology" :** the CSA3 scrambling technology approved, on 11 April 2007, by the Steering Board of the DVB Project for Standards and any modifications and improvements thereof similarly specified which belong to the Companies.

1.13. **"CSA3 Scrambling Technology Licensee" :** the company whose name appears on the signature page of this Agreement.

1.14. **"CSA3 Scrambling Technology Custodian Agreement" :** the DVB CSA3 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 CSA3 Scrambling Technology Licensee a non-exclusive, non-assignable and non-sublicensable (except as otherwise provided in this Article 2.1), non-transferable right and licence to use the CSA3 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 CSA3 Scramblers incorporating Standards, and of components for CSA3 Scramblers, for demonstration or display purposes ; conducting an evaluation of the commercial application of the CSA3 Scrambling Technology to Standards ;

 (ii) the sublicence of the CSA3 Scrambling Technology, together with the sale and delivery of CSA3 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 CSA3 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 CSA3 Scrambling Technology Licensee and to applicable law.

2.2. In consideration of the licence and other rights granted under this Agreement, the CSA3 Scrambling Technology Licensee has paid the initial royalty, and shall, on or before 31 March each year, pay the further royalties in respect of the CSA3 Scramblers sold or otherwise disposed of during the prior calendar year, to the Custodian for the account of the Companies in the amounts and in the manner, specified in the Schedule. If the Custodian fails to obtain a governmental licence in respect of this Agreement (or the CSA3 Scrambling Technology Licensee is found not suitable under section 2 (iv) of the CSA3 Scrambling Technology Custodian Agreement) any royalties thereto paid shall be returned to the CSA3 Scrambling Technology Licensee.

2.3. The CSA3 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 CSA3 Scrambling Technology Licensee agrees that the Confidential Information and all other industrial or intellectual property rights in the CSA3 Scrambling Technology remain the property of the Companies. The CSA3 Scrambling Technology Licensee shall not assert any industrial or intellectual property right it owns or controls, covering any part of the CSA3 Scrambling Technology or any improvement thereof, against any Company or any other licensee of the CSA3 Scrambling Technology 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 CSA3 Scrambling Technology Licensee to the Custodian 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 CSA3 Scrambling Technology Licensee and, to the extent the Companies have rights therein, grant the CSA3 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 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. The Custodian and each Company shall not assert, so as to limit the licence granted hereby, against the CSA3 Scrambling Technology Licensee during the term of this Agreement any patent or other intellectual property right covering the CSA3 Scrambling Technology.

2.6. The CSA3 Scrambling Technology Licensee may sublicense the CSA3 Scrambling Technology and sell or otherwise dispose of a CSA3 Scrambler only to an End-user (i) which enters into a CSA3 Scrambler Sublicence Agreement which incorporates the provisions set forth in Exhibit II hereto and (ii) after receipt by the CSA3 Scrambling Technology Licensee of a governmental licence, if any, required for the export or use of the CSA3 Scrambler. The CSA3 Scrambling Technology Licensee shall

 (a) sell or otherwise dispose of any CSA3 Scrambler only to an End-user which has entered into a CSA3 Scrambler Sublicence Agreement with the CSA3 Scrambling Technology Licensee,

 (b) not agree to amend, or consent to any waiver of, any CSA3 Scrambler Sublicence Agreement,

 (c) deliver to an End-user only that part of Confidential Information strictly necessary to the operation of the CSA3 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 CSA3 Scrambling Technology Licensee shall give notice to the Custodian of the number of CSA3 Scramblers sold or otherwise disposed of during the prior calendar year. At the request of the Custodian, the CSA3 Scrambling Technology Licensee shall deliver to the Custodian or its designated representative the CSA3 Scrambler Sublicence Agreements in respect of CSA3 Scramblers sold or transferred to End-users.

**ARTICLE 3 - CONFIDENTIAL INFORMATION; ANTIPIRACY**

3.1. The Custodian shall on the Effective Date deliver the Confidential Information held by the Custodian to the CSA3 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 CSA3 Scrambling Technology Licensee agrees to keep the Confidential Information strictly confidential and shall not disclose Confidential Information to any other person except, in compliance with Article 5.1, to an Affiliate or a court of law when required by a court order.

3.2. The CSA3 Scrambling Technology Licensee agrees that the Confidential Information shall be used solely for the purposes specified in Article 2.1 and any CSA3 Scrambler, or component of a CSA3 Scrambler, manufactured, tested or otherwise using or incorporating the CSA3 Scrambling Technology shall be designed and manufactured in such a way as to protect the confidentiality thereof and to prevent the pirating or other compromise or misuse of the CSA3 Scrambling Technology including by ensuring the integrity of the CSA3 Scrambler, and each component thereof, and by adopting sufficiently robust manufacturing and other practices.

3.3. The CSA3 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 CSA3 Scrambling Technology Licensee are subject to an obligation not to disclose confidential information of the CSA3 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 CSA3 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 CSA3 Scrambling Technology Licensee shall, at the Custodian's request, provide written assurances concerning the steps taken by the CSA3 Scrambling Technology Licensee and its Affiliates to preserve the confidentiality of the Confidential Information.

3.5. If the CSA3 Scrambling Technology Licensee has notice of any unauthorized use, infringement or misappropriation of the Confidential Information or the CSA3 Scrambling Technology, it shall forthwith give notice to the Custodian. The CSA3 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, using its own intellectual property, if infringed, as the basis for a claim in such action, and otherwise participating in such action. The Custodian, on behalf of the Companies, and the CSA3 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 CSA3 Scrambling Technology Licensee or any third party of unauthorized use, infringement or misappropriation by the Confidential Information or the CSA3 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 CSA3 Scrambling Technology for Standards or any other application. The CSA3 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 CSA3 Scrambling Technology Licensee of the CSA3 Scrambling Technology or as a result of its breach of this Agreement.

3.6. If the CSA3 Scrambling Technology 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 Scrambling Technology, it shall forthwith give notice to the Custodian. The CSA3 Scrambling Technology Licensee shall assist the Companies, the other users of the CSA3 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, using its own intellectual property, if infringed, as the basis for a claim in such action, and otherwise participating in any judicial proceeding. The CSA3 Scrambling Technology 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 CSA3 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 CSA3 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 CSA3 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:

 (A) upon notice given by the Custodian:

 (i) the CSA3 Scrambling Technology Licensee or any of its Affiliates breaches any of the terms hereof , or

 (ii) the CSA3 Scrambling Technology Licensee fails to enforce its remedies for a breach by an End-user of Articles 2 or 3 of any CSA3 Scrambler Sublicence Agreement, or

 (iii) the CSA3 Scrambling Technology Licensee of any of its Affiliates engages in or supports 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) the Effective Date has not occurred before the first anniversary of the signature by the CSA3 Scrambling Technology Licensee of this Agreement; or

 (B) without any notice:

(vi) there is a voluntary or involuntary filing of bankruptcy by, or similar event affecting, the CSA3 Scrambling Technology Licensee, or

(vii) the CSA3 Scrambling Technology 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, (A) the CSA3 Scrambling Technology Licensee shall forthwith cease its use of the CSA3 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 CSA3 Scrambler Sublicence Agreement to which it is party to the Custodian or to an undertaking designated by the Custodian. A termination under this Agreement is without prejudice to the CSA3 Scrambling Technology Licensee seeking a licence of industrial and intellectual property rights from one or more Companies.

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

5.1. The CSA3 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 CSA3 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 CSA3 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 CSA3 Scrambling Technology Licensee, the CSA3 Scrambling Technology Licensee shall cause such Affiliate forthwith to return to the CSA3 Scrambling Technology Licensee all Confidential Information disclosed to the Affiliate.

5.2. Except as otherwise provided in Article 5.1, the CSA3 Scrambling Technology Licensee shall not subcontract any part of the design or manufacture of a Scrambler 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 CSA3 Scrambling Technology Licensee shall not assign or, except as otherwise provided in Article 2.6, sublicense this Agreement. The Custodian may upon notice to the CSA3 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 CSA3 Scrambling Technology Licensee delivered by such Company or the Custodian.

5.3. The CSA3 Scrambling Technology 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 CSA3 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 CSA3 Scrambling Technology Licensee and the Custodian, and between the CSA3 Scrambling Technology Licensee and any Company (except in respect of protection of confidential information). For the avoidance of doubt, this Agreement is limited to CSA3 Scrambling Technology 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 CSA3 Scrambling Technology 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 VAT number is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[[3]](#footnote-3), its ultimate parent is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[[4]](#footnote-4), and its website is available at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_; and that it is a conditional access systems provider / conditional access subsystem manufacturer / conditional access designer / CSA3 Scrambler component manufacturer / CSA3 Scrambler manufacturer / CSA3 Scrambler designer / CSA3 Scrambler developer / CSA3 Scrambler tester[[5]](#footnote-5); 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 CSA3 Scrambling Technology 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**, **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**[[6]](#footnote-6)

on behalf of the Companies,

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

STANDARDS INSTITUTE

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

By : By 6[[7]](#footnote-7):

Title : Title:

Date:

Anti-piracy contact under Article 3.6

Name:

Email:

Telephone:

 Exhibit I to the DVB CSA3

Scrambling Technology

Licence and Non-Disclosure Agreement

**List of Companies developing the CSA3 Scrambling Technology**

CISCO

CONAX

IRDETO

NAGRA

ORANGE/VIACCESS

Exhibit II to the DVB CSA3

Scrambling Technology

Licence and Non-Disclosure Agreement

 **CSA3 SCRAMBLER SUBLICENCE AGREEMENT**

 **Standard Terms and Provisions**

**RECITALS :**

i) The DVB Project (all capitalized terms herein are defined in Article 1 of this Agreement) has been formed to develop a digital video standards including specifications for CSA3 Scrambling Technology ;

ii) CSA3 Scrambling Technology has been licensed to the Sublicensor for the development, manufacture and the other activities related to CSA3 Scramblers and the Sublicensor is permitted to grant sublicences for the use of the CSA3 Scrambling Technology in conjunction with the CSA3 Scrambler under the terms set forth herein;

iii) The Sublicensor wishes to grant, and the Sublicensee wishes to obtain, under the terms of this Agreement, a sublicence for the use of the CSA3 Scrambling Technology and the operation of the CSA3 Scrambler ;

iv) Before operation of the CSA3 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 CSA3 Scrambling Technology and the CSA3 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" :** (i) the CSA3 Scrambler and CSA3 Scrambling Technology, 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 Sublicensor to the Sublicensee under this Agreement or (iii) any other information of a confidential nature relating to the CSA3 Scrambling Technology, made available to the Sublicensee by the Sublicensor, 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 fault of the Sublicensee) ; (B) is rightfully known by the Sublicensee at the time of receipt ; (C) 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. **"DVB Project" :** the DVB Project or, if such project cease to exist, the body succeeding to its activities.

1.6. **"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.

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

1.8. **"CSA3 Scrambler" :** the CSA3 Scrambler identified on the face of this Agreement.

1.9. **"CSA3 Scrambling Technology" :** the scrambling system approved, on 11 April 2007, by the Steering Board of the DVB Project for Standards and any modifications and improvements thereof.

**ARTICLE 2 - SALE OF CSA3 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, non-assignable, non-sublicensable right and licence to use the CSA3 Scrambling Technology (including any intellectual property rights of the Companies directly related thereto), solely in conjunction with the operation of the CSA3 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 CSA3 Scrambler, the Effective Date, the conditions of the use or other exploitation of the CSA3 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 CSA3 Scrambler and use the CSA3 Scrambling Technology no earlier than the date specified in the governmental licences if any, for export or otherwise, of the CSA3 Scrambler, CSA3 Scrambling Technology or both.

2.3. In consideration of the licence granted hereby and the delivery of the CSA3 Scrambler, the Sublicensee shall pay to the Sublicensor the consideration elsewhere specified.

2.4. The Sublicensee shall use the CSA3 Scrambler only for the purposes specified in this Agreement and in the governmental licence, if any, obtained for the CSA3 Scrambler and CSA3 Scrambling Technology. The Sublicensee shall not tamper, harm, reverse engineer, modify, decompile, disassemble or otherwise attempt to extract information from, the CSA3 Scrambling Technology, the CSA3 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 CSA3 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 CSA3 Scrambling Technology sublicensed hereby or the CSA3 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 CSA3 Scrambling Technology remain the property of the entities listed on the Annex hereto (the "Companies"). The Sublicensee shall not assert any industrial or intellectual property right it owns or controls, covering any part of the CSA3 Scrambling Technology or any improvement thereof, against any Company, CSA3 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 DVB Project 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 DVB Project, 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 CSA3 Scrambler and the CSA3 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 CSA3 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, using its own intellectual property, if infringed, as the basis for a claim in such action, 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 CSA3 Scrambling Technology or the CSA3 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 CSA3 Scrambling Technology or the CSA3 Scrambler, for Standards 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 CSA3 Scrambling Technology or the CSA3 Scrambler, or as a result of breach of this Agreement.

3.6. If the Sublicensee 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 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 Scrambling Technology, a CSA3 Scrambler, or its technology, it shall forthwith give notice to the Custodian. The Sublicensee shall assist the Companies, the other users of the CSA3 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 CSA3 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 CSA3 Scrambling Technology, and the CSA3 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 CSA3 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.

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 CSA3 Scrambler will be used and that neither the CSA3 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 :

 ETSI,

 as DVB Custodian

 Route des Lucioles

 FR - 06921 Sophia Antipolis Cedex

 France

 Fax : 33/(0)4 93/654716

Annex to the

CSA3 Scrambler Sublicence Agreement

**List of Companies developing the CSA3 Scrambling Technology**

CISCO

CONAX

IRDETO

NAGRA

ORANGE/VIACCESS

 Schedule to the ST Custodian

 Agreement and to the CSA3 Scrambling

 Technology Licence Agreement

 **SCHEDULE OF PAYMENTS**

 Initial royalty 2 000 € (euros)

 Royalty for each CSA3 Scrambler 30 € (euros)

 sold during prior calendar year

 Non-refundable administrative charge 2 000 € (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.**

**Annual payment of royalties**

On or before 31 March , the one-time royalty of 30 euros for each CSA3 Scrambler sold or otherwise disposed of during the prior calendar year to be paid to the account (to be decided)

1. Insert country of incorporation or formation, together with further registry information. [↑](#footnote-ref-1)
2. Insert address of registered office of the CSA3 Scrambling Technology Licensee [↑](#footnote-ref-2)
3. Insert VAT number of the CSA3 Scrambling Technology Licensee (if registered in the European Union). [↑](#footnote-ref-3)
4. Insert the name of the ultimate parent of the CSA3 Scrambling Technology Licensee. [↑](#footnote-ref-4)
5. Delete the inapplicable activities. [↑](#footnote-ref-5)
6. Insert the name of the CSA3 Scrambling Technology Licensee. [↑](#footnote-ref-6)
7. Insert the name and title of the person signing on behalf of the CSA3 Scrambling Technology Licensee. [↑](#footnote-ref-7)