

Dated \_\_\_\_\_

**SKY SUBSCRIBERS SERVICES LIMITED**

**and**

**THE BROADCASTER**

\_\_\_\_\_  
**APPLICATION SIGNING AGREEMENT**  
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THIS AGREEMENT is made between:

**SKY SUBSCRIBERS SERVICES LIMITED**, a company incorporated under the laws of England and Wales (registered number 2340150) whose registered office is at Grant Way, Isleworth, Middlesex TW7 5QD ("**SSSL**"); and

**THE ENTITY SPECIFIED AT PARAGRAPH 1 OF ANNEX A** (the "**Broadcaster**").

**BACKGROUND:**

- (A) SSSL makes certain services available to TV broadcasters and interactive service providers in connection with the signing, adaptation and integration of Applications to be executed in Set Top Boxes.
- (B) The Broadcaster wishes to acquire such services from SSSL upon the terms set out herein.

**NOW IT IS HEREBY AGREED as follows:**

**1. INTERPRETATION**

- 1.1 The words and expressions set out in Schedule 1 shall have the meanings ascribed therein.
- 1.2 References in this Agreement to "SSSL" and "Broadcaster" shall include their respective employees, agents and permitted assigns.
- 1.3 Headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement.
- 1.4 References to Clauses, Schedules, and Annexes are, unless otherwise provided, references to the clauses of and schedules and Annexes to this Agreement.
- 1.5 In the event, and to the extent only, of any conflict between the Clauses and the Annexes or the Schedules and the Annexes, the Annexes shall prevail. In the event, and to the extent only, of any conflict between the Clauses and the Schedules, the Clauses shall prevail.
- 1.6 Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.

**2. COMMENCEMENT DATE AND TERM**

- 2.1 This Agreement shall be legally binding on the parties from the date of signature. The parties' obligations shall commence from the Commencement Date specified in Paragraph 2 of Annex A.
- 2.2 This Agreement shall expire on the date specified in Paragraph 3 of Annex A.
- 2.3 The Broadcaster shall have the right, at its option, to extend the Agreement on expiry for successive periods of three (3) years at a time on either:
  - 2.3.1 the terms of this Agreement (subject to SSSL's right to vary the terms where SSSL has reasonable justification for making such variation(s)); or

2.3.2 SSSL's standard terms as at the date of the extension.

2.4 The Broadcaster may exercise the option to extend in Clause 2.3 by service of written notice on SSSL from no more than ninety (90) days and no less than one (1) month prior to the expiry of the Agreement.

### **3. PROVISION OF SERVICES**

3.1 SSSL shall provide the Services described in Schedule 2. This Agreement does not entitle the Broadcaster to receive any services other than those described in Schedule 2.

3.2 The Broadcaster shall comply with its obligations in connection with the Services set out in Schedule 2.

### **4. SERVICE LEVELS**

4.1 SSSL shall provide the Signing Services and (where provided) the Adaptation and Integration Services to substantially the same standard as it provides comparable services to comparable Third Parties.

4.2 Without prejudice to Clause 4.1, SSSL intends to provide the Signing Services in accordance with the Operational Procedures. The parties confirm that the Operational Procedures are not legally binding upon them.

4.3 Without prejudice to the express rights and obligations of the parties under this Agreement, SSSL does not warrant that the Services are or will be free from error or fault. Where the Broadcaster reports that the Signing Tool, a Producer Certificate and/or a Private Key issued to it by SSSL is defective, or, if earlier, upon SSSL becoming aware that such item is defective, SSSL shall cancel the Signing Tool, Producer Certificate or Private Key (as appropriate) and promptly replace the defective item without further charge to the Broadcaster.

4.4 Nothing in this Agreement shall prevent SSSL from introducing additional terms and conditions (including as to charges therefor) in respect of specific additional Set Top Box functionality which becomes available and in respect of which the Broadcaster requests access or makes use.

### **5. USE OF THE SERVICES**

#### *Broadcast of Applications and use of Producer Certificates and Private Keys*

5.1 The Broadcaster shall ensure that all Broadcaster-Signed Applications comply with the Mandatory Requirements and are broadcast in accordance with the ETS 300 468 standard published by the European Telecommunications Standards Institute. The parties confirm that, other than in respect of the Broadcaster's obligation to comply with the Mandatory Requirements pursuant to this Clause 5.1, the Application Guidelines are not legally binding upon them.

5.2 Without prejudice to paragraph 7.3 of Schedule 2, where the Broadcaster becomes aware that there is a fault in the execution of an Application broadcast to or otherwise accessed by live Set Top Boxes, the Broadcaster shall notify SSSL forthwith upon becoming aware of the fault and, if it continues to broadcast the Application, shall use its reasonable endeavours to rectify the same as soon as reasonably practicable.

- 5.3 The Broadcaster shall not broadcast any Application for the first time without the agreement of SSSL as to the time at which such Application shall first be broadcast. SSSL shall not unreasonably withhold or delay its consent to the time at which any Application may first be broadcast but the Broadcaster acknowledges that SSSL has wider responsibilities than to the Broadcaster and must consider any potentially adverse effect on other broadcasters using the Set Top Boxes to provide their services to consumers.
- 5.4 The Broadcaster shall not broadcast any Application which includes or constitutes an Unapproved New Service. Breach of this Clause 5.4 by the Broadcaster shall be considered to amount to a material breach of a material obligation which is capable of remedy for the purposes of Clause 10.3.2.
- 5.5 The Broadcaster shall not (and shall not authorise or permit any other person to) enable any Broadcaster-Signed Application to be launched via:
- 5.5.1 a Trigger Track broadcast with a television channel or audio channel; or
- 5.5.2 using the text key,
- unless the broadcaster of the relevant television channel or audio channel from which the Broadcaster-Signed Application is to be launched is (i) also in receipt of signing services from SSSL or (ii) is a Wholly Owned Subsidiary of the Broadcaster.
- 5.6 The Broadcaster shall not authorise or permit any other broadcaster to broadcast any Application to, or make any Application capable of being accessed by, Set Top Boxes unless either:
- 5.6.1 the other broadcaster is a Wholly Owned Subsidiary of the Broadcaster; or
- 5.6.2 SSSL has given prior written consent to the Broadcaster (such consent not to be unreasonably withheld or delayed) and such other broadcaster has entered into an application signing agreement with SSSL.
- 5.7 The Broadcaster shall not (and shall not authorise or permit any other person to) sign any Application using the Producer Certificates and Private Keys issued to it unless such Application has been authored and signed in accordance with the terms of this Agreement.
- 5.8 The Broadcaster shall only apply the Producer Certificates and Private Keys issued to it to Applications which comply with the Mandatory Requirements.
- 5.9 Unless SSSL otherwise consents in writing, such consent not to be unreasonably withheld or delayed, the Broadcaster shall ensure that Producer Certificates and Private Keys issued to it are only applied to Applications which are broadcast by the Broadcaster or by a Wholly Owned Subsidiary of the Broadcaster.
- 5.10 The Broadcaster shall not broadcast any Application to, or make any Application capable of being accessed by, Set Top Boxes unless either:
- 5.10.1 such Application has been signed using Producer Certificates and Private Keys issued to the Broadcaster under this Agreement; or
- 5.10.2 such Application has been signed using Producer Certificates and Private Keys issued to a third party under an agreement for signing services with SSSL and SSSL has given its prior written consent to the Broadcaster broadcasting or otherwise making such Application capable of being

accessed by Set Top Boxes (such consent not to be unreasonably withheld or delayed).

- 5.11 The Broadcaster shall be entitled to distribute to its own prospective Content Providers and/or Application developers any Producer Certificates, Private Keys and Signing Tools issued to it by SSSL and shall:
  - 5.11.1 upon request disclose to SSSL the names of any Content Providers and/or Application developers to whom it has allocated Producer Certificates or Private Keys;
  - 5.11.2 ensure there is no unauthorised usage of Producer Certificates and Private Keys which the Broadcaster has issued to any Content Providers and/or Application developers and shall implement a strict and secure allocation procedure.
- 5.12 Before providing any Producer Certificate, Private Key or Signing Tool to a third party as provided for under this Agreement the Broadcaster shall ensure that both it and the third party have executed a confidentiality agreement substantially in the form set out in Schedule 4 and have provided a copy of that executed agreement to SSSL.
- 5.13 The Broadcaster shall ensure that any third party to which it has provided any Producer Certificate, Private Key or Signing Tool complies with all the obligations of the Broadcaster under the terms of this Agreement insofar as such obligations pertain to possession or use of such Producer Certificate, Private Key or Signing Tool. Notwithstanding the distribution of any Producer Certificates, Private Keys or Signing Tools to third parties:
  - 5.13.1 the Broadcaster shall not be relieved of any of its obligations hereunder (including, but not limited to, obligations in relation to any Broadcaster-Signed Application); and
  - 5.13.2 the Broadcaster shall be liable for any and all breaches of the terms of this Agreement by any third party to which it has provided a Producer Certificate, Private Key and/or Signing Tool.
- 5.14 The Broadcaster may from time to time change the list of Wholly Owned Subsidiaries at Paragraph 4 of Annex A provided that:
  - 5.14.1 SSSL is notified in advance in writing;
  - 5.14.2 any new Wholly Owned Subsidiary is the holder of the relevant regulatory licence(s) required to broadcast the Application; and
  - 5.14.3 the Broadcaster has supplied satisfactory evidence of its authority to act as agent for that Wholly Owned Subsidiary for the purpose of this Agreement.

For the avoidance of doubt, unless SSSL agrees otherwise, a company shall cease to be listed in Paragraph 4 of Annex A immediately upon it ceasing to be a Wholly Owned Subsidiary of the Broadcaster.

*Use of the modem*

- 5.15 The Broadcaster may enable an Application executed in Set Top Boxes to connect to a Relevant Online Infrastructure, and when so connected to pass data via the modem, only if there is in place:
- 5.15.1 an agreement between the Broadcaster and SSSL for the provision of Authentication Services by SSSL to the Broadcaster in respect of that Relevant Online Infrastructure; or
  - 5.15.2 an agreement between a third party and SSSL for the provision of Authentication Services by SSSL to such third party in respect of that Relevant Online Infrastructure, and an agreement between such third party and the Broadcaster under which the Broadcaster receives the benefit of such Authentication Services.
- 5.16 The Broadcaster shall ensure that each Broadcaster-Signed Application which attempts to utilise the modem in a Set Top Box both to establish a connection and to pass data via the modem only does so in compliance with an agreement for Authentication Services with SSSL PROVIDED THAT where the Broadcaster has entered into an agreement with a third party for the provision of Authentication Services such compliance shall be to the best of the Broadcaster's knowledge and belief having made reasonable enquiries.
- 5.17 The Broadcaster shall not enable any Application to make a call via the modem in the Set Top Box other than to a Relevant Online Infrastructure (an "Unauthenticated Call") without SSSL's prior written consent. In the event that SSSL permits any broadcaster to enable its application to use the modem to make Unauthenticated Calls, SSSL shall notify the Broadcaster that it consents to the use of the modem in such manner by the Broadcaster's Applications. In the event that SSSL gives such consent, the use of the modem in such manner shall constitute a New Service for the purpose of this Agreement.
- 5.18 The Broadcaster shall not (and shall not authorise or permit any other person to) collect any data via an Application or use of the modem which enables the identification of a household in which a Set Top Box is situated (including, for the avoidance of doubt but without limitation, caller line identification and the 1471 last number services and their equivalents or any successor or substitute services) unless that data has been inputted directly by the Set Top Box user and specific authorisation has been given by the user as to the collection of that data. Where the Set Top Box user has specifically authorised collection and use of data which enables the identification of a household in which a Set Top Box is situated, that data shall only be used for the express purpose or purposes which has or have been authorised by the Set Top Box user and shall not be passed on to any third party unless it is necessary to do so in order to fulfil that or those express purposes. Notwithstanding the foregoing, nothing in this clause shall preclude the collection of data by means of a telephone call which is made by a viewer where the viewer does not make such call via the modem in the Set Top Box.

