



DVB COMMON SCRAMBLING ALGORITHM

DISTRIBUTION AGREEMENTS

DVB DOCUMENT A011 rev. 1
June 1996

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DIGITAL VIDEO BROADCASTING PROJECT

COMMON DESCRAMBLING SYSTEM

SCRAMBLING TECHNOLOGY

Distribution Agreements

This revised version contains the distribution agreements for both the Common Descrambling System and Scrambling Technology. This version replaces a prior version dated October 1995.

DIGITAL VIDEO BROADCASTING PROJECT

DVB COMMON SCRAMBLING ALGORITHM

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DIGITAL VIDEO BROADCASTING PROJECT

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INTRODUCTION

This document contains the forms of the distribution agreements for the elements of the Common Scrambling Algorithm approved by the Steering Board of the DVB Project.

The Common Scrambling Algorithm is comprised of the Common Descrambling System and Scrambling Technology. The specification for each is distributed separately under arrangements with the European Telecommunications Standards Institute, which acts as Custodian for the four Companies which have developed the Common Scrambling Algorithm.

These are the arrangements contemplated for descrambling of digital television signals "according to the common European scrambling algorithm as administrated by a recognised European standardisation body" under Article 4(a) of the 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, OJ L 281/51 (23 Nov 95).

The Common Descrambled System will be licensed to manufacturers of Decoders and their components, and to providers, designers and other entities engaged in conditional access. The DVB Common Descrambling System License and Non-Disclosure Agreement is contained in Part A of this document.

The Scrambling Technology will be licensed to manufacturers of Scramblers, which will in turn sublicense the purchasers of Scramblers. The DVB Scrambling Technology Licence and Non-Disclosure Agreement is contained in Part B of this document.

While the DVB Project Office distributes this document, an entity wishing to obtain a licence or further information on the distribution of the specifications should direct its enquiries to:

European Telecommunications Standards Institute (ETSI)
(as Custodian)
Route des Lucioles
F-06921 Sophia Antipolis CEDEX
France
fax: (33) 93 65 47 16
attention: Mr. Pierre de Courcel

Explanatory Note

CERTAIN TERMS GOVERNING THE DISTRIBUTION AGREEMENTS OF THE COMMON SCRAMBLING ALGORITHM

This note sets out a brief background to the drafting process for the distribution agreements for the specifications, approved by the DVB Project, for the Common Descrambling System and Scrambling Technology. It also responds to some issues that have been raised about the agreements.¹ In this note, the capitalized terms have the same meaning as in the DVB Descrambling Custodian Agreement. The "Common Scrambling Algorithm" means the Common Descrambling System and the Scrambling Technology, taken together.

Background. The distribution arrangements for the Common Scrambling Algorithm are the result of a prolonged drafting and review process within the DVB Project. The four Companies which developed the algorithm were given the task of drafting the distribution agreements. The drafting process has kept pace with the work of encryption specialists who were preparing the final version of the Common Scrambling Algorithm. The initial round of the distribution documents, covering the Common Descrambling System, was being completed at the time of adoption by the European Union of the Directive on Television Transmission Standards.² That directive requires that all consumer equipment capable of descrambling digital television signals shall possess the capability to allow the descrambling of such signals

according to a common European scrambling algorithm administered by a recognized European standardization body.

The DVB Descrambling Custodian Agreement and the Scrambling Technology Custodian Agreement specify the terms of administration as referred to in the directive.

This drafting process for the Common Descrambling System lasted over a year. In addition to the four Companies and the European Telecommunications Standards Institute, state ministries and agencies sat in some drafting sessions. Periodic progress reports were made to the Steering Board of the DVB Project, to the Ad-hoc Group on Conditional Access and its Conditional Access Specialists Group and to assemblies of ETSI. Copies of the draft documents were made available to the members of the Steering Board and to those, notably manufacturers, expressing interest. Detailed comments were received from several DVB

¹ *The Custodian and the Companies are of course available to discuss these and other issues with proposed licensees and other interested parties.*

² *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, O.J. L 281/51 (23 Nov. 1995).*

members and these comments were, where appropriate, worked into the draft documents.

The DVB Descrambling Custodian Agreement became effective in August 1995 and the Scrambling Technology Custodian Agreement in January 1996.

Nominal royalties. The distribution process for each of the Common Descrambling System and the Scrambling Technology is comprised of two central documents: a custodian agreement and a licence agreement. (The Scrambling Technology Licence Agreement also contains, as an annex, the form of Scrambler Licence Agreement for sales of Scramblers to End-Users.) A summary of the licensing process is contained elsewhere in this document of the DVB Project.

The custodian agreements were prepared with a view to ensuring the distribution of the Confidential Information,

under the supervision of a neutral Custodian,

to licensees approved by the Custodian and the Companies based on ability to use the Confidential Information (and which have not engaged in audiovisual piracy),

while recognizing that such a distribution may give rise to review by export control authorities.

The most notable feature of the licence agreements is the nominal royalty charged to each licensee. The nominal royalty is designed to hold down the price of equipment needed by the consumer to receive digital video broadcasting.³ Related to this low royalty is a shifting of the burden to the licensees for the defense of the Confidential Information. As the recitals to the licence agreements make clear, the nominal royalty is a contribution by the Companies to the work of the DVB Project

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.

The nominal royalty could be modified upon the occurrence of certain regulatory changes.

³ *In addition to an initial royalty, the Scrambling Technology Licensee is called upon to pay a further royalty of 30 ecus for each Scrambler sold or otherwise disposed of. This additional royalty is designed to ensure that the sale of a Scrambler also includes a sublicense of Scrambling Technology (and, with it, the duties incumbent on a sublicensee with respect to proprietary technology).*

Repriced royalties. As noted above, one of the signal contributions to the DVB Project by the Companies has been their agreement to license, for a nominal royalty, the Common Scrambling Algorithm. This contribution is part of the conditional access package adopted by the Steering Board of the DVB Project in September 1994. After the initial drafting of the distribution agreements, the Companies concluded that the careful consensus worked out for the conditional access package could be undermined. Under these circumstances, it would be unjust, in their view, that they would remain bound to this royalty structure while their competitive position is significantly undercut.

For this reason, the notion of "Repriced Royalties" was introduced (Article 2.2 of the licence agreements), allowing generally the Companies to assess a different royalty under the respective licence agreements. The provision makes clear that this different royalty would however fall under any pooling arrangements for DVBS.

Uniformity of Licence Agreements. The distribution agreements were drafted with the objective of creating a standard low-cost system, administered by a neutral Custodian, for licensing the specifications related to the Common Scrambling Algorithm. The terms of the licence agreements are the result of the drafting and review process outlined above, including consultations with manufacturers, ministries and agencies and review by the Steering Board and ETSI. In addition, the drafting was contemporaneous with the legislative process which produced the Directive on Television Transmission Standards.

For these reasons -- ease of administration, extensive prior review -- the same terms for licensing the Common Scrambling Algorithm are offered to all proposed licensees; no variation is permitted in the text. In other words, the licence agreement for each licensee contains terms which are identical to every other licence agreement.

Burden-shifting. Articles 3.5 and 3.6 of the licence agreements call upon the licensee to assist in the defense of the intellectual property rights contained in the Common Descrambling System and Scrambling Technology and to assist in the fight against audiovisual piracy. These articles were drafted under the principle of burden-shifting noted above. In other words, in view of the nominal royalty, it was judged reasonable (and the Steering Board accepted) that the licensee assume the burden for defense of the Common Scrambling Algorithm and Scrambling Technology.

Some proposed licensees from countries which experience a higher level of litigation than in Europe have expressed the concern that the licensees would be called upon to assume a potentially unlimited liability. In the view of the Companies this is highly speculative and in any event is not a basis for overturning the basic principle of burden-shifting. Moreover, there are explicit qualifications to the licensee's duty under Article 3.5: it will furnish assistance "to the extent it would take action in respect of its own valuable patent". In addition, the Custodian and the licensee will coordinate any such action, including bringing in other parties. Some concern has been expressed that section 3.6 does not contain a similar limitation. We understand that a French court would apply a standard of reasonableness to the

Licensee's obligations under this section.

French export control. One concern has been that French companies will enjoy an unfair competitive advantage because only companies from outside France will be required to submit to a French export control. The decision by the DVB Project to accept the distribution arrangements in their present form indicates that the non-French member companies found these arrangements to be suitable. (Indeed, French companies are also obliged to obtain a governmental licence for use within France.)

Full implementation. Article 2.1 of the Licence Agreement limits the scope of the grant of licence to an

activity only in respect of full implementation of the Common Descrambling System as described in the Confidential Information.

A Licensee producing an intermediate product is not itself directly responsible for "full implementation" if it delivers its product to another Licensee for incorporation. In other words, full implementation of the Common Descrambling System must be achieved by the final Licensee before the Decoder is put into commercial operation or released into the consumer market. A Licensee supplying to the final Licensee or to intermediaries must be certain that its customer is a Licensee.

COMMON DESCRAMBLING SYSTEM

Summary of Distribution Arrangements

The specifications for the Common Descrambling System, as adopted by the DVB Project, can be obtained by following the three steps set out below.

The European Telecommunications Standards Institute has been named as Custodian, by the four Companies which have developed the specification, to handle licensing of the Common Descrambling System and distribution of the specification and other Confidential Information. The duties of the Custodian and the three steps required to obtain the specification by a proposed Licensee are set out in fuller detail in the DVB Descrambling Custodian Agreement contained in this document.

A. Submission to the Custodian

1. The proposed Licensee submits to the Custodian two copies of the completed Licence Agreement, signed by the proposed Licensee.

2. At the same time the proposed Licensee makes two payments:

(i) the administrative charge of 1000 ecus to the Custodian, and

(ii) the one-time royalty of 1000 ecus to the Companies which developed the Common Descrambling System.

The account numbers and other details for these two payments are set out on the Schedule of Payments on page 24 of this document

B. Approval of the proposed Licensee by the Custodian and the Companies

After the proposed Licensee has completed the steps outlined above, the Custodian and the Companies will, within 21 days, decide whether the proposed Licensee meets the Conditions for a licence. These Conditions are:

- The proposed Licensee is a conditional access systems provider, a conditional access designer, a conditional access subsystem manufacturer, a conditional access subsystem integrator or a descrambling component manufacturer.
- It is capable of using the specifications and other Confidential Information for one of more of the following purposes, in full implementation of the Common Descrambling System: the design, development, testing and manufacture of Decoders incorporating DVBS and of components for DVBS; conducting an evaluation of the commercial application of the Common Descrambling System to DVBS; the sale or other disposal, servicing and maintenance of Decoders or components.
- Neither the proposed Licensee or any of its Affiliates has engaged in audiovisual piracy (as defined by the Council of Europe or under laws applicable to the proposed Licensee).

The conditions are also set out in section 2 of the DVB Custodian Agreement. The 21 day period may be extended if one or more Companies gives notice that the proposed Licensee fails to fulfil a Condition.

C. Approval by French governmental authorities

Because ETSI is located within France, export (and use within France) of the specification for the Common Descrambling System will require approval of French governmental authorities. Once a proposed Licensee has been found to be suitable under the procedure described above, then the Custodian will, together with the Licensee, apply for the necessary governmental licence. This approval process is expected not to exceed 30 days.

When the governmental licence is obtained, the Custodian, on behalf of the developing Companies, will sign the Licence Agreement and deliver to the Licensee the specification and the other Confidential Information.

DVB DESCRAMBLING CUSTODIAN AGREEMENT

BETWEEN :

Canal+ SA, Centre Commun d'Etudes de Télédiffusion et Télécommunications, Irdeto BV and News Datacom Limited (the "Companies") and European Telecommunications Standards Institute, a standards-making organization recognised by the European Union ("ETSI"),

WHEREAS :

- i) The European Project - Digital Video Broadcasting (the "EP-DVB") has been formed to develop the DVBS (all capitalized terms in this Agreement, unless otherwise defined herein, are defined in the DVB Common Descrambling System Licence and Non-Disclosure Agreement attached as Annex I (the "Licence Agreement")) to be used for digital television services ;
- ii) The Companies, members of the EP-DVB, have developed together a Common Descrambling System which has been adopted by the Steering Board of the EP-DVB to complement the specifications of DVBS ;
- iii) The Companies desire to promote the use of the DVBS and to license the Common Descrambling System to users specified in Article 5.6 of the Licence Agreement (the "Licensees") for the development and manufacture of, and other activities related to, Decoders in exchange for a nominal royalty set by the Companies as a contribution to the work of the EP-DVB and as part of the implementation of its conditional access package adopted by the Steering Board of the EP-DVB on 27 September 1994 ;
- iv) The Companies intend to appoint ETSI, and ETSI is willing to accept such appointment, as Custodian pursuant to the terms of this Agreement ; and for administrative convenience the Companies have named as their representative (the "Representative") the Company named on the signature page of this Agreement ; and
- v) In such capacity, the Custodian shall enter into Licence Agreements with Licensees which provide for
 - (A) the grant, on behalf of the Companies, as licensors, to each Licensee of a licence of the Common Descrambling System, in exchange for the royalties specified in the Schedule, on a non-discriminatory basis and without liability to the Companies for infringement of any patent or otherwise, and

- (B) the disclosure to the Licensees of the Confidential Information under the terms and conditions specified in the Licence Agreement ;

IT IS HEREBY AGREED AS FOLLOWS :

1. Each of the Companies hereby appoints ETSI exclusive Custodian (i) to hold under the terms of this Agreement the Confidential Information and (ii) to enter into Licence Agreements with Licensees. ETSI accepts such appointment. It is understood that the administrative aspects shall be handled by the ETSI Secretariat.

2. The Custodian shall undertake the following duties :
 - i) Except for its performance under this Agreement, ETSI shall hold the Confidential Information on the terms specified in Article 3 of the Licence Agreement as if ETSI were the Licensee therein named;

 - ii) the Custodian shall provide, on written request, a form of the Licence Agreement in the form attached as Annex I to each person ("proposed Licensee") appearing to the Custodian to fulfil the relevant conditions (each a "Condition") :
 - (A) it is a user as specified in Article 5.6 of the Licence Agreement in the context of the DVBS,

 - (B) it is capable itself of using the Confidential Information for the purposes specified in Article 3.2 of the Licence Agreement, and

 - (C) neither it nor any of its Affiliates has engaged in activities which could be considered as audiovisual piracy in the forms addressed in Recommendation N° R 88 (2) or Recommendation N° R 91 (14) of the Council of Europe or under the laws applicable to the proposed Licensee.

At the time the Custodian provides such a form, it shall notify the Companies of the name of the proposed Licensee ;

- iii) upon receipt of two copies of the Licence Agreement each duly executed by the proposed Licensee and in the form attached as Annex I, together with the administrative charge referred to in section 3 and the royalty specified in the schedule, and provided the Custodian is satisfied that the Conditions appear to be fulfilled, the Custodian shall notify each of the Companies again, by fax, of the name of, and other information supplied to the Custodian by, the proposed Licensee. Within 21 days of the receipt of such notice, any Company may notify the Custodian that the proposed Licensee is not suitable, giving reasons why the proposed Licensee fails to fulfil a Condition ; the Custodian shall forthwith so notify the proposed Licensee and each of the Companies. The

proposed Licensee and any Company may submit further information to rebut or to support this conclusion. The Companies shall examine the further information and a decision of a majority of the Companies (each Company being entitled to one vote) as to the suitability of the proposed Licensee shall be final. A proposed Licensee shall be deemed to have been found suitable if the Companies are equally divided ;

- iv) if the proposed Licensee is found to be not suitable, the Custodian shall so notify the proposed Licensee ;
 - v) if the proposed Licensee is found to be suitable (after the expiry of the 21 day period specified in Section 2(iii) or earlier after written notice to the Custodian by each Company), the Custodian shall take the necessary steps, in consultation with the proposed Licensee, to obtain a governmental licence, if any, for the Confidential Information ;
 - vi) when any necessary governmental licence has been granted, the Custodian shall execute the Licence Agreement and provide the Confidential Information, together with one fully executed original of the Licence Agreement, to the Licensee.
3. The Custodian may impose, on each proposed Licensee, an administrative charge, not to exceed 1000 ECUS (excluding value-added tax), to cover the costs of the custodianship. Such a charge shall be payable to the Custodian at the time specified in the Schedule. The administrative charge is non-refundable including in the event the proposed Licensee is found not to fulfill the Conditions.
4. The Companies shall, either directly or by means of the EP-DVB, promptly transmit to the Custodian any improvements or upgrades of the Common Descrambling System which have been developed by the Companies and adopted by the Steering Board of the EP-DVB. The Custodian shall, under the terms of the Licence Agreement (and upon payment of a supplementary administrative charge if any notified by the Custodian to the Steering Board of the EP-DVB), take the necessary steps, in consultation with Licensees, to obtain any governmental licence thereon and thereafter transmit to Licensees any such upgrade or improvement.
5. Neither the Custodian nor the Companies are required to provide technical support.
6. Any matter relating to this Agreement, or to any Licence Agreement and its enforcement, shall be resolved in consultation between the Custodian and the Companies. The Custodian shall not enter into any Licence Agreement except in the form of Annex I nor agree to amend, or consent to any waiver of, any Licence Agreement. The Custodian shall not represent the Companies or any of them except as expressly provided in this Agreement. If the Custodian receives notice of a breach of any Licence Agreement or of any piracy (in any of the forms specified in Section 2(ii) or any other form) or other alleged unauthorized use concerning the Common Descrambling System, it shall promptly notify the Companies. The Custodian shall in respect of a breach of any Licence Agreement or piracy concerning the Common

Descrambling System, take only such action as the Representative may direct including without limitation declaring a breach and enforcing contractual remedies under a Licence Agreement.

7. This Agreement shall terminate on the fifth anniversary thereof but shall be extended for successive three year renewal terms unless ETSI or the Representative gives written notice of termination three months before the end of the initial term or any renewal term. This Agreement may also be terminated upon (A) six months' written notice given either by ETSI or the Representative, or (B) upon material breach by ETSI of this Agreement (and after written notice), or (C) the bankruptcy, judicial administration or winding up of ETSI. Notwithstanding termination for any reason, the obligations of ETSI under section 2(i) shall continue and it shall take such steps as the Companies may direct to ensure the transfer of the Confidential Information and custodianship duties to a new custodian.
8. ETSI may assign its obligations hereunder and under any Licence Agreement only upon the prior written consent of the Representative, which consent shall be granted (or denied) after consultation with the EP-DVB (but if the EP-DVB cease to exist and there be no successor thereto, then without such consultation). Notices shall be delivered to the address set forth next to the signature of the party (which address a party may by notice change). The Representative may give notice of its replacement by another Company, at which time the Custodian shall treat the replacing Company as Representative under this Agreement. Any Company may assign its rights and obligations hereunder, and under any Licence Agreement, upon notice to the Custodian and each other Company. The Custodian shall deliver any such notice to each Licensee.
9. Each Company, for itself, and the Custodian agree to keep the identity, and the information submitted as to the suitability, of any proposed Licensee strictly confidential and not to disclose it to any other person, including its Affiliates, except to a court of law when required by a court order and except for disclosure to other Companies for any decision on suitability under Section 2 (ii) and 2 (iii) or for antipiracy measures.
10. 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 Custodian and any Company. Any amendments to this Agreement (and any modifications or waiver to any Licence Agreement) shall be in writing signed by ETSI and each Company.

11. 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.

Executed in six originals as of 28 August 1995.

Address for notice
pursuant to Section 6

EUROPEAN TELECOMMUNICATIONS
STANDARDS INSTITUTE

CANAL + SA

CENTRE COMMUN D'ETUDES DE
TELEDIFFUSION ET TELECOMMUNICATIONS

IRDETO BV
(and named under a separate agreement
as Representative of the Companies)

NEWS DATACOM LIMITED

DVB COMMON DESCRAMBLING SYSTEM LICENCE AND NON-DISCLOSURE AGREEMENT

BETWEEN :

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

and

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

WHEREAS :

- i) The EP-DVB (all capitalized terms herein are defined in Article 1 of this Agreement) has been formed to develop a digital video broadcasting system to be used as the basis for digital television services ;
- ii) The Companies, members of the EP-DVB, have developed together a Common Descrambling System which has been adopted by the Steering Board of the EP-DVB ;
- iii) By a resolution of its Steering Board, the EP-DVB has agreed on the necessity of defining the confidentiality rules to be applied for the distribution and use of Confidential Information ;
- iv) The Companies desire to promote the use of the DVBS and to license, in exchange for a nominal royalty, the Common Descrambling System for the development, manufacture and the other activities related to Decoders, to certain bona fide users specified in Article 5.6 (and found suitable under the DVB Custodian Agreement) on a non-discriminatory basis and without liability to the Companies for infringement of any patent or otherwise ;
- v) A nominal royalty only is payable by the Licensee under this Agreement and by other licensees of the Common Descrambling System as a contribution by the Companies to the work of the EP-DVB, with the hope that other holders of rights in technology incorporated in DVBS will make a similar contribution and as part of the implementation of the conditional access package of the EP-DVB adopted by the Steering Board of the EP-DVB on 27 September 1994 ;
- vi) The Custodian, a recognized European standards-making organization, has

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

- vii) The Licensee, whose activities are described in Article 5.6., has applied, and paid to the Custodian a non-refundable administrative charge and to the Companies the royalty, to be a licensee of the Common Descrambling System for the purposes set out in Article 5.6. ; and
- viii) The Custodian, with the assistance of the Licensee, intends to obtain any governmental licence, for export or otherwise, for the Confidential Information and further implementation of this Agreement and upon the grant of such governmental licence this Agreement shall become effective ;

IT IS HEREBY AGREED AS FOLLOWS :

ARTICLE 1 - DEFINITIONS

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

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

Ownership or control shall exist through the direct or indirect :

- ownership of 50 percent or more of the nominal value of the issued equity share capital or of 50 percent or more of the shares entitling the holders to vote for the election of directors or persons performing similar functions, or
- right by any other means to elect or appoint directors or persons who collectively can exercise such control.

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

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

- 1.4. **"Confidential Information"** : any information delivered or communicated by the Custodian or any Company to the Licensee under this Agreement or any other information of a confidential nature relating to the Common Descrambling System, made available to the Licensee by the Custodian or by any Company, which is marked

confidential or proprietary, or disclosed orally and identified as confidential at the time of disclosure and confirmed to be so in writing within 15 days of disclosure, or is known to be confidential. Confidential Information shall not include information that (i) is now, or later becomes, generally known to the public (other than through the Licensee's fault) ; (ii) is known by the Licensee at the time of receipt ; (iii) is lawfully obtained by the Licensee from any third party who has lawfully obtained such information. The Licensee shall bear the burden of showing that any of the foregoing exclusions applies to any part of the Confidential Information.

- 1.5. **"Custodian"** : the European Telecommunications Standards Institute, a recognized European standards-making organization, or any replacement custodian notified to the Licensee under Article 5.2.
- 1.6. **"Decoder"** : a device, apparatus or mechanism designed or specifically adapted, totally or partially, to enable access in the clear to a DVBS-compatible service scrambled by the common scrambling system (approved by the Steering Board of the EP-DVB for DVBS) and any modifications and improvements thereof and which can be descrambled using the Common Descrambling System.
- 1.7. **"DVB Custodian Agreement"** : the DVB Descrambling Custodian Agreement between the Custodian and the Companies.
- 1.8. **"Effective Date"** : the date on which occurs the later of (i) the grant of all governmental licences, if any, for the delivery of the Confidential Information and further implementation of this Agreement and (ii) the finding that the Licensee is suitable under section 2 of the DVB Custodian Agreement.
- 1.9. **"DVBS"** : the digital video broadcasting systems specified by the EP-DVB for digital one-way broadcasting (including without limitation video-on-demand) as approved from time to time by the Steering Board of the EP-DVB and delivered for standardization to the competent standard-making organization.
- 1.10. **"EP-DVB"** : the European Project - Digital Video Broadcasting or, if such project cease to exist, the body succeeding to its activities.
- 1.11. **"Licensee"** : the company whose name appears on the signature page of this Agreement.
- 1.12. **"Schedule"** : the schedule attached to this Agreement.

ARTICLE 2 - LICENCE

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

incorporating DVBS and of components for Decoders ; conducting an evaluation of the commercial application of the Common Descrambling System to DVBS ; the sale or other disposal, servicing and maintenance of Decoders or components ; provided that any such activity is only in respect of full implementation of the Common Descrambling System as described in the Confidential Information. The licence granted hereby (including its territory, field of use and implementation and the Effective Date) is subject to the terms of the governmental licence, if any, required in respect of the Licensee and to applicable law.

- 2.2. In consideration of the rights granted under this Agreement, the Licensee shall pay to the Companies the one-term royalty in the amount, in the manner, and at the time specified in the Schedule. If the Custodian fails to obtain a governmental licence in respect of this Agreement (or the Licensee is found not suitable under section 2 (iv) of the DVB Custodian Agreement) such royalty shall be returned to the Licensee. Notwithstanding the first sentence of this Article 2.2 and the Schedule, if a directive or other instrument is adopted by the European Union which substantially limits the implementation of one or more elements of the conditional access package adopted by the Steering Board of the EP-DVB on 27 September 1994, the Companies and the Licensee shall, during a period of 60 days following notice by the Custodian of such limitation, renegotiate the amount, the manner and time of further royalties (the "Repriced Royalties") in consideration of the rights granted under this Agreement. The Repriced Royalties shall be consistent with other common arrangements for the licence of intellectual property rights in respect of other specifications of the EP-DVB (or, in the absence of such arrangements, based on terms which are fair, reasonable and non discriminatory) and shall upon agreement by the Companies and the Licensee replace the provisions of the first sentence of this Article 2.2.
- 2.3. The Licensee shall not file any patent registration or claim any industrial or intellectual property right incorporating all or any part of the Confidential Information. The Licensee agrees that the Confidential Information and all other industrial or intellectual property rights in the Common Descrambling System remain the property of the Companies. The Licensee shall not assert any industrial or intellectual property right it owns or controls, covering any part of the Common Descrambling System or any improvement thereof, against any Company or any other licensee of the Common Descrambling System who is bound by the same provision as in this Article 2.3. The agreement containing the Repriced Royalties referred to in Article 2.2 shall provide that the Licensee shall offer any such industrial or intellectual property right under the common arrangements for the licence of such rights in respect of other specifications of the EP-DVB (or, in the absence of such arrangements, on terms which are fair, reasonable and non-discriminatory) to the Companies and to any other Licensee of the Common Descrambling System on a reciprocal basis.
- 2.4. If, at any time during this Agreement, any improvement specified by the Steering Board of the EP-DVB shall become available to the Custodian, the Custodian shall, upon payment by the Licensee to the Custodian of any further administrative charge, assist in obtaining an governmental licence, if any, required for the improvement, fully disclose the improvement to the Licensee and shall, to the extent the Companies have rights therein, grant the Licensee a licence thereto on the basis of Article 2.1. In

respect of any improvement, the Custodian may require that its implementation be introduced on a coordinated basis, consistent with the objectives of the EP-DVB, with all persons who have entered into agreements similar to this Agreement.

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

ARTICLE 3 - CONFIDENTIAL INFORMATION

- 3.1. The Custodian shall on the Effective Date deliver the Confidential Information held by the Custodian to the Licensee and shall, during the term of the Agreement, deliver such additional Confidential Information which the Custodian may from time to time receive from the Companies. The Licensee agrees to keep the Confidential Information strictly confidential and shall not disclose Confidential Information to any other person except to an Affiliate or a court of law when required by a court order.
- 3.2. The Licensee agrees that the Confidential Information shall be used solely for the purposes specified in Article 2.1 and any Decoder manufactured, tested or otherwise using or incorporating the Common Descrambling System shall be designed in such a way as to protect the confidentiality of the Confidential Information.
- 3.3. The Licensee shall disclose the Confidential Information only to its Affiliates, and to its employees (who under the terms of their employment by the Licensee are subject to an obligation not to disclose confidential information of the Licensee), who have a "need to know" for the purposes specified in Article 3.2, and are made aware of the requirements of this Article 3 and Article 5.1.
- 3.4. The Licensee shall protect the Confidential Information with the same degree of care as it normally uses in the protection of its own confidential and proprietary information, but in no case with any less degree than reasonable care. The Licensee shall, at the Custodian's request, provide written assurances concerning the steps taken by the Licensee and its Affiliates to preserve the confidentiality of the Confidential Information.
- 3.5. If the Licensee has notice of any unauthorized use, infringement or misappropriation of the Confidential Information or the Common Descrambling System, it shall forthwith give notice to the Custodian. The Licensee shall, where required (and to the extent it would take action in respect of its own valuable patent), assist the Custodian (or any Company) in any action brought against such use, infringement or misappropriation, including being named as a party in such actions and otherwise participating in such action. The Custodian and the Licensee shall coordinate the prosecution of any such action, including the desirability of including other parties or participants in the action.

Neither the Custodian nor any Company shall be liable for (A) any claim asserted by the Licensee or any third party of unauthorized use, infringement or misappropriation of the Confidential Information or the Common Descrambling System of any patent, trademark, copyright, industrial or other intellectual property right or (B) any representation or warranty, implied or otherwise, as to the suitability or fitness of the Common Descrambling System for DVBS or any other application. The Licensee shall indemnify the Custodian and the Companies for any loss, damage or costs suffered or incurred as a result of the misuse by the Licensee of the Common Descrambling System or breach of this Agreement.

- 3.6. If the Licensee has notice of any audiovisual piracy in the forms addressed in Recommendation N° R 88 (2) or Recommendation N° R 91 (14) of the Council of Europe or other unauthorized use of the Common Descrambling System, it shall forthwith give notice to the Custodian. The Licensee shall assist the Companies, the other users of the Common Descrambling System and the Custodian to combat, by technical, judicial and other means, any such piracy or unlawful use, including being named as a party and otherwise participating in any judicial proceeding.
- 3.7. In no event shall Custodian, the Companies or the Licensee be liable to other parties for exemplary, incidental, special or consequential damages of any kind, including without limitation loss of profit, savings or revenue, or the claims of third parties, whether or not advised of the possibility of such loss, however caused and on any theory or liability, arising out of this Agreement or the relationship of the parties.

ARTICLE 4 - DURATION, BREACH

- 4.1. This Agreement shall become effective on the Effective Date and expire on the fifth anniversary thereof. This Agreement shall be extended for successive three year renewal terms under the terms of this Agreement unless the Licensee shall have given written notice of termination three months before the end of the initial term or any renewal term. Expiration of this Agreement (or earlier termination) shall not relieve the Licensee of any of its obligations under Articles 2 and 3 or any governmental licence.
- 4.2. This Agreement may be terminated upon notice given by the Custodian upon the occurrence of any of the following events :
- (i) the Licensee or any of its Affiliates breaches any of the terms hereof, or
 - (ii) the Licensee engages in or authorizes any activity which could be considered as audiovisual piracy (in the forms described in Article 3.6.), or
 - (iii) any of the representations in Article 5.6 is or becomes untrue, or
 - (iv) there is a voluntary or involuntary filing of bankruptcy by, or similar event affecting, the Licensee, or

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

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

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

ARTICLE 5 - MISCELLANEOUS

- 5.1. The Licensee may after written notice to the Custodian disclose the Confidential Information (but may not sublicense its rights hereunder) to any Affiliate. The Licensee shall ensure that both it and such Affiliate shall comply with Articles 2.3 and 3 and this Article 5.1 in respect of the Confidential Information disclosed to such Affiliate. The Licensee shall cause such Affiliate not to disclose Confidential Information to any other Affiliate. The ability and extent of disclosure may be subject to a governmental licence. If the Affiliate ceases to be an Affiliate of the Licensee, the Licensee shall cause such Affiliate forthwith to return to the Licensee all Confidential Information disclosed to the Affiliate.
- 5.2. Except as otherwise provided in Article 5.1, the Licensee shall not subcontract any part of the design or manufacture of its equipment or the provision of its service which requires knowledge of any part of the Confidential Information to any entity which has not signed an agreement in the form hereof with the Custodian. The Licensee may not assign or sublicense this Agreement. The Custodian may upon notice to the Licensee assign this Agreement to a replacement custodian which shall have the rights and obligations on the Custodian hereunder. Any Company may assign its rights and obligations hereunder upon notice to the Licensee delivered by such Company or the Custodian.
- 5.3. The Licensee agrees that, in addition to the Custodian, the Companies, jointly or severally, shall have the right to enforce this Agreement.
- 5.4. This Agreement shall be construed according to the laws of France and, in case of disagreement that cannot be settled amicably, the Tribunal de Grande Instance de Grasse (Alpes Maritimes, France) shall have exclusive jurisdiction of any claim brought by the Licensee and non-exclusive jurisdiction of any claim brought by the Custodian or the Companies. The Custodian or any Company may seek to enforce in any jurisdiction any judgment entered by such tribunal.
- 5.5. This Agreement is the only agreement between the parties on the subject matter described herein and replaces in all respects any prior agreement, written or oral, on the subject matter between the Licensee and the Custodian, and between the Licensee

and any Company (except in respect of protection of confidential information).

- 5.6. The Licensee represents and warrants that its registered office is located at _____⁴, and its ultimate parent is _____⁵ and that it is a conditional access systems provider / conditional access designer / conditional access subsystem manufacturer / conditional access subsystem integrator / descrambling component manufacturer⁶, it requires the Confidential Information for the purposes of manufacturing Decoders compatible with DVBS and excluding any other use, it is capable itself of using the Confidential Information for such purposes and neither the Licensee nor any Affiliate has engaged directly or indirectly in or authorized audiovisual piracy.

⁴*Insert address of Company's registered office*

⁵*Insert name of ultimate parent(s)*

⁶*Strike out when irrelevant*

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

The Custodian, _____⁷ at
on behalf of the Companies,

EUROPEAN TELECOMMUNICATIONS

STANDARDS INSTITUTE

By : _____

By⁸: _____

Title : _____

Title⁹: _____

Date : _____

Date : _____

⁷ Name of company

⁸ Name of authorized representative

⁹ Title of authorized representative

SCHEDULE OF PAYMENTS

	<u>Ecus</u>
Royalty paid by the Licensee	1000
Administrative charge paid by the Licensee	1000

TIMING AND MANNER OF PAYMENTS

Non refundable administrative charge of the Custodian

At the time the Licence Agreement, executed by the proposed Licensee, is submitted to the Custodian, to be paid to the Account of European Telecommunications Standards Institute, N° 10319060, Bank code 30004/00643, Swift address BNPAFRPPCAN at Banque Nationale de Paris, route des Dolines, F-06902 Sophia Antipolis, France.

Royalties

At the time the License Agreement, executed by the proposed Licensee, is submitted to the Custodian to be paid to the account "Irdeto BV for Companies developing DVB scrambling", account N° 43.26.00.450, Swift address HBUANL2R, at HBU Bank, Postbus 249, 3000 AE Rotterdam, the Netherlands.

Any royalty or administrative charge shall be paid exclusive of value-added taxes, bank charges and other taxes and duties, all which shall be borne by the Licensee.

SCRAMBLING TECHNOLOGY

Summary of Distribution Arrangements

The specifications for the Scrambling Technology, as adopted by the DVB Project, can be obtained by following the three steps set out below.

The European Telecommunications Standards Institute has been named as Custodian, by the four Companies which have developed the specification, to handle licensing of the Scrambling Technology and distribution of the specification and other Confidential Information. The duties of the Custodian and the three steps required to obtain the specification by a proposed Scrambling Technology Licensee are set out in fuller detail in the DVB Scrambling Technology Custodian Agreement contained in this document.

A. Submission to the Custodian

1. The proposed Scrambling Technology Licensee submits to the Custodian two copies of the completed Scrambling Technology Licence Agreement, signed by the proposed Scrambling Technology Licensee.

2. At the same time the proposed Scrambling Technology Licensee makes two payments:

(i) the administrative charge of 2000 ecus to the Custodian, and

(ii) an initial royalty of 1000 ecus to the Companies which developed the Scrambling Technology.

Thereafter the Scrambling Technology Licensee makes payment of 30 ecus for each Scrambler sold or otherwise disposed of during the prior 12 months.

The account numbers and other details for these payments are set out on the Schedule of Payments on page 44 of this document.

B. Approval of the proposed Scrambling Technology Licensee by the Custodian and the Companies

After the proposed Scrambling Technology Licensee has completed the steps outlined above, the Custodian and the Companies will, within 21 days, decide whether the proposed Scrambling Technology Licensee meets the Conditions for a licence. These Conditions are:

- The proposed Scrambling Technology Licensee is a conditional access systems provider, a conditional access designer, a conditional access subsystem manufacturer, a Scrambler component manufacturer, or a Scrambler manufacturer.
- It is capable of using the specifications and other Confidential Information for one or more of the following purposes, in full implementation of Scrambling Technology: the design, development, testing, manufacture, sale or other disposal of Scramblers incorporating DVBS, and of components for Scramblers; using Scramblers for demonstration or display purposes; conducting an evaluation of the commercial application of Scrambling Technology to DVBS; the sublicense of Scrambling Technology, together with the sale and delivery of sale or other disposal of Scramblers or components to End-users.
- Neither the proposed Scrambling Technology Licensee or any of its Affiliates has engaged in audiovisual piracy (as defined by the Council of Europe or under laws applicable to the proposed Scrambling Technology Licensee).

The conditions are also set out in section 2 of the DVB Scrambling Technology Custodian Agreement. The 21 day period may be extended if one or more Companies gives notice that the proposed Scrambling Technology Licensee fails to fulfil a Condition.

C. Approval by French governmental authorities

Because ETSI is located within France, export (and, in some cases, use within France) of the specification for Scrambling Technology will require approval of French governmental authorities. Once a proposed Scrambling Technology Licensee has been found to be suitable under the procedure described above, then the Custodian will, together with the Scrambling Technology Licensee, apply for the necessary governmental licence. This approval process is expected not to exceed 30 days.

When the governmental licence is obtained, the Custodian, on behalf of the

developing Companies, will (i) sign the Scrambling Technology Licence Agreement and deliver to the Scrambling Technology Licensee the specification and the other Confidential Information, (ii) assign to the Scrambling Technology Licensee a unique number and (iii) issue certificates in conjunction with identification keys used by the Scrambling Technology Licensee.

D. Sale of Scramblers

A Scrambling Technology Licensee will use the Confidential Information generally for the sale or other disposal of a Scrambler to an End-user, that is, an entity offering conditional access by means of the Scrambler. For the sale to End-users, the Scrambling Technology Licence Agreement requires that the End-users enter into a Scrambler Licence Agreement and obtain all required governmental licences. The Scrambler Sublicence Agreement contains standard terms and conditions -- on confidentiality, piracy, no challenge, etc. -- similar to those in the Scrambling Technology Licence Agreement.

DVB SCRAMBLING TECHNOLOGY CUSTODIAN AGREEMENT

BETWEEN :

Canal+ SA, Centre Commun d'Etudes de Télédiffusion et Télécommunications, Irdeto BV and News Datacom Limited (the "Companies") and European Telecommunications Standards Institute, a standards-making organization recognised by the European Union ("ETSI"),

WHEREAS :

- i) The European Project - Digital Video Broadcasting has been formed to develop the DVBS (all capitalized terms in this Agreement, unless otherwise defined herein, are defined in the DVB Scrambling Technology Licence and Non-Disclosure Agreement attached as Annex I (the "Scrambling Technology Licence Agreement")) to be used 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 to complement the specifications of DVBS ;
- 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 ; this Agreement specifies the terms of administration as referred to in such directive ;
- iv) The Companies desire to promote the use of the DVBS and to license the Scrambling Technology to users specified in Article 5.6 of the Scrambling Technology Licence Agreement (the "Licensees") for the development and manufacture of, and other activities related to, Scramblers in exchange for a nominal royalty set by the Companies as a contribution to the work of the EP-DVB and as part of the implementation of its conditional access package adopted by the Steering Board of the EP-DVB on 27 September 1994 ;
- v) The Companies intend to appoint ETSI, and ETSI is willing to accept such appointment, as Custodian pursuant to the terms of this Agreement ; and for administrative convenience the Companies have named as their representative (the "Representative") the Company named on the signature page of this Agreement ; and
- vi) In such capacity, the Custodian shall enter into Scrambling Licence Agreements with Scrambling Technology Licensees which provide for

- (A) the grant, on behalf of the Companies, as licensors, to each Scrambling Technology Licensee of a licence of the Scrambling Technology, in exchange for the royalties specified in the Schedule, on a non-discriminatory basis and without liability to the Companies for infringement of any patent or otherwise, and
- (B) the disclosure to the Scrambling Technology Licensees of the Confidential Information under the terms and conditions specified in the Scrambling Technology Licence Agreement.

IT IS HEREBY AGREED AS FOLLOWS :

1. Each of the Companies hereby appoints ETSI exclusive Custodian (i) to hold under the terms of this Agreement the Confidential Information, (ii) to enter into Scrambling Technology Licence Agreements with Licensees and (iii) to perform the other duties specified in this Agreement. ETSI accepts such appointment. It is understood that the administrative aspects shall be handled by the ETSI Secretariat.
2. The Custodian shall undertake the following duties :
 - i) Except for its performance under this Agreement, ETSI shall hold the Confidential Information on the terms specified in Article 3 of the Scrambling Technology Licence Agreement as if ETSI were the Scrambling Technology Licensee therein named;
 - ii) the Custodian shall provide, on written request, a form of the Scrambling Technology Licence Agreement in the form attached as Annex I to each person ("proposed Scrambling Technology Licensee") appearing to the Custodian to fulfil the relevant conditions (each a "Condition") :
 - (A) it is a user as specified in Article 5.6 of the Scrambling Technology Licence Agreement in the context of the DVBS,
 - (B) it is capable itself of using the Confidential Information for the purposes specified in Article 3.2 of the Scrambling Technology Licence Agreement, and
 - (C) neither it nor any of its Affiliates has engaged in activities which could be considered as audiovisual piracy in the forms addressed in Recommendation N° R 88 (2) or Recommendation N° R 91 (14) of the Council of Europe or under the laws applicable to the proposed Licensee.

At the time the Custodian provides such a form, it shall notify the Companies of the name of the proposed Scrambling Technology Licensee ;

- iii) upon receipt of two copies of the Scrambling Technology Licence Agreement each duly executed by the proposed Scrambling Technology Licensee and in the form attached as Annex I, together with the administrative charge referred to in section 3 and the royalty specified in the Schedule, and provided the Custodian is satisfied that the Conditions appear to be fulfilled, the Custodian shall notify each of the Companies again, by fax, of the name of, and other information supplied to the Custodian by, the proposed Scrambling Technology Licensee. Within 21 days of the receipt of such notice, any Company may notify the Custodian that the proposed Scrambling Technology Licensee is not suitable, giving reasons why the proposed Scrambling Technology Licensee fails to fulfil a Condition ; the Custodian shall forthwith so notify the proposed Scrambling Technology Licensee and each of the Companies. The proposed Scrambling Technology Licensee and any Company may submit further information to rebut or to support this conclusion. The Companies shall examine the further information and a decision of a majority of the Companies (each Company being entitled to one vote) as to the suitability of the proposed Scrambling Technology Licensee shall be final (without prejudice to review of a negative decision by a court having jurisdiction). A proposed Scrambling Technology Licensee shall be deemed to have been found suitable if the Companies are equally divided ;
- iv) if the proposed Scrambling Technology Licensee is found to be not suitable, the Custodian shall so notify the proposed Scrambling Technology Licensee ;
- v) if the proposed Scrambling Technology Licensee is found to be suitable (after the expiry of the 21 day period specified in Section 2(iii) or earlier after written notice to the Custodian by each Company), the Custodian shall take the necessary steps, in consultation with the proposed Scrambling Technology Licensee, to obtain a governmental licence, if any, for the Confidential Information ;
- vi) when any necessary governmental licence has been granted, the Custodian shall
 - (A) execute the Scrambling Technology Licence Agreement,
 - (B) provide the Confidential Information, together with one fully executed original of the Scrambling Technology Licence Agreement, to the Scrambling Technology Licensee, and
 - (C) following the guidelines of the Representative, (i) assign to the Scrambling Technology Licensee a number unique to the Scrambling Technology Licensee and (ii) issue certificates in conjunction with identification keys used by the Scrambling Technology Licensee ;

- vii) the Custodian shall maintain a list of the numbers issued pursuant to Section 2(vi)(C), setting forth on such list the Scrambling Technology Licensees.
3. The Custodian may impose, on each proposed Scrambling Technology Licensee, an administrative charge, not to exceed 2000 ECUS (excluding value-added tax), to cover the costs of the administration. Such a charge shall be payable to the Custodian at the time specified in the Schedule. The administrative charge is non-refundable including in the event the proposed Scrambling Technology Licensee is found not to fulfill the Conditions.
 4. The Companies shall, either directly or by means of the EP-DVB, promptly transmit to the Custodian any improvements or upgrades of the Scrambling Technology which have been developed by the Companies and adopted by the Steering Board of the EP-DVB. The Custodian shall, under the terms of the Scrambling Technology Licence Agreement (and upon payment of a supplementary administrative charge if any notified by the Custodian to the Steering Board of the EP-DVB), take the necessary steps, in consultation with Scrambling Technology Licensees, to obtain any governmental licence thereon and thereafter transmit to Scrambling Technology Licensees any such upgrade or improvement.
 5. Neither the Custodian nor the Companies are required to provide technical support.
 6. Any matter relating to this Agreement, or to any Scrambling Technology Licence Agreement and its enforcement, shall be resolved in consultation between the Custodian and the Companies. The Custodian shall not enter into any Scrambling Technology Licence Agreement except in the form of Annex I nor agree to amend, or consent to any waiver of, any Scrambling Technology Licence Agreement. The Custodian shall not represent the Companies or any of them except as expressly provided in this Agreement. If the Custodian receives notice of a breach of any Scrambling Technology Licence Agreement, or of any breach of Articles 2 and 3 of any Scrambler Sublicence Agreement or of any piracy (in any of the forms specified in Section 2(ii) or any other form) or other alleged unauthorized use concerning the Scrambling Technology, it shall promptly notify the Companies. The Custodian shall, in respect of any such breach or piracy concerning the Scrambling Technology, take only such action as the Representative may direct including without limitation declaring a breach and enforcing contractual remedies under a Scrambling Technology Licence Agreement.
 7. This Agreement shall terminate on the fifth anniversary thereof but shall be extended for successive three year renewal terms unless ETSI or the Representative gives written notice of termination three months before the end of the initial term or any renewal term. This Agreement may also be terminated upon (A) six months' written notice given either by ETSI or the Representative, or (B) upon material breach by ETSI of this Agreement (and after written notice), or (C) the bankruptcy, judicial administration or winding up of ETSI. ETSI may give the notice specified in Section 7(A) for any reason, including upon the giving of the notice specified in Article 2.2 of the Scrambling Technology Licence Agreement in respect of Repriced Royalties and the failure during the six-month notice period to obtain negative clearance or other

assurances satisfactory to ETSI from the European Commission on the compatibility of the Repriced Royalties with competition law. Notwithstanding termination for any reason, the obligations of ETSI under Section 2(i) shall continue and it shall take such steps as the Companies may direct to ensure the transfer of the Confidential Information and custodianship duties to a new custodian.

8. ETSI may assign its obligations hereunder and under any Scrambling Technology Licence Agreement only upon the prior written consent of the Representative, which consent shall be granted (or denied) after consultation with the EP-DVB (but if the EP-DVB cease to exist and there be no successor thereto, then without such consultation). Notices shall be delivered to the address set forth next to the signature of the party (which address a party may by notice change). The Representative may give notice of its replacement by another Company, at which time the Custodian shall treat the replacing Company as Representative under this Agreement. Any Company may assign its rights and obligations hereunder, and under any Scrambling Technology Licence Agreement, upon notice to the Custodian and each other Company. The Custodian shall deliver any such notice to each Scrambling Technology Licensee.
9. Each Company, for itself, and the Custodian shall keep the identity, and the information submitted as to the suitability, of any proposed Scrambling Technology Licensee strictly confidential and not to disclose it to any other person, including its Affiliates, except to a court of law when required by a court order and except for disclosure to other Companies for any decision on suitability under Sections 2 (ii) and 2 (iii) or for antipiracy measures.
10. 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 Custodian and any Company. Any amendments to this Agreement (and any modifications or waiver to any Scrambling Technology Licence Agreement) shall be in writing signed by ETSI and each Company.
11. 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.

Executed in six originals as of 11 January 1996.

Address for notice
pursuant to Section 6

EUROPEAN TELECOMMUNICATIONS
STANDARDS INSTITUTE

CANAL + SA

CENTRE COMMUN D'ETUDES
DE TELEDIFFUSION ET
TELECOMMUNICATIONS

IRDETO BV
(and named under a separate agreement
as Representative of the Companies)

NEWS DATACOM LIMITED

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 mentioned 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 sublicense the Scrambling Technology and sell or otherwise dispose of a Scrambler only to an End-user (i) which enters into a Scrambler Sublicense 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 Sublicense Agreement with the Scrambling Technology Licensee,
 - (b) not agree to amend, or consent to any waiver of, any Scrambler Sublicense 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 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 Sublicense 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 _____¹⁰, its VAT number is _____¹¹, and its ultimate parent is _____¹² and that it is a conditional access systems provider / conditional access subsystem manufacturer / conditional access designer / Scrambler component manufacturer / Scrambler manufacturer¹³, it requires the Confidential Information for the purposes herein permitted

¹⁰Insert address of registered office of the Scrambling Technology Licensee

¹¹Insert the VAT number of the Scrambling Technology Licensee

¹²Insert name of ultimate parent(s)

¹³Delete inapplicable categories

¹⁴Name of company

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,

on behalf of the Companies,

_____ ¹⁴at

EUROPEAN TELECOMMUNICATIONS
STANDARDS INSTITUTE

By : _____

By ¹⁵: _____

Title : _____

Title ¹⁶: _____

Date : _____

Date : _____

¹⁵ Name of authorized representative

¹⁶ Title of authorized representative

SCHEDULE OF PAYMENTS

	<u>Ecus</u>
Initial royalty	1000
Royalty for each Scrambler sold during prior 12 months	30
Administrative charge	2000

TIMING AND MANNER OF PAYMENTS

Non refundable administrative charge of the Custodian

At the time the Scrambling Technology Licence Agreement, executed by the proposed Scrambling Technology Licensee, is submitted to the Custodian, to be paid to the Account of European Telecommunications Standards Institute, N° 10319060, Bank code 30004/00643, Swift address BNPAFRPPCAN at Banque Nationale de Paris, route des Dolines, F-06902 Sophia Antipolis, France.

Royalties

At the time (i) the Scrambling Technology Licence Agreement, executed by the proposed Scrambling Technology Licensee, is submitted to the Custodian, the initial royalty of 1000 Ecus and (ii) upon each anniversary of the Effective Date, the one-time royalty of 30 Ecus for each Scrambler sold or otherwise disposed of during the prior 12 months, in either case, to be paid to the account "Irdeto BV for Companies developing DVB scrambling", account N° 43.26.00.450, Swift address HBUANL2R, at HBU Bank, Postbus 249, 3000 AE Rotterdam, the Netherlands.

Any royalty or administrative charge shall be paid exclusive of value-added taxes, bank charges and other similar taxes and duties, all which shall be borne by the Scrambling Technology Licensee.

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 sublicense for the use of the Scrambling Technology and the operation of the Scrambler ;
- v) Before operation of the Scrambler and exploitation of the sublicense 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, 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 : 33/93654716