*General*

- 5.19 The Broadcaster shall, at its own cost, obtain, operate and maintain:
- 5.19.1 all equipment, facilities, licences and permissions (whether regulatory, copyright, contractual or otherwise) which are required to enable it to develop, broadcast and execute the Applications or otherwise in connection with the content of the Applications; and

- 5.19.2 if applicable, all permissions required in respect of any channel or other broadcast with which an Application is associated.
- 5.20 The Broadcaster hereby warrants and undertakes to comply with:
- 5.20.1 any applicable regulatory codes and directions issued from time to time by any relevant regulatory authority relating to the broadcast and/or content of the Applications from time to time;
- 5.20.2 relevant and applicable legislation (whether European Union, national or otherwise) relating to the broadcast and/or content of the Applications from time to time; and
- 5.20.3 where applicable, SSSL's "Policy on Gambling on the DTH Platform" dated 27 April 2006 as amended from time to time.
- 5.21 Without prejudice to Clause 5.22, if a breach of Clause 5.19 or 5.20 is a remedial breach, it shall be dealt with in accordance with Clause 10.3.2 provided that, in so far as the breach relates to one or more Applications, the Broadcaster ceases to broadcast and ceases to permit the broadcast on its behalf of such Application(s) as soon as it is advised of or otherwise becomes aware of the breach, and shall not knowingly broadcast any new Application that would give rise to a breach of Clause 5.19 and/or 5.20. For the avoidance of doubt, the Broadcaster shall not re-broadcast the relevant Application(s) until such time as it is in compliance with Clauses 5.19 and 5.20.
- 5.22 If the Broadcaster is advised or otherwise becomes aware of a breach of Clauses 5.19 or 5.20 but thereafter fails to cease to broadcast the relevant Application affected by the breach, or thereafter knowingly broadcasts or re-broadcasts an Application which continues to be affected by the breach under Clauses 5.19 or 5.20, SSSL may (without prejudice to its other rights or remedies) terminate this Agreement forthwith by service of notice in writing on the Broadcaster.
- 5.23 If a breach of Clause 5.19 or 5.20 is not a remediable breach, SSSL may (without prejudice to its other rights or remedies) terminate this Agreement forthwith by service of notice in writing on the Broadcaster.

## **6. CHANGES TO THE MANDATORY REQUIREMENTS, APPLICATION GUIDELINES AND THE PROVISIONS OF THIS AGREEMENT**

- 6.1 SSSL shall provide the Broadcaster with reasonable prior notice of any proposed change to the Mandatory Requirements. SSSL shall have due regard to any comments made by the Broadcaster in response to any such proposed change. Notwithstanding the foregoing, SSSL may, in its absolute discretion, make any change to the Mandatory Requirements as it determines appropriate.
- 6.2 Without prejudice to Clause 6.1, SSSL shall provide the Broadcaster with reasonable prior notice of any proposed change to the Application Guidelines which will have a material effect on the ability of the Broadcaster to sign and execute Applications in Set Top Boxes. SSSL shall have due regard to any comments made by the Broadcaster in response to any such proposed change. Notwithstanding the foregoing, SSSL may, in its absolute discretion, make any change to the Application Guidelines as it determines appropriate.
- 6.3 In the event that SSSL intends to:

- 6.3.1 make a change to the underlying technology used to provide the Services;
- 6.3.2 introduce new functionality which forms part of the Services; or
- 6.3.3 make any necessary operational changes to the provision of the Services,

then in addition to making any changes to the Mandatory Requirements and Application Guidelines in accordance with Clauses 6.1 and 6.2 above, SSSL shall be entitled to amend the provisions of this Agreement in order to reflect the intended changes. SSSL shall provide the Broadcaster with reasonable prior notice of any such proposed amendments to this Agreement. SSSL shall have due regard to any comments made by the Broadcaster in response to any such proposed amendments. Notwithstanding the foregoing, SSSL may, in its absolute discretion, make any amendments to this Agreement as it determines appropriate to reflect the intended changes.

## **7. CHARGES**

- 7.1 The Broadcaster shall pay the Charges determined in accordance with this Clause 7 and Schedule 3. Unless otherwise specified in this Agreement, such Charges shall be payable in respect of the period from the Commencement Date until expiry or earlier termination of this Agreement.
- 7.2 The Charges are exclusive of VAT which shall, where applicable, be invoiced by SSSL and paid by the Broadcaster at the prevailing rate and in the manner prescribed by law at the date of invoice.
- 7.3 The Broadcaster shall pay to SSSL one hundred thousand pounds (£100,000) per annum for the provision of Signing Services. In addition to such Signing Services, SSSL shall provide to the Broadcaster without charge and upon request up to 0.83 Man/days of Adaptation and Integration Services for each full month - equivalent to and not exceeding 10 Man/days per annum - that SSSL provides Signing Services to the Broadcaster. SSSL may pro-rate and invoice the charge specified in this Clause 7.3 monthly in advance.
- 7.4 Save as provided for in Clause 7.3, in the event that the Broadcaster requests Adaptation and Integration Services in accordance with Paragraphs C.1 and C.2 of Schedule 2, the Broadcaster shall pay to SSSL:
  - 7.4.1 eight hundred pounds (£800) per Man/day (pro-rated for any periods less than a man/day) for the provision of Adaptation and Integration Services unless otherwise agreed in writing; and
  - 7.4.2 £30 for each Access Card supplied pursuant to Paragraph 2 of Part B of Schedule 2 to this Agreement.

SSSL shall not commence the provision of any such Adaptation and Integration Services until SSSL has provided the broadcaster with written estimation of the cost of such services and the Broadcaster has approved such estimated cost in writing. SSSL will invoice the Charges for the Adaptation and Integration Services and any Access Cards supplied monthly in arrears.

- 7.5 If the Broadcaster is carrying out any of the activities specified at paragraph 1.2 of Schedule 3 and/or at Paragraph 5 of Annex A ("Schedule 3 Activities"), then the Broadcaster shall pay to SSSL the additional charges (the "Additional Charges") set out in Schedule 3 and/or in Annex A (as applicable) associated with such activity.

The Broadcaster undertakes and warrants that it is only carrying out the Schedule 3 Activities specified at Paragraph 5 of Annex A.

- 7.6 If the Broadcaster undertakes any Schedule 3 Activity, the Broadcaster shall, within 14 days of the end of each calendar month, provide returns to SSSL in respect of the preceding calendar month containing at least the following information:
- 7.6.1 a list of the Schedule 3 Activities undertaken by the Broadcaster during the relevant month;
  - 7.6.2 the information specified at Column 3 of the table set out in Paragraph 1.2 of Schedule 3 in respect of each such activity; and
  - 7.6.3 any other information specified by SSSL from time to time which SSSL requires in order to determine the charges payable under Schedule 3.
- 7.7 SSSL shall be entitled to invoice the Broadcaster for the Additional Charges payable by the Distributor pursuant to Clause 7.5 monthly in advance. Such invoices may be issued up to forty-five (45) days prior to the commencement of the period to which the invoiced Additional Charges relate. Such invoices shall be based on SSSL's estimate of such Additional Charges which shall be made with reference to:
- 7.7.1 returns previously provided by the Broadcaster; and/or
  - 7.7.2 any public statements made by the Broadcaster; and/or
  - 7.7.3 any other information available to SSSL; and
- SSSL shall, in the invoicing round following receipt from the Broadcaster of the return in respect of a particular calendar month in accordance with Clause 7.6, reconcile any difference between (i) the Additional Charges invoiced pursuant to this Clause 7.7 and (ii) the Additional Charges actually payable in respect of that calendar month, based on the Broadcaster's returns and any other information available to SSSL EXCEPT THAT SSSL shall not be required (but shall be entitled) to reconcile any difference where such return is provided more than six (6) months after the end of the relevant calendar month.
- 7.8 Each invoice sent pursuant to this Clause 7 shall be for a calendar month.
- 7.9 SSSL shall issue invoices to the email address specified in Paragraph 6 of Annex A. The Broadcaster may change the email address for invoices by service of written notice on SSSL.
- 7.10 The Broadcaster shall pay each invoice rendered in accordance with this Clause 7 within 30 days of the date of the invoice (the "due date").
- 7.11 SSSL shall be entitled to charge, and the Broadcaster shall pay, interest on any sums which are overdue in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 7.12 The Broadcaster shall comply with any additional payment, deposit or security requirements specified in Paragraph 7 of Annex A.

## **8. AUDIT AND VERIFICATION**

- 8.1 The Broadcaster shall retain all relevant information used to compile the returns required to be provided to SSSL pursuant to Clause 7.6, and all other information which may be necessary to verify such information and the Charges payable under Clause 7.5, for a period of no less than three (3) years from the end of the calendar month to which the return relates.
- 8.2 In order to permit SSSL effectively to exercise its right to audit the information provided by the Broadcaster pursuant to Clause 7.6, the Broadcaster shall ensure, unless SSSL otherwise agrees in writing, that any telephone number, fax number, e-mail address or other electronic means of communication which is promoted within an Application to allow a person to undertake a Schedule 3 Activity is used exclusively for that purpose.
- 8.3 SSSL shall have the right during the Term and for three (3) years thereafter, on reasonable notice, to appoint an Auditor to verify some or all of the returns provided by the Broadcaster pursuant to Clause 7.6 (or to create such returns where the Broadcaster has failed to provide such returns). SSSL shall not be entitled to exercise such right within 12 months of previously appointing an Auditor, except where:
- 8.3.1 the Broadcaster has failed to provide returns in accordance with Clause 7.6 on one or more occasions since the previous appointment of an Auditor under this Clause 8; or
  - 8.3.2 the previous audit had determined that the returns provided by the Broadcaster were in error such that the Additional Charges levied by SSSL in reliance on such returns were found to be five per cent (5%) or more in error; or
  - 8.3.3 SSSL has reasonable grounds for believing that one or more of the returns provided by the Broadcaster since the previous audit contained incorrect information.
- 8.4 The Broadcaster shall ensure that the Auditor appointed by SSSL under this Clause 8 has such access during business hours and on reasonable notice to all information used to compile the returns and all other information which may be necessary to verify such information PROVIDED THAT SSSL shall ensure that the Auditor:
- 8.4.1 takes all reasonable steps to minimise administration, burden and cost to the Broadcaster resulting from its investigations;
  - 8.4.2 undertakes to the Broadcaster not to disclose any Confidential Information it receives from the Broadcaster to any person save that it may disclose to SSSL such information as is necessary to calculate and verify the Charges arising pursuant to Schedule 3; and
  - 8.4.3 without prejudice to the ability of the Auditor to take and retain notes, does not copy any documents or computer records or remove from the premises of the Broadcaster any such documentation or computer records (whether in hard or electronic copy).
- 8.5 In the event that the Broadcaster enters into arrangements with third party Content Providers, then the following provisions shall apply:

8.5.1 the Broadcaster shall use all reasonable endeavours to procure that such Content Providers provide access on the terms set out in Clause 8.4 (in which Clause references to "Broadcaster" shall include references to the Broadcaster's Content Provider) to any Auditor appointed by SSSL pursuant to this Clause 8 to its books, working papers, operating statistics and other relevant information to the extent only that such access is required in order to enable such Auditor to verify the information provided by the Broadcaster pursuant to Clause 7.6; and

8.5.2 in the event that the Broadcaster is unable to secure access for an Auditor appointed by SSSL to any Content Provider's records in accordance with Clause 8.5.1, the Broadcaster shall notify SSSL that it has been unable to secure such rights and shall require the relevant Content Provider to (a) disclose to it the information the Broadcaster requires in order to provide SSSL with a calculation in reasonable detail of the Charges arising pursuant to Schedule 3 and (b), unless SSSL otherwise agrees in writing (such agreement not to be unreasonably withheld), permit the Broadcaster to audit the information provided to it by the Content Provider and to disclose to SSSL the results of such audit.

SSSL shall require any Auditor appointed in the circumstances set out in Clause 8.5.1 to comply fully with all the terms of Clause 15 (Confidentiality), for which purpose the books, working papers, operating statistics and other relevant information referred to in Clause 8.5.1 shall, as between the parties, be deemed Confidential Information of the Broadcaster.

8.6 SSSL shall bear the costs of the Auditor unless:

8.6.1 the Broadcaster has failed to provide a return in respect of a calendar month under Clause 7.6; or

8.6.2 the returns which have been audited by the Auditor are in error such that the Additional Charges levied by SSSL in reliance on such returns are found to be five per cent (5%) or more in error,

in which case the Broadcaster shall bear the reasonable costs of the Auditor.

8.7 If the Auditor determines that an overpayment has been made by the Broadcaster, SSSL shall issue a credit note to the Broadcaster against future invoices within thirty (30) days' of such determination. If the Auditor determines that an underpayment has been made by the Broadcaster, SSSL shall issue an invoice to the Broadcaster for the shortfall within thirty (30) days' of such determination.

8.8 In the event that the Broadcaster is required to remedy any underpayment pursuant to Clause 8.7, SSSL shall be entitled to charge interest in accordance with Clause 7.11 from the time at which the underpayment arose.

## **9. SECURITY**

9.1 Notwithstanding any other provisions of this Agreement, SSSL shall be entitled to withdraw any Producer Certificates and/or Private Keys issued to the Broadcaster and to terminate any Application and prevent it executing in Set Top Boxes where SSSL, in its absolute discretion, believes that the use of such Producer Certificates and/or Private Keys or the execution of such Application may endanger the security or integrity of Set Top Boxes. SSSL shall promptly notify the Broadcaster of any

such withdrawal and shall, where practicable, provide appropriate replacements within a reasonable period.

- 9.2 If there are security measures which it is reasonably necessary for the Broadcaster (as a broadcaster of Applications) to effect and maintain in order to safeguard SSSL's conditional access system or the software in Set Top Boxes and prevent use of SSSL's conditional access system or the software in Set Top Boxes by any unauthorised person the Broadcaster will effect and maintain such measures (including, without limitation, any such security measures reasonably required by SSSL) at its own cost.
- 9.3 The Broadcaster shall, from time to time, promptly take such actions as SSSL may reasonably request to prevent or reduce piracy. Such actions shall be at SSSL's expense except where the risk of piracy is due to an act, omission or procedure of the Broadcaster (other than where specifically required by SSSL) in which case such actions shall be taken at the expense of the Broadcaster.

## **10 SUSPENSION AND TERMINATION**

- 10.1 SSSL shall be entitled to take such measures, in its absolute discretion, as are necessary to suspend the provision of Services and/or to prevent Application(s) from executing in Set Top Boxes immediately in the event that SSSL reasonably believes that any Broadcaster-signed Application or any Application otherwise broadcast by the Broadcaster may write or seek to write to the flash memory, the NVRAM or system memory of the Set Top Boxes. Such measures include, without limitation, deconfiguring an Application, a Broadcaster-Signed Application and/or the Trigger Track(s) or IMM listing(s) by which the Application or Broadcaster-Signed Application is made accessible on the Sky digital satellite platform.
- 10.2 SSSL shall re-commence providing Services following a suspension pursuant to Clause 10.1 when it reasonably believes that no Broadcaster-Signed Application or any Application otherwise broadcast by the Broadcaster will write or seek to write to the flash memory, the NVRAM or system memory of the Set Top Boxes.
- 10.3 Either party may terminate this Agreement by service on the other party of:
- 10.3.1 notice in writing having effect forthwith, if the other party shall become insolvent or have an administrator or administrative receiver appointed over the whole or any part of its assets or go into liquidation (whether compulsory or voluntary) otherwise than for the purposes of bona fide amalgamation or reconstruction or shall make any agreement with its creditors or have any form of execution or distress levied upon its assets or cease to carry on business; or
- 10.3.2 not less than thirty (30) days' notice in writing specifying a material or persistent breach by the other party of a material obligation that is capable of remedy and requiring that the breach is remedied, provided that the breach is not remedied during such period. Without prejudice to the generality of this Clause 10.3.2, the Broadcaster shall be considered to be in material and persistent breach of a material obligation if it fails to pay any invoice issued by SSSL in accordance with Clause 7 within thirty (30) days of its due date; or
- 10.3.3 notice in writing having effect forthwith specifying a material or persistent breach by the other party of a material obligation which is not capable of remedy; or

- 10.3.4 notice in writing taking effect on a date nominated by SSSL in such notice, in the event that SSSL reasonably considers that any provision of this Agreement or any assumption underlying this Agreement may not be consistent (or may become inconsistent) with the regulatory obligations imposed on SSSL or an Associated Company, provided that after serving notice under this Clause 10.3.4 SSSL shall give the Broadcaster reasonable notice of the terms (such terms being consistent with the regulatory obligations imposed on SSSL and its Associated Companies) on which SSSL offers to continue to provide the Services in respect of the Channel(s) upon termination of this Agreement; or
- 10.3.5 notice in accordance with Clause 11.7.
- 10.4 The Broadcaster may terminate this Agreement by service on SSSL of not less than 90 days' notice in writing at any time.
- 10.5 SSSL may terminate this Agreement by service on the Broadcaster of notice in accordance with Clauses 5.22, 5.23, 12.5 or 12.9.
- 10.6 SSSL may terminate this Agreement by service on the Broadcaster of notice in writing having effect forthwith in the event that the Broadcaster:
- 10.6.1 has not requested, and accordingly SSSL has not provided to the Broadcaster, any Producer Certificates or Private Keys within 3 months of the date of signature of this Agreement; or
- 10.6.2 fails to satisfy SSSL that it has complied with its obligation under Clause 12.7.
- 10.7 In the event that (a) the Broadcaster or SSSL terminates this Agreement or (b) the Agreement expires by effluxion of time then (but without prejudice to the accrued rights and obligations of the parties) to the extent that the Broadcaster has paid any Charges for Signing Services for periods following such termination, SSSL shall refund such payments to the Broadcaster provided that SSSL shall be entitled to apply such funds first to any sum then outstanding from the Broadcaster to SSSL pursuant to this Agreement.
- 10.8 Those provisions of this Agreement which by their nature were intended to continue after termination of this Agreement (including, to the extent relevant, Clauses 12 to 15, 17 and 19 shall continue in full force and effect notwithstanding the termination or expiry of this Agreement.
- 10.9 Termination or expiry of this Agreement shall not operate as a waiver of any breach by either party of any of the provisions hereof and shall be without prejudice to any rights or remedies of either party which may arise as a consequence of such breach or which may have accrued hereunder up to the date of such termination or expiry.
- 10.10 The Broadcaster shall cease to broadcast any Applications with immediate effect from termination of this Agreement.
- 10.11 The Broadcaster expressly acknowledges that if this Agreement expires or is terminated in accordance with this Clause 10, SSSL shall be entitled to withdraw with immediate effect any Producer Certificates and/or Private Keys issued to the Broadcaster and/or take such measures as are necessary to prevent Application(s) executing in Set Top Boxes including, but not limited to, deconfiguring Application(s) and/or the Trigger Track(s) or IMM listing(s) by which the Application(s) is made accessible on the Sky digital satellite platform.

## **11. FORCE MAJEURE**

- 11.1 Subject to Clause 11.2, 11.3 and 11.4 any delay or failure to perform an obligation under this Agreement by a party (the "affected party") shall not constitute a breach of this Agreement to the extent that it is caused by an event of Force Majeure.
- 11.2 The affected party shall promptly notify the other party in writing of the estimated extent and duration of the inability to perform its obligations.
- 11.3 Upon the cessation of the event of Force Majeure, the affected party shall promptly notify the other party in writing of such cessation.
- 11.4 The affected party shall use all reasonable endeavours to mitigate the effect of each event of Force Majeure.
- 11.5 Subject to Clause 11.6, where the Broadcaster is not able to broadcast or execute Applications in Set Top Boxes by reason of an event of Force Majeure affecting SSSL for a period of four (4) days or more, then:
- 11.5.1 the Broadcaster's obligations to pay Charges pursuant to Clause 7 shall be suspended for the duration of such period of Force Majeure; and
- 11.5.2 SSSL shall refund to the Broadcaster such Charges paid by the Broadcaster prior to the event of Force Majeure which shall relate to the period during which the event of Force Majeure persists.
- 11.6 Clause 11.5 shall not apply where the event of Force Majeure affects some but not all of the Broadcaster's Applications or where Applications other than Broadcaster-Signed Applications are being launched from within the Broadcaster's services.
- 11.7 If, following ninety (90) days from the date of notification under Clause 11.2, the event of Force Majeure persists, the unaffected party may forthwith terminate this Agreement by service of notice in writing on the affected party.
- 11.8 Without prejudice to the generality of this Clause 11, neither party shall be in breach of this Agreement for failure to perform its obligations or observe the provisions of this Agreement where to do so would place such party in breach of any applicable law, regulation, code of practice or similar instrument of any competent regulator.

## **12. INDEMNITY, COMPENSATION AND INSURANCE**

- 12.1 Subject always to Paragraphs 6.8 and 6.9 of Schedule 2, the Broadcaster shall indemnify and keep SSSL indemnified against any and all claims, demands, proceedings, damages, costs, charges (including payment of service credits) and expenses whatsoever which may arise (whether under any contract for conditional access services, the Services and/or Authentication Services or otherwise) as a result of any Broadcaster-Signed Application or any Application otherwise broadcast by it writing or seeking to write to the flash memory, the NVRAM or system memory of Set Top Boxes.
- 12.2 Without prejudice to Clause 12.1 but subject always to Paragraphs 6.8 and 6.9 of Schedule 2, the Broadcaster shall compensate SSSL in accordance with Clauses 12.3 and 12.4 against the following types of loss and expenses which arise as a result of any Broadcaster-Signed Application or any Application otherwise broadcast by it having a material adverse effect on the operation of Set Top Boxes

(including, but not limited to, the viewing of any broadcast services or use of interactive services via Set Top Boxes):

- 12.2.1 telephone calls received by the Sky contact centre or the SSSL technical help line;
  - 12.2.2 service engineer call-outs required to assess or repair Set Top Boxes;
  - 12.2.3 replacement of Set Top Boxes;
  - 12.2.4 service credits paid by SSSL to customers of conditional access services.
- 12.3 Subject to Clause 12.4, the compensation payable by the Broadcaster pursuant to Clause 12.2 shall be calculated as follows:
- 12.3.1 Five pounds (£5) for each telephone call handled by either the Sky contact centre or the SSSL technical help line, such compensation only to be payable once five-hundred (500) telephone calls have been received in respect of any single incident. For the avoidance of doubt, once five-hundred (500) telephone calls have been received in respect of any single incident, the compensation shall be payable in respect of all such calls and not just those in excess of five-hundred (500);
  - 12.3.2 seventy-five pounds (£75) per service engineer call out;
  - 12.3.3 one-hundred and twenty-five pounds (£125) per standard Set Top Box replacement; and
  - 12.3.4 such service credits per minute as are actually paid by SSSL in the event that the Broadcaster's Application has a material adverse effect on more than five per cent (5%) of the total Set Top Box base.

Without prejudice to the unit charges set out in this Clause 12.3, in the event that SSSL invoices the Broadcaster for compensation pursuant to Clauses 12.2 and 12.3, SSSL shall provide reasonable written evidence to support its claim.

- 12.4 The compensation payable by the Broadcaster in accordance with Clause 12.2 and 12.3 shall be limited as follows:
- 12.4.1 the service credits per minute shall be capped at a maximum of three hundred pounds (£300) per minute; and
  - 12.4.2 the total liability under Clauses 12.2 and 12.3 shall be twenty-five million pounds (£25,000,000) for all incidents during the term of this Agreement.
- 12.5 In the event that the liability cap in Clause 12.4.2 is reached SSSL may forthwith terminate this Agreement by service of notice in writing on the Broadcaster. In such circumstances the Broadcaster hereby agrees and acknowledges that it will not:
- 12.5.1 seek to broadcast Applications to Set Top Boxes; or
  - 12.5.2 request SSSL to provide Signing Services

until SSSL is reasonably satisfied as to the Broadcaster's competency.

- 12.6 The Broadcaster shall indemnify and keep SSSL indemnified in respect of any and all claims, damages, costs, expenses and other liabilities whatsoever arising in connection with the content of the Applications (including but not limited to claims for defamation, but, for the avoidance of doubt, excluding any claims, damages, costs, expenses and other liabilities arising as a result of any failure of any Producer Certificates and/or Private Keys provided by SSSL to the Broadcasters pursuant to this Agreement which are inserted in to such Application and/or to the extent that SSSL has a specific remedy in respect of the claim under Clauses 12.1 or 12.2).
- 12.7 Without thereby limiting its responsibilities under this Clause 12 prior to the Broadcaster executing Application(s) in Set Top Boxes, the Broadcaster shall either:
- 12.7.1 arrange adequate liability insurance with a reputable insurance company (and, if requested, note SSSL's interest on such policy) to cover any potential liability to SSSL under Clauses 12.2 and 12.3; or
- 12.7.2 satisfy SSSL (which shall be in SSSL's absolute discretion) that it has sufficient assets to self-insure against any potential liability under Clauses 12.2 and 12.3.
- 12.8 Unless the Broadcaster has satisfied SSSL of its ability to self-insure pursuant to Clause 12.7.2, the Broadcaster shall:
- 12.8.1 maintain the insurance cover referred to in Clause 12.7.1 above in full force and effect throughout the Term; and
- 12.8.2 pay all premiums and other sums due in respect thereof (and shall send to SSSL on written demand copies of the latest receipts for such premiums or other documentary evidence that such premiums have been paid); and
- 12.8.3 not do anything whereby such insurance may be vitiated whether in whole or in part.
- 12.9 If the Broadcaster fails to comply with any of its obligations under Clauses 12.7 and 12.8, SSSL may (without prejudice to its other rights or remedies) either:
- 12.9.1 terminate this Agreement forthwith by service of notice in writing on the Broadcaster; or
- 12.9.2 effect compliance on behalf of the Broadcaster (but without being obliged so to do) in which event the cost of so doing shall be recoverable by SSSL from the Broadcaster as a debt payable on demand.
- 12.10 Subject to Clause 12.14, SSSL shall:
- 12.10.1 give notice to the Broadcaster of any third party claim against SSSL which would be covered by the indemnities in Clause 12.1 and 12.6 as soon as reasonably practicable upon becoming aware of the same; and
- 12.10.2 at the Broadcaster's request which shall be made within 10 working days of any notice given pursuant to Clause 12.10.1, and subject to the Broadcaster satisfying SSSL that it will have the necessary financial resources to satisfy the claim in the event that it is successful, give the Broadcaster sole conduct of the defence to and any negotiations in connection with any such claim.

- 12.11 The Broadcaster will as soon as is reasonably practicable after accepting conduct of the defence and the negotiations under Clause 12.10.2 take over conduct of the defence to any negotiations in connection with any such claim or action and litigation that may rise in relation thereto.
- 12.12 Provided that the Broadcaster has accepted conduct of the defence and the negotiations under Clause 12.10.2, SSSL shall not at any time admit liability or settle or compromise the said claim except upon the express instruction of the Broadcaster and shall provide the Broadcaster, at the Broadcaster's cost, with such assistance as it is reasonable to require in respect of the conduct of the said defence and/or negotiations. The Broadcaster shall take reasonable account of SSSL's views and take such action as SSSL may reasonably request to avoid, minimise or mitigate the amount of loss that may be incurred by SSSL.
- 12.13 For the avoidance of doubt, nothing in this Clause 12 shall restrict the ability of SSSL to rely on the indemnities in Clause 12.6 in respect of SSSL's own direct losses.
- 12.14 SSSL shall also be entitled to claim under the indemnities in Clause 12.6 in respect of any claim against SSSL if the Broadcaster, having been provided such opportunity pursuant to Clause 12.10.2, fails to take over conduct of the defence to and any negotiations in connection with any such claim that may arise in relation thereto.
- 12.15 The Broadcaster shall not be liable to SSSL pursuant to Clauses 12.1, 12.2 or 12.6 to the extent that any loss or damage suffered by SSSL arises or is increased as a result of any failure of any equipment or systems for which SSSL is solely responsible pursuant to this Agreement.

### **13 LIABILITY**

- 13.1 Neither party excludes or limits liability to the other party for death or personal injury.
- 13.2 Subject to Clauses 12 and 13.1, neither party shall be liable to the other in contract, tort (including negligence and breach of statutory duty) or otherwise for indirect or consequential loss or damage. For these purposes, the expression "indirect or consequential loss or damage" shall include but not be limited to loss of revenue, profit, anticipated savings or business.
- 13.3 SSSL shall not be liable to the Broadcaster for any loss arising in connection with any Third Party broadcasting any application to, or making any application capable of being accessed by, Set Top Boxes.
- 13.4 The Broadcaster shall not be liable to SSSL for any loss arising in connection with any Third Party broadcasting any application to, or making any application capable of being accessed by, Set Top Boxes if the relevant application was not signed by the Broadcaster.
- 13.5 Without prejudice to Clauses 13.2, 13.3 and 13.4, the liability of each party to the other in contract, tort (including negligence and breach of statutory duty) or otherwise arising by reason of or in connection with this Agreement but excluding liability under Clause 12 shall be limited to:
- 13.5.1 one million pounds (£1,000,000) for any one incident or series of events arising from a single incident; and

- 13.5.2 five million pounds (£5,000,000) for all incidents in any twelve month (12) period.
- 13.6 Should any limitation or provision contained in this Clause 13 be held to be invalid under any applicable statute or rule of law, it shall to that extent be deemed omitted.
- 13.7 All representations, warranties and conditions implied by statute, common law or otherwise, (including but not limited to fitness for purpose) are hereby excluded to the extent permitted by law.

## **14 DUTY OF CARE**

- 14.1 The Broadcaster acknowledges and confirms that:
- 14.1.1 it owes a duty of care to other broadcasters and interactive service providers which make services available via Set Top Boxes in respect of the authoring, signing, broadcasting and execution of Applications; and
- 14.1.2 some of the broadcasters and interactive service providers which make services available via Set Top Boxes do not derive income directly from their services and that such broadcasters and interactive service providers may suffer loss other than direct financial loss if their services are affected by an adverse effect on the Set Top Boxes.
- 14.2 The Broadcaster acknowledges and confirms that SSSL shall be entitled to disclose to such other broadcasters and interactive service providers the existence of the acknowledgement and confirmation of the duty of care set out in Clause 14.1 PROVIDED THAT SSSL believes, acting reasonably, that:
- 14.2.1 there has been an adverse effect on the operation of the Set Top Boxes which has affected the services of the broadcasters and interactive service providers to whom it proposes to disclose the acknowledgement and confirmation; and
- 14.2.2 the relevant adverse effect has been triggered by the Broadcaster's Application.
- 14.3 SSSL shall use reasonable endeavours to require all other broadcasters and interactive service providers who receive signing services (other than for use solely in a test environment) to acknowledge and confirm their responsibilities to other broadcasters and interactive service providers in substantially the same form as is set out in Clause 14.1. In the event (and on the first occasion only) that SSSL enters into an agreement after the date hereof to provide signing services (other than for use solely in a test environment) without such provision, SSSL shall promptly notify the Broadcaster and, at the Broadcaster's option:
- 14.3.1 the Broadcaster shall be released from its acknowledgement in Clause 14.1, SSSL shall not disclose the existence of any such acknowledgement pursuant to Clause 14.2 and SSSL shall no longer be required to seek the acknowledgement and confirmation pursuant to Clause 14.3; or
- 14.3.2 the Broadcaster's acknowledgement of a duty of care and SSSL's right to disclose such acknowledgement shall only exist in favour of such other broadcasters and interactive service providers which make services available via Set Top Boxes who have made and continue to make a similar

acknowledgement of a duty of care in favour of the Broadcaster. Thereafter SSSL shall no longer be required to seek the acknowledgement and confirmation pursuant to Clause 14.3.

- 14.4 Unless the Broadcaster has been released from its acknowledgements of a duty of care pursuant to Clause 14.3, SSSL shall disclose to the Broadcaster upon request the existence of any acknowledgement and confirmation of the duty of care substantially in the form set out in Clause 14.1 by any broadcaster or interactive services provided where:
- 14.4.1 the Broadcaster has notified SSSL or has been notified by SSSL that there has been an adverse effect on the operation of Set Top Boxes which has affected the service(s) of the Broadcaster; and
  - 14.4.2 SSSL believes, acting reasonably, that the relevant adverse effect has been triggered by an application for which the relevant broadcaster or interactive service provider is responsible; and
  - 14.4.3 SSSL has complied with any relevant obligation(s) to notify the relevant broadcaster or interactive service provider of such disclosure.

## **15 CONFIDENTIALITY**

- 15.1 Subject to Clauses 15.2 and 15.3 in respect of Confidential Information disclosed by the other party, each party shall and shall procure that its officers, employees and agents shall:
- 15.1.1 only use such Confidential Information for the purposes of performing this Agreement;
  - 15.1.2 only disclose such Confidential Information to a third party with the prior written consent of the other party; and
  - 15.1.3 ensure that any third party, to which Confidential Information is disclosed under Clause 15.1.2 or 15.3.3, executes a confidentiality undertaking on terms at least as strict as this Clause 15.
- 15.2 The provisions of Clause 15.1 shall not apply to any Confidential Information which:
- 15.2.1 is in or comes into the public domain other than by default of the recipient party;
  - 15.2.2 is or has already been independently generated by the recipient party;
  - 15.2.3 is in the possession of or is known by the recipient party prior to its receipt from the disclosing party; or
  - 15.2.4 is properly disclosed pursuant to and in accordance with a relevant statutory or regulatory obligation or to obtain or maintain any listing on a stock exchange.
- 15.3 Notwithstanding Clause 15.1, either party shall be entitled to disclose:
- 15.3.1 Confidential Information to its permitted sub-contractors when (and to the extent only) such disclosure is necessary for the performance by the relevant party of its obligations under this Agreement;

- 15.3.2 Confidential Information to a third party Content Provider which is a party to a confidentiality agreement executed in accordance with Clause 5.12 in accordance with the terms of such agreement;
- 15.3.3 Confidential Information to Ofcom or any successor regulator;
- 15.3.4 Confidential Information to a licensing authority which granted the Broadcaster the licence to broadcast the Application and/or the Channels; and
- 15.3.5 details of the terms and performance of this Agreement to its Associated Companies, auditors, legal and other professional advisers as is strictly necessary for the proper performance of this Agreement and who are bound by duties of confidentiality which are at least as strict as this Clause 15.

## **16 ASSIGNMENT**

- 16.1 The Broadcaster shall not assign, transfer, charge or otherwise deal with the whole or any part of this Agreement or its rights or obligations hereunder without the prior written consent of SSSL. The Broadcaster shall request such consent no less than twenty eight (28) days prior to the proposed assignment, transfer, charge or other dealing. Subject to clause 16.2, SSSL shall not unreasonably withhold or delay its consent under this clause 16.1.
- 16.2 In the event of a proposed transfer or assignment of this Agreement, SSSL may, without limitation, require as a condition of giving its consent that the parties and the third party transferee or assignee enter into a deed of novation on terms acceptable to SSSL.
- 16.3 SSSL may assign, transfer, charge or otherwise deal with the whole or any part of this Agreement or its rights or obligations hereunder.

## **17 PUBLICITY AND MARKETING**

- 17.1 Subject to Clause 17.2 and save as required by law or regulation, neither party shall directly or indirectly make any press release or statement to the press, radio, television, or to the media in any way connected with the subject matter of this Agreement except with the prior written consent of the other which shall not be unreasonably withheld or delayed.
- 17.2 Without prejudice to the rights which either party might have under any other agreement and subject to Clause 17.3:
  - 17.2.1 the Broadcaster shall not, in any advertisement, marketing materials or other publicity materials concerning the Applications or otherwise, without SSSL's prior written consent (i) refer to SSSL or any of its Associated Companies; or (ii) use any trade mark, service mark or channel name of SSSL or any of its Associated Companies; and
  - 17.2.2 SSSL and its Associated Companies may refer to the Broadcaster and may use the Broadcaster's trade marks, channel names and service marks (the "Marks") non-exclusively and royalty-free to the extent necessary for the performance of its obligations under this Agreement and for the promotion of the digital satellite platform. SSSL and its Associated Companies may also use the Marks in any advertising or marketing material or

communication, customer or corporate communication or other publicity materials in the Territory, subject to each type of use of the Marks being approved in writing by the Broadcaster (such consent not to be unreasonably withheld) and, such approval having been obtained, SSSL and its Associated Companies being able to use the Marks in a same or similar way to the approved use without further approval having to be obtained. For the avoidance of doubt, nothing in this clause shall prevent SSSL and its Associated Companies using the Marks as permitted under the Trade Marks Acts 1994 or as otherwise permitted by law.

- 17.3 For the avoidance of doubt, nothing in this Clause 17 shall:
- 17.3.1 prevent the Broadcaster from advertising or making known the availability of its enhanced or interactive services via digital satellite where it does so without using any of the marks or names of SSSL or any of its Associated Companies;
  - 17.3.2 give the Broadcaster the right to use any trade mark, service mark, or channel name of any other users of the Technology or any providers of the Technology.

## **18 NOTICES**

- 18.1 Any notice required or authorised by this Agreement must be given in writing and may be delivered personally or by commercial messenger or courier service, or sent by email, or by prepaid, recorded, postal delivery.
- 18.2 Notices so given will be deemed to have been duly given and received as follows:
- 18.2.1 if delivered personally or by commercial messenger or courier service, or if sent by prepaid, recorded, postal delivery, upon delivery at the address of the relevant party as proven by a signed receipt;
  - 18.2.2 if sent by email, upon receipt by the recipient,
- provided that, if, in accordance with the above provision, any such notice, demand or other communication would otherwise be deemed to be given or made outside of the hours of 0830 and 1730 on a working day in the place of delivery, such notice, demand or other communication will be deemed to be given or made on the next working day in such place.
- 18.3 Notwithstanding Clause 18.2, notices shall be deemed to have been duly given and received where all reasonable endeavours have been made to deliver the notice in accordance with this Clause 18 but such endeavours have been unsuccessful.
- 18.4 Notices addressed to SSSL shall be addressed to:

The Company Secretary  
Sky Subscribers Services Limited  
Grant Way  
Isleworth  
Middlesex TW7 5QD

email: [Channels.Operations@sky.uk](mailto:Channels.Operations@sky.uk)

18.5 Notices addressed to the Broadcaster shall be addressed as specified in Paragraph 8 of Annex A.

18.6 SSSL and the Broadcaster may amend their address and email address specified in Clause 18.4 or Paragraph 8 of Annex A (respectively) by written notice to the other party.

## 19. GENERAL

19.1 **Information and assistance:** Each party shall promptly supply to the other such information and assistance as the other may reasonably request to enable it to perform its obligations under this Agreement. Each party shall ensure that information provided to the other party in accordance or in connection with this Agreement is correct to the best of its knowledge at the time of such provision.

19.2 **Counterparts:** This Agreement may be executed in any number of counterparts. This has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

19.3 **Waiver:** The rights of each party under this Agreement are cumulative with, and not exclusive of, rights or remedies provided by law. The rights of each party under this Agreement may be waived only in writing and specifically. Delay in exercising or non-exercise of any right under this Agreement is not a waiver of that right.

19.4 **Amendments:** Without prejudice to SSSL's right to vary the Mandatory Requirements, Application Guidelines and the provisions of this Agreement in accordance with Clause 6, any amendment of this Agreement will not be binding on the parties unless set out in writing, expressed to amend this Agreement and signed by authorised representatives of each of the parties.

19.5 **Severability:** If any term of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that will not affect:

19.5.1 the legality, validity or enforceability in that jurisdiction of any other term of this Agreement; or

19.5.2 the legality, validity or enforceability in other jurisdictions of that or any other provision of this Agreement.

19.6 **Third Party Rights:** A person who is not a party to this Agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999, but this shall not affect any right or remedy of a third party, which exists or is available apart from that Act.

19.7 **Entire Agreement:** Save in the case of fraudulent misstatement or fraudulent misrepresentation, each party acknowledges that:

19.7.1 this Agreement constitutes the entire and only agreement between the parties relating to the subject matter hereof and supersedes all previous agreements between the parties relating to the subject matter hereof; and

19.7.2 it has not been induced to enter into this Agreement in reliance on, nor has it been given, any warranty, representation, statement, assurance, covenant, agreement, undertaking, indemnity or commitment of any nature whatsoever in respect of the subject matter of this Agreement, other than as expressly set out in this Agreement and, to the extent that either party

has been so induced, it unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation to the same.

19.8 **Electronic Signature**

- (i) Each party warrants that the person signing this Agreement on behalf of that party has the requisite authority to bind that party by means of DocuSign’s electronic signature system. By affixing their respective electronic signatures hereto by means of DocuSign’s electronic signature system, the signatories below acknowledge and agree that they intend to bind the respective parties on behalf of whom they are signing.
- (ii) The parties shall each nominate their respective signatories and email addresses and, except where the signatory is a victim of fraud or misrepresentation, the parties and signatories agree that the electronic signature emanating from such nominated email address constitutes valid signature and shall be construed as (and given equal evidentiary weight as) the signatory having signed the document as an original in manuscript.

19.9 **Law and Jurisdiction:** This Agreement shall be governed and construed in accordance with the laws of England and the parties hereby submit to the exclusive jurisdiction of the English Courts.

19.10 **Other:** the parties hereby agree to comply with any other provisions set out in Paragraph 9 of Annex A.

**AS WITNESS** the hands of the duly authorised representatives of the parties at the date first above written

.....

(signature)

Signed for and on behalf of **SKY SUBSCRIBERS SERVICES LIMITED**

.....

(signature)

Signed for and on behalf of \_\_\_\_\_

## **SCHEDULE 1 - DEFINITIONS**

In this Agreement, the following words and expressions shall have the meanings ascribed herein.

<b>"Access Card"</b>	A smart card, supplied by SSSL, containing certain elements of the Technology which, when inserted in a Set Top Box and enabled, will de-scramble and enable viewing of digital satellite transmissions encrypted utilising the Technology and provides access for interactive services via the Technology.
<b>"Adaptation and Integration Services"</b>	The services to be provided by SSSL as set out in Part C of Schedule 2.
<b>"Additional Charge"</b>	Sums charged by SSSL and payable by the Broadcaster in accordance with Clause 7 and Schedule 3.
<b>"Adult Impacts"</b>	The number of persons aged 16 or over who are reported by a Ratings Measurement Agency as having viewed the relevant Channel at the time the Advertisement was broadcast, multiplied by the factor used by the Broadcaster to charge for advertisements on the Channels where the factor for a 30 second Advertisement is 100%. For example if the Broadcaster usually charges 70% as much for a 15 second Advertisement on the Channels as it does for a thirty second Advertisement, then the factor would be 70%. One adult watching one advertisement of 15 seconds duration would therefore count as 0.7 Adult Impacts.
<b>"Advertisement(s)"</b>	Advertising items as defined in Section 2.1 of the Ofcom "Rules on the amount and distribution of Advertising" or their replacement from time to time.
<b>"Agreement"</b>	This agreement together with the Schedules and Annex hereto and any addenda subsequently agreed.
<b>"Application(s)"</b>	An OpenTV o_code application developed by or on behalf of the Broadcaster or which is broadcast by the Broadcaster which runs on top of the OpenTV API available in Set Top Boxes together with the associated Trigger Track (if any) used to launch the application. For the purposes of this definition each new application shall be deemed to be a new, separate application.
<b>"Application Guidelines"</b>	SSSL's Application Guidelines at the date of this Agreement and as subsequently amended in accordance with the terms of this Agreement.

<b>"Associated Company"</b>	In the case of the relevant party, any subsidiary, any holding company and any subsidiary of such holding company (as such terms are defined in Section 1159 of the Companies Act 2006).
<b>"Authentication Services"</b>	Services provided by SSSL which identify an end-user or a Set Top Box in order to enable access by that end-user or Set Top Box to an online service.
<b>"Auditor"</b>	A reputable and independent third party auditor appointed by SSSL (or, subject to the Broadcaster's agreement, Sky UK Limited's audit and risk management team).
<b>"Average Adult Audience"</b>	The average number of persons aged 16 or over who viewed the relevant Channel at any one point in time, as reported by a Ratings Measurement Agency in respect of the relevant calendar month.
<b>"BACC Copy Number"</b>	The unique reference number of an advertising campaign established by the Broadcast Advertising Clearance Centre, or its replacement.
<b>"Broadcaster-Signed Application"</b>	An Application which has been signed using a Producer Certificate(s) and a Private Key(s) which has been issued to the Broadcaster.
<b>"Call"</b>	A telephone call made by a person to a telephone number promoted within an Application.
<b>"Call Charge"</b>	In respect of calls made from the United Kingdom, the published rate on BT's standard calls package for calls to the telephone number promoted within a Relevant Application (exclusive of VAT). In respect of calls made from the Republic of Ireland, the published rate on Eircom's standard calls package for calls to the telephone number promoted within a Relevant Application (exclusive of VAT). For example, the Call Charges in respect of a Chargeable Call made from the United Kingdom lasting 3 minutes, where the published rate for calls to the telephone number on BT's standard calls package is 25 pence per minute plus a connection fee of 5p (excluding VAT), would be £0.80.
<b>"Channel CPT"</b>	An amount equal to the amount invoiced by or on behalf of the Broadcaster in respect of all Advertisements broadcast on the relevant Channel in a relevant month, divided by the number of Adult Impacts (in thousands) for the relevant Channel in the month, as measured by a Ratings Measurement Agency.
<b>"Channels"</b>	The channels broadcast by the Broadcaster that are subject to rating by a Ratings Measurement Agency and "Channel" shall mean any of them.

**"Chargeable Call"**

Any of the following:

- (a) any:
  - (i) Voting Call;
  - (ii) Game Response Call; or
  - (iii) any other type of Call

for which the tariff used to calculate the Call Charge is greater than the Local Rate Tariff and in respect of which the Call Charge is the only charge paid by the person who makes the Call; or

- (b) any SMS which (i) results in the person who sent the message paying more than £0.12 (including VAT) or such other charge as may be agreed between the parties during the term and (ii) generates a revenue for the Broadcaster or a third party (excluding the relevant mobile telephony operators).

**"Charges"**

The charges payable by the Broadcaster for the Signing Services and Adaptation and Integration Services pursuant to this Agreement as set out in Clause 7 and Schedule 3, including the Additional Charges (where applicable).

**"Commencement Date"**

The date specified at Paragraph 2 of Annex A.

**"Commercial Watermarking"**

The display of a visual identifier on the screen (such as, but not limited to a pint glass symbol), which is specifically broadcast to commercial premises, so that the pay-TV distributor of that channel can verify whether a commercial premise has purchased the appropriate commercial subscription from that pay-TV distributor.

**"Confidential Information"**

All information (whether written or oral) designated as such by either party together with all such other information which relates to the business, affairs, subscribers, products, developments, trade secrets, know-how and personnel of either party (or an Associated Company of either party) which may reasonably be regarded as the confidential information of the disclosing party including, without limitation, the terms of this Agreement, any terms proposed by either party (whether or not agreed) in connection with the negotiation of this Agreement and information relating to programme content or schedules.

**"Consent"**

Any specific and informed indication given by a person which signifies his/her agreement to

personal data relating to him/her being processed for marketing purposes.

**"Content Provider"**

A third party which has entered into an arrangement with the Broadcaster in order to support activities and/or provide services within an Application on behalf of the Broadcaster or with the permission of the Broadcaster.

**"Customer"**

A viewer, within the Territory, of digital satellite transmissions via an Access Card and Set Top Box.

**"DocuSign"**

DocuSign is a provider of electronic signature software that facilitates the secure exchange and completion of contracts and other legal documents by allowing an authorised person to sign a document electronically on behalf of a party to that document.

**"DSAT Adult Impact(s)"**

Adult Impacts multiplied by the Proportion of Viewing.

**"DTH Household"**

Households which receive programme services via a signal which is transmitted directly from a satellite to a satellite dish at the place of reception for the purpose of viewing that programme service at the place of reception.

**"Email Service"**

A service offered to consumers as part of the Application by means of which Customers are able to set up and operate e-mail accounts, including the sending and receiving of e-mails.

**"Expiry Date"**

The date embedded in the Producer Certificate until which the Producer Certificate can be used to generate a valid signature.

**"Force Majeure"**

Any cause beyond a party's reasonable control affecting the performance by that party of its obligations hereunder including but not limited to acts of God, insurrection or civil disorder, war or military operations, national or local emergency, avian influenza pandemic, acts or omissions of Government or regulatory authority, industrial disputes of any kind (not involving that party's employees), fire, flood, lightning, explosion, subsidence, uplink and/or satellite failure or degradation, and acts or omissions of persons or bodies beyond the reasonable control of the affected party.

**"Gambling Service"**

The broadcast and online interactive television service(s) which comprise:

- (i) betting, fixed odds games and gaming

products and services;

- (ii) the provision of information in relation to such gambling products;
- (iii) the management of any associated customer accounts.

**"Game Response Call"**

A Call made by a Customer in order to submit a score achieved by playing an interactive game for the purposes of a prize competition or other purpose related to the interactive game.

**"Gross Margin"**

The total value of Stakes placed via each of the Gambling Services for the relevant period, after the deduction of:

- (i) winnings paid via the relevant Gambling Service during the relevant period;
- (ii) void Stakes and chargebacks relating to and/or arising from the relevant Gambling Service for the relevant period; and
- (iii) applicable taxes and levies including, without limitation, horse racing levy and general betting duty levied in relation to Stakes in respect of the relevant period.

**"Identifying Details"**

Any details (including but not limited to a name, address, phone number or e-mail address) that enable a person or his/her household to be contacted.

**"Intellectual Property Rights"**

Patents, trade marks, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, know-how, trade or business names and other similar rights or obligations whether registrable or not in any country.

**"Interactive Advertisement"**

An Advertisement broadcast on one or more of the Channels during which people viewing the Channel(s) are prompted to launch an Application which contains content related to the Advertisement and which launches via the use of the Trigger Track.

**"Local Rate Tariff"**

In respect of calls made from within the United Kingdom, BT's published standard rate for local voice calls. In respect of calls made from the Republic of Ireland, the published rate for local voice calls on Eircom's standard calls package.

<b>"Man/day"</b>	Each period of eight hours (8) during which a single person provides Adaptation and Integration Services (so that, for example, two (2) persons providing such services for three (3) hours each would be considered to be 0.75 man/days in total).
<b>"Mandatory Requirements"</b>	The mandatory requirements for all applications broadcast to or otherwise accessed by Set Top Boxes as set out in the Application Guidelines.
<b>"Marketing Registration"</b>	<p>The collection and recording by the Broadcaster of Identifying Details where either: (i) the Broadcaster has obtained the express or implied Consent of the subject or (ii) Consent has not been obtained but the Broadcaster intends (subject to complying with any applicable legislation) to use the Identifying Details for marketing purposes, whether such intent is present at the time that the Identifying Details are collected or is formed subsequently.</p> <p>For the avoidance of doubt, a Marketing Registration shall be considered to have occurred whether the collection of a person's or household's Identifying Details is effected as part of a stand-alone registration process or incidentally as part of another service contained within an Application.</p>
<b>"Multiple Donation"</b>	An instruction made by a Customer to a Charity as a result of which a specified Charity will receive multiple payments from the Customer over a period of time (typically a standing order or direct debit arrangement).
<b>"New Service"</b>	An activity other than (i) one which is included in Paragraph 1.2 of Schedule 3 or (ii) one in respect of which the Additional Charges have previously been agreed between the parties.
<b>"Non-Compliant Application"</b>	An Application which does not comply with the Mandatory Requirements or which otherwise has a material adverse effect on the operation of Set Top Boxes (including, for the avoidance of doubt, the viewing of any broadcast services or the use of interactive services via the Set Top Boxes).
<b>"Operational Procedures"</b>	SSSL's Operational Procedures for Interactive Applications at the date of this Agreement and as subsequently amended from time to time.
<b>"Pay TV Customer Services"</b>	services provided by or on behalf of a pay TV distributor that enable viewers to: access information about their account with that pay TV distributor, including information about the pay TV products to which they have subscribed or purchased on a pay-per-view basis; view the invoices issued to them by that pay TV distributor;

subscribe/unsubscribe to/from additional pay TV products provided by that pay TV distributor; and register as a new customer of that pay TV distributor (in order that they may then subscribe to pay TV products or make impulse pay-per-view purchases from that pay TV distributor).

**"Private Key"** A unique series of bytes used by the Signing Tool in applying a valid signature to an Application.

**"Producer Certificate"** A software file incorporating the Public Key to be inserted into an Application to enable Set Top Boxes to recognise the Application as a valid Application.

**"Proportion of Viewing"** The proportion of a Channel's viewing (expressed as a percentage) that is obtained via Set Top Boxes in DTH Households, which shall be calculated by dividing (i) the Average Adult Audience (in thousands) obtained via Set Top Boxes in DTH Households by (ii) the Average Adult Audience (in thousands) obtained in all households.

For the avoidance of doubt, an example calculation of the Proportion of Viewing is set out below:

Example:

Average Adult Audience (000s) obtained via Set Top Boxes in DTH Households: 275,000

Average Adult Audience (000s) obtained in all households: 1,250,000

Proportion of Viewing: 22%.

**"Public Key"** A series of bytes embedded in the Producer Certificate which is used by Set Top Boxes to validate the signature of the application directory.

**"Ratings Measurement Agency"** British Audience Research Bureau Limited or any successor or similar body in the United Kingdom, or equivalent body in the Republic of Ireland, that performs a television audience rating function and is generally accepted within the television and advertising industries.

**"Relevant Applications"** Broadcaster-Signed Applications or Applications otherwise launched from within the Broadcaster's services.

**"Relevant Online Infrastructure"** An online infrastructure in respect of which Authentication Services are provided by SSSL.

**"Retail Transaction"** Any Transaction as a result of which the consumer receives goods of a physical nature.

<b>"Services"</b>	The Signing Services and the Adaptation and Integration Services.
<b>"Set Top Box"</b>	A viewer terminal system (whether or not integrated into a TV set) which is compatible with the Technology, capable of decoding direct to home digital satellite transmissions encrypted utilising such technology and which is capable of supporting Applications using OpenTV v1.2/v1.3.
<b>"Signing Services"</b>	The services to be provided by SSSL and set out in Part B of Schedule 2 in order to enable Applications to be validly signed by or on behalf of the Broadcaster.
<b>"Signing Tool"</b>	The software toolkit provided by SSSL to enable a digital signature to be applied to an Application.
<b>"Single Donation"</b>	A single payment successfully collected by or on behalf of a specified Charity from a Customer.
<b>"SMS"</b>	A message sent by a person to a telephone number or short code promoted within an Application using a "short message service" or "multimedia messaging service" operated by a provider of mobile network services.
<b>"SMS Service"</b>	A service offered to consumers as part of the Application by means of which Customers are able to send text messages to mobile telephones. For the avoidance of doubt, a service by which Customers are able to purchase a product or service shall not be considered to be an SMS Service but shall be considered to be a Retail Transaction for the purposes of this Agreement.
<b>"Stake"</b>	Any amount staked by a viewer in order to place a bet or play a game in one of the Gambling Services.
<b>"Technology"</b>	All software, hardware, other equipment and procedures used by SSSL in the provision of the Services, Authentication Services or conditional access services.
<b>"Term"</b>	The term of this Agreement as set out in Clause 2 and Annex A.
<b>"Territory"</b>	The United Kingdom, the Republic of Ireland, the Channel Islands and the Isle of Man.
<b>"Third Parties"</b>	Any and all third parties other than the Broadcaster (including, without limitation, Sky UK Limited and its Associated Companies) of any channel or interactive service in respect of which SSSL provides

all or any Services other than for use solely in a test environment.

**"Ticket Transaction"**

Any Transaction as a result of which the consumer receives a single entrance ticket(s) to:

- (i) live music events;
- (ii) live sports events;
- (iii) live theatre, opera, ballet and other dance events;
- (iv) cinema screenings; or
- (v) any other live attractions.

For the avoidance of doubt, any Transaction as a result of which the consumer receives a season ticket or other multiple entrance ticket for any of the attractions referred to at (i) to (v) above will be considered to be a Retail Transaction for the purposes of this Agreement.

**"Transaction"**

Any economic activity resulting in the supply of goods or provision of services which results directly from a Relevant Application containing either an invitation to treat or an offer to consumers (on behalf of the Broadcaster or any Content Provider) together with contact information, including without limitation "call me" functionality, through which the consumer can either:

- (i) make an offer in response to the invitation to treat contained in the Application which can be accepted (by or on behalf of the Broadcaster or Content Provider as appropriate); or
- (ii) accept an offer contained in the Application for the sale of goods or provision of services (from or on behalf of the Broadcaster or Content Provider as appropriate).

**"Transaction Revenue"**

The full cost to the consumer of the Retail Transaction excluding:

- (a) Any VAT payable in respect of the Retail Transaction;
- (b) Any separate post and packaging charges provided that such charges represent the direct cost to the Broadcaster (or its

Content Providers, as appropriate) in delivering the goods to the consumer and do not include any unreasonable mark-up;

- (c) Any refunds or charge-backs made in respect of the Retail Transactions.

**"Travel Transaction"**

Any Transaction as a result of which the consumer receives services associated with travel and holidays, including (but not limited to) holiday insurance, transport tickets, hotel bookings, car rental, and equipment rental.

**"Trigger Module"**

The data module provided by the Broadcaster in accordance with the syntax defined by SSSL which carries the icon and the description of the EPG behaviour in response to user actions.

**"Trigger Module Directory"**

The data file provided by SSSL which, together with the relevant Trigger Module, enables broadcasters to make use of the icon mechanism for launching Applications.

**"Trigger Track"**

The broadcast data track comprising the Trigger Module and the Trigger Module Directory.

**"Unapproved New Service"**

An activity contained in an Application which has been launched and is neither (i) one which is included in Paragraph 1.2 of Schedule 3 nor (ii) one in respect of which the Additional Charges have previously been agreed between the parties.

**"Voting Call"**

Any Call or SMS made by a person in order to participate in an event, express a preference, or select between different options.

**"Voting Service"**

Services by means of which Customers are able to place Voting Calls.

**"Wholly Owned Subsidiary"**

A wholly owned subsidiary as that term is defined in Section 1159 of the Companies Act 2006 and which is listed at Paragraph 4 of Annex A.

## **SCHEDULE 2 – SERVICES**

### **A PERMITTED INTERACTIVE SERVICES**

#### **1. SKY'S COMMITMENTS TO OFCOM**

- 1.1 By way of commitments to Ofcom dated 23 April 2015 (the "Commitments"), Sky has agreed that it shall provide the Broadcaster with the Services in order to enable the Broadcaster to provide interactive services to end users on Set Top Boxes including, but not limited to:
- 1.1.1 services that enable viewers to access and select alternative linear video feeds broadcast via digital satellite;
  - 1.1.2 services that enable viewers to access and select alternative audio soundtracks;
  - 1.1.3 services that enable viewers to access and select digital text services (such as digital text services providing news, sports news, weather bulletins, travel news and lottery results);
  - 1.1.4 services that enable viewers to access and play games;
  - 1.1.5 services that enable viewers to access and use betting services;
  - 1.1.6 services that enable viewers to select sub-titles in their language of choice;
  - 1.1.7 services that enable viewers to vote;
  - 1.1.8 Commercial Watermarking; and
  - 1.1.9 Pay TV Customer Services.
- 1.2 Under this Agreement SSSL shall provide the Broadcaster with the Services in order to enable the Broadcaster to provide the interactive services listed in Annex A.

### **B. SIGNING SERVICES**

#### **1. PRODUCER CERTIFICATES**

- 1.1 SSSL shall provide the Broadcaster with Producer Certificates as and when reasonably requested by the Broadcaster.
- 1.2 SSSL shall, subject to the terms of this Agreement, ensure that Set Top Boxes recognise the Public Key contained in each Producer Certificate until its Expiry Date.
- 1.3 SSSL shall ensure that Set Top Boxes permit Applications signed with a valid Producer Certificate and Private Key to be executed, subject to the limitations set out in each such Producer Certificate on the Set Top Box functionality which may be accessed by Applications signed using that Producer Certificate.
- 1.4 Each Producer Certificate shall set out the limitations of the Set Top Box functionality which the Broadcaster is permitted to access for Applications signed using that Producer Certificate. The limitations applied to any Producer Certificate shall be agreed between SSSL and the Broadcaster.

- 1.5 Subject to Clause 4.4, the Broadcaster shall be entitled to have access, for the purpose of executing Applications, to any Set Top Box functionality which is made available to comparable Third Parties (other than where such functionality is being made available as part of a test). SSSL shall not withhold its consent to any request by the Broadcaster for a Producer Certificate to enable access to any functionality which is made available to comparable Third Parties (other than where such functionality is being made available as part of a test) where the Broadcaster reasonably believes that its Applications require such access. For the avoidance of doubt, the Broadcaster shall not be entitled to access any functionality of the Set Top Box prior to SSSL making such functionality available to Third Parties.
- 1.6 SSSL shall allocate a Producer ID to be associated with each Producer Certificate and notify the Broadcaster at the time of allocation of an Expiry Date for each Producer Certificate allocated to the Broadcaster.
- 1.7 Where the Expiry Date of a Producer Certificate is about to be reached and the Broadcaster wants to continue to use a Producer Certificate with the same limitations:
- 1.7.1 the Broadcaster shall notify SSSL of the imminent Expiry Date and request a replacement Producer Certificate;
- 1.7.2 SSSL shall then provide the Broadcaster with such replacement Producer Certificate a reasonable period in advance of the Expiry Date of the relevant Producer Certificate, so as to ensure that any Broadcaster-Signed Application is not prevented from executing in Set Top Boxes due to the Expiry Date of any Producer Certificate having been reached.

In order to ensure that any Broadcaster-Signed Application is not prevented from executing in Set Top Boxes due to the Expiry Date of any Producer Certificate having been reached, the notice from the Broadcaster pursuant to Paragraph 1.7.1 requesting that a replacement Producer Certificate be issued should be given not less than thirty (30) days prior to the relevant Expiry Date.

## **2. PRODUCER PRIVATE KEYS**

- 2.1 SSSL shall provide the Broadcaster with Private Keys as and when reasonably requested by the Broadcaster.

## **3. SIGNING TOOL**

- 3.1 SSSL shall provide the Broadcaster with the Signing Tool on request.
- 3.2 SSSL hereby grants a licence to the Broadcaster during the Term to use the Signing Tool in order to sign Applications and/or to permit the use of the Signing Tool in order for third parties to sign Applications on the Broadcaster's behalf in accordance with the terms of this Agreement.

## **4. TRIGGER TRACK**

- 4.1 SSSL shall provide the Broadcaster with a Trigger Module Directory as and when reasonably requested by the Broadcaster and shall periodically update such Trigger Module Directory.
- 4.2 In order to launch an enhanced television Application using the icon mechanism, the Broadcaster acknowledges that it will have to transmit the Trigger Module

Directory together with the appropriate Trigger Module on each transponder which carries a digital satellite broadcast of the channel from which the relevant enhanced Application is to be launched.

- 4.3 SSSL has developed certain software known as the TMGlink1 Trigger Module Generation Tool which provides users with a Windows-based tool enabling the creation of Trigger Modules and their associated Trigger Tracks for use with Applications using Set Top Boxes (the "TMGlink1 Software").
- 4.4 SSSL hereby grants to the Broadcaster a non-exclusive licence to use the TMGlink1 Software solely in connection with Applications using Set Top Boxes pursuant to this Agreement.
- 4.5 The licence granted hereunder shall be for the duration of the Term.
- 4.6 The Broadcaster may sub-license the use of the TMGlink1 Software to third party application developers for use in accordance with Paragraph 4.4 above provided that the Broadcaster ensures such sub-licensees comply with the terms of Paragraph 4.3 to Paragraph 4.8 (inclusive) of Schedule 2.
- 4.7 Other than expressly stated herein, the Broadcaster shall not copy, alter, adapt, modify, distribute, disclose, transfer, assign, lease, sell or otherwise deal in or use the TMGlink1 Software (or any part of it) nor, except to the extent permitted by law, reverse engineer or decompile the TMGlink1 Software (or any part of it).
- 4.8 The Broadcaster acknowledges that all copyright and other intellectual property rights of whatever nature in and to the TMGlink1 Software are the exclusive property of SSSL (or its licensors). All rights not expressly granted by SSSL in this Paragraph 4 of Schedule 2 are expressly reserved to SSSL.
- 4.9 The Broadcaster acknowledges and accepts the disclaimer and limitation of liabilities set out in this Paragraph 4.9:
  - 4.9.1 whilst SSSL has taken reasonable care to ensure that the TMGlink1 Software is free from defects and viruses SSSL will not be liable for any loss or damage which the Broadcaster may suffer as a result of or connected with the use of the TMGlink1 Software;
  - 4.9.2 in installing and making use of the TMGlink1 Software the Broadcaster acknowledges and accepts all risks inherent therein and accepts that SSSL cannot be held liable or responsible for the installation or any problems arising therefrom. Without prejudice to the foregoing, SSSL does not warrant that the use of the TMGlink1 Software will meet the Broadcaster's requirements or that the operation of this software will be uninterrupted or error free;
  - 4.9.3 the Broadcaster also accepts that SSSL will not be liable for any loss or damage to data, applications or hardware the Broadcaster may suffer as a result of or connected with the use of the TMGlink1 Software;
  - 4.9.4 the Broadcaster further acknowledges that SSSL has provided the TMGlink1 Software on an "as is" basis and has made no commitment to correcting any errors or bugs in the TMGlink1 Software, adapting that software as a result of changes to Set Top Boxes or any systems used in connection therewith or otherwise providing support for the TMGlink1 Software; and

4.9.5 subject to the foregoing and to the extent permitted by law all representations, conditions, warranties and other terms, whether express or implied, by statute or otherwise, in respect of the TMGlink1 Software are hereby excluded.

## **5. APPLICATION TESTING**

5.1 The Broadcaster shall, prior to attempting to broadcast any Application, undertake adequate testing of the Application to ensure that the Application is not a Non-Compliant Application. The Broadcaster shall undertake such testing against a population of Set Top Boxes which is representative of all the Set Top Boxes then in use (including, without limitation, against one version of each Set Top Box type from each manufacturer, as identified in SSSL's then current list of Set Top Box types, which SSSL shall provide to the Broadcaster). To the extent that SSSL makes test facilities available to any Third Party, SSSL shall make them available to the Broadcaster. SSSL and the Broadcaster shall negotiate in good faith the terms (including any charges) upon which any such test facilities may be made available.

5.2 The Broadcaster shall, after completing the testing referred to in Paragraph 5.1 but prior to attempting to broadcast any Application for the first time:

5.2.1 notify SSSL that it intends to broadcast the Application, and provide SSSL with test scripts and such other documents as SSSL may reasonably require, which would allow SSSL at its own cost to test the Application for such purposes as SSSL reasonably considers appropriate (including, but not limited to, testing against any new versions of software which SSSL is considering downloading to Set Top Boxes or new versions of the Set Top Box which SSSL is considering placing on the market, and testing such aspects of the Application as may be necessary for determining whether the Application may be a Non-Compliant Application, or otherwise whether the Application causes any material adverse effect to the operation of Set Top Boxes); and

5.2.2 at SSSL's request, submit the Application to SSSL so that SSSL may at its own cost test the Application.

5.3 For the avoidance of doubt, the Broadcaster shall, each time it intends to broadcast a modified Application, notify SSSL and provide SSSL with updated test scripts and other documents that SSSL may reasonably require pursuant to Paragraph 5.2.1, and shall, at SSSL's request, submit such modified Applications for testing pursuant to Paragraph 5.2.2.

5.4 In the event that SSSL wishes to test an Application pursuant to Paragraph 5.2.2 (including a modified Application pursuant to Paragraph 5.3), the Broadcaster shall not broadcast that Application until SSSL has notified the Broadcaster that the Application has been tested to SSSL's satisfaction. The Broadcaster acknowledges that SSSL has wider responsibilities (for example, to the platform) than to the Broadcaster, and limited test resources. SSSL may, where necessary, operate a queuing system for testing different broadcasters' applications.

## **6. SET TOP BOX MODIFICATIONS AND LIVE APPLICATION TESTING**

6.1 Subject to Paragraph 6.2 and without prejudice to the Broadcaster's obligations pursuant to Paragraph 5 to test Applications, where SSSL anticipates downloading new software to Set Top Boxes, or introducing new Set Top Boxes into the market, SSSL shall use its reasonable endeavours to test a representative sample of live

Applications broadcast on the platform (but, for the avoidance of doubt, may not necessarily test any or all of the Broadcaster's Applications), using the test scripts provided by broadcasters, against the final versions of the new software which it is considering downloading to Set Top Boxes or new versions of the Set Top Box which are to be placed in the market (as the case requires).

6.2 The Broadcaster acknowledges that SSSL may not test any Application pursuant to Paragraph 6.1 which is not being transmitted over the air during normal business hours during the period in which the testing is being undertaken.

6.3 SSSL shall promptly notify the Broadcaster if SSSL believes, as a result of undertaking testing pursuant to Paragraph 6.1, that:

6.3.1 any Application will become a Non-Compliant Application as a result of the new software or the new version of the Set Top Box; and/or

6.3.2 there is a material fault in the execution of any Application when operating with the new software or the new version of the Set Top Box.

If SSSL notifies the Broadcaster in accordance with this Paragraph 6.3, SSSL shall also provide the Broadcaster with the relevant results of the testing undertaken pursuant to Paragraph 6.1 which gave rise to the notification.

6.4 The Broadcaster acknowledges that SSSL has wider responsibilities (for example, to the platform) than to the Broadcaster and that therefore SSSL may, in its absolute discretion, decide to download new software into Set Top Boxes or introduce new versions of the Set Top Boxes into the market notwithstanding the effect such action could have on the Broadcaster's existing Applications or that such action would require the Broadcaster to withdraw an existing Application.

6.5 In the event that SSSL has determined that it will change the software resident in Set Top Boxes and has developed the new software to be downloaded to the live Set Top Boxes, SSSL shall provide the Broadcaster with reasonable prior written notice that it is proposing to change the software resident in Set Top Boxes.

6.6 If an intended change to the software resident in Set Top Boxes is a material change to the functionality of Set Top Boxes available for use in connection with Applications, then in addition to the notifications of the intended change in accordance with Paragraph 6.5, SSSL shall notify the Broadcaster of the functional changes.

6.7 Where SSSL intends to introduce a new version of the Set Top Box into the market, SSSL shall provide the Broadcaster with reasonable prior written notice of such introduction, and reasonable prior written notice of the date from which SSSL shall require that the Broadcaster tests its new and modified Applications against that Set Top Box version pursuant to Paragraph 5.1.

6.8 In the event that SSSL changes the software resident in Set Top Boxes and in the four (4) week period following such change to the software an Application which was being broadcast to live Set Top Boxes prior to the change to the software resident in Set Top Boxes has a material adverse effect on the operation of Set Top Boxes (including, for the avoidance of doubt, the viewing of any broadcast services or use of interactive services via Set Top Boxes), then the Broadcaster shall have no liability to SSSL in respect of such material adverse effect pursuant to Clauses 12.1 or 12.2 unless:

- 6.8.1 the results of the testing of the Application reported by SSSL to the Broadcaster pursuant to Paragraph 6.3 before such change to the software identified that the Application might become a Non-Compliant Application or otherwise that there was a fault with the Application operating on the new software which has been downloaded into Set Top Boxes; or
  - 6.8.2 SSSL can demonstrate that the relevant material adverse effect on the operation of Set Top Boxes also occurred in the version of the software resident in Set Top Boxes prior to the change.
- 6.9 In the event that SSSL introduces a new version of the Set Top Box into the market and in the four (4) week period following such introduction an Application which was being broadcast to live Set Top Boxes prior to the introduction of the new version of the Set Top Box has a material adverse effect on the operation of Set Top Boxes (including, for the avoidance of doubt, the viewing of any broadcast services or use of interactive services via Set Top Boxes), then the Broadcaster shall have no liability to SSSL in respect of such material adverse effect pursuant to Clauses 12.1 or 12.2 unless:
- 6.9.1 the results of the testing of the Application reported by SSSL to the Broadcaster pursuant to Paragraph 6.3 before SSSL introduced the new version of the Set Top Box identified that the Application might become a Non-Compliant Application or otherwise that there was a fault with the Application operating in the new version of the Set Top Box; or
  - 6.9.2 SSSL can demonstrate that the relevant material adverse effect on the operation of Set Top Boxes also occurred on one or more versions of the Set Top Box prior to the introduction of the new version of the Set Top Box.
- 6.10 Nothing in this Paragraph 6 shall absolve the Broadcaster from any liability in connection with any Application if the Broadcaster continues to broadcast the Application once it has been notified by SSSL pursuant to Paragraph 6.3, or is otherwise aware, that the Application is a Non-Compliant Application.
- 6.11 In the event that SSSL has downloaded new software into the live Set Top Boxes, SSSL reserves the right without prior notice to the Broadcaster to revert to the former version of the software in the live Set Top Boxes in the event that it discovers a fault with the new version of software downloaded. If SSSL reverts to the former version of software pursuant to this Paragraph 6.11 it shall notify the Broadcaster as soon as reasonably practicable and Paragraphs 6.8 and 6.10 shall apply upon such reversion in respect of any modifications made to an Application by the Broadcaster as a result of the download of the new software into Set Top Boxes.
- 6.12 Any notifications referred to in this Paragraph 6 shall be made by e-mail or other agreed form of written communication between the nominated technical points of contact for this purpose.

## **7. NON-COMPLIANT APPLICATIONS**

- 7.1 Without prejudice to any of SSSL's rights and remedies, to the extent that SSSL reasonably believes that:
  - 7.1.1 any Producer Certificates and/or Private Keys issued to the Broadcaster are being applied to Non-Compliant Applications (other than Non-

Compliant Applications in respect of which the Broadcaster is entitled to be excused from liability under Paragraphs 6.8 and/or 6.9 above); or

7.1.2 the Broadcaster is otherwise broadcasting any Non-Compliant Applications (other than Non-Compliant Applications in respect of which the Broadcaster is entitled to be excused from liability under Paragraphs 6.8 and/or 6.9 above),

THEN SSSL may, subject to Paragraph 7.2 but otherwise in its sole discretion, decide to monitor Applications broadcast by the Broadcaster and the Broadcaster hereby undertakes to indemnify SSSL fully in respect of any and all costs and/or expenses reasonably incurred in relation to such monitoring.

7.2 Before exercising its rights to monitor the Broadcaster's Applications under Paragraph 7.1, SSSL shall, to the extent practicable, consult with the Broadcaster and give the Broadcaster a reasonable opportunity to correct or withdraw the Non-Compliant Application(s) in question.

7.3 In the event that an Application has a material adverse effect on the operation of Set Top Boxes (including, for the avoidance of doubt, the viewing of any broadcast services or the use of interactive services via the Set Top Boxes) whether due to a fault in the Application or otherwise, the Broadcaster shall, forthwith upon becoming aware of this material adverse effect, notify SSSL and cease broadcasting the Application. If, prior to receipt of any such notification from the Broadcaster, SSSL becomes aware that a broadcast Application has such a material adverse effect SSSL shall notify the Broadcaster forthwith and, upon receipt of any such notice from SSSL the Broadcaster shall forthwith cease broadcasting the Application. Where an Application has been withdrawn pursuant to this Paragraph, the Broadcaster shall not attempt to rebroadcast the Application until the Broadcaster has:

7.3.1 fully debugged and tested the Application; and

7.3.2 demonstrated (to SSSL's reasonable satisfaction, not to be unreasonably withheld or delayed) that the Application does not have a material adverse effect on the operation of any Set Top Boxes (including, for the avoidance of doubt, the viewing of any broadcast services or the use of interactive services via the Set Top Boxes).

7.4 Where the Broadcaster becomes aware or is informed by SSSL that an Application does not comply with the Mandatory Requirements, the Broadcaster shall forthwith cease broadcasting that Application and shall not re-broadcast the relevant Application until such time as it does so comply. Where SSSL informs the Broadcaster that an Application does not comply with the Mandatory Requirements, SSSL shall provide appropriate details of the manner in which it considers that the relevant Application does not comply with the Mandatory Requirements.

7.5 SSSL shall be entitled to withdraw any Producer Certificates and/or Private Keys issued to the Broadcaster and/or take such measures as are necessary to prevent Application(s) executing in Set Top Boxes if SSSL reasonably believes that an Application being broadcast by the Broadcaster or a Broadcaster-Signed Application is a Non-Compliant Application.

7.6 In the event that SSSL withdraws any Producer Certificates and/or Private Keys issued to the Broadcaster or prevents Application(s) executing in Set Top Boxes pursuant to Paragraph 7.5, SSSL shall as soon as reasonably practicable notify the

Broadcaster of such action and document the reasons why it decided to withdraw such Producer Certificates and/or Private Keys or prevent Application(s) executing in Set Top Boxes (as the case may be). SSSL shall, as soon as is reasonably practicable, provide written reports to the Broadcaster setting out such reasons. SSSL shall use all reasonable endeavours to provide such reports within 7 days of the relevant withdrawal or termination.

- 7.7 The Broadcaster shall not attempt to:
- 7.7.1 broadcast any Application using any Producer Certificate and/or Private Keys which have been withdrawn by SSSL pursuant to Paragraph 7.5; or
  - 7.7.2 rebroadcast any Application(s) which has been the cause of the withdrawal of Producer Certificates and/or Private Keys or prevented from executing in Set Top Boxes by SSSL pursuant to Paragraph 7.5

until the breach detailed by SSSL in its report to the Broadcaster pursuant to Paragraph 7.6 has been remedied and the relevant Application has been demonstrated (to SSSL's reasonable satisfaction) to be in accordance with the terms of this Agreement.

- 7.8 Provided that the Broadcaster has remedied the breach detailed by SSSL in its report to the Broadcaster pursuant to Paragraph 7.6 and the relevant Application has been demonstrated (to SSSL's satisfaction, not to be unreasonably withheld or delayed) not to be a Non-Compliant Application, then SSSL shall, as soon as reasonably practicable (but subject to any delays caused as a result of any reasonable operational or technical constraints) provide such Producer Certificates and Private Keys as are necessary to enable the Broadcaster to rebroadcast the relevant Application(s).

## **C. ADAPTATION AND INTEGRATION SERVICES**

### **1. ADAPTATION**

Such services as support the configuration of the Broadcaster's adaptation system to include each new Application both as a test service and as a live service and as are requested by the Broadcaster from time to time.

### **2. INTEGRATION**

Such support services in connection with the testing of new Applications and their integration into the Broadcaster's adaptation and play-out systems as are requested by the Broadcaster from time to time. Such services shall include the provision of Access Cards to allow the testing of new Applications over the air as part of a test service not receivable by the majority of Set Top Boxes.

### SCHEDULE 3 – ADDITIONAL CHARGES

- 1.1 There shall be no Additional Charges payable by the Broadcaster in respect of the provision of following interactive services on Set Top Boxes:
- 1.1.1 services that enable viewers to access and select alternative linear video feeds broadcast via digital satellite;
  - 1.1.2 services that enable viewers to access and select alternative audio soundtracks;
  - 1.1.3 services that enable viewers to access and select digital text services;
  - 1.1.4 services that enable viewers to select sub-titles in their language of choice;
  - 1.1.5 Commercial Watermarking; and
  - 1.1.6 Pay TV Customer Services.
- 1.2 If the broadcaster undertakes any activity other than those listed in paragraph 1.1 above, the Broadcaster shall pay the Additional Charges set out in Paragraph 1.3 and/or the Additional Charges agreed or determined pursuant to Paragraphs 1.4 to 1.9.
- 1.3 The Broadcaster shall pay the following Additional Charges for the activities set out below from the date on which the Relevant Application enabling or promoting the activity in question is first broadcast. For the avoidance of doubt:
- 1.3.1 Additional Charges shall be payable by the Broadcaster in respect of all of the activities set out below which are made available using any Relevant Application, including without limitation where the activity is undertaken by a Content Provider and not by the Broadcaster; and
  - 1.3.2 more than one charge may apply to any particular service or Application and the Broadcaster shall pay Additional Charges for each separate activity. For example, a Marketing Registration may occur within a service or Application which also contains a Retail Transaction or Chargeable Call:

<b>Activity to which the charge applies</b>	<b>Additional Charges</b>	<b>Information to be provided pursuant to Clause 7.6</b>
Interactive Advertisements broadcast on the Channels.	5% of the Channel CPT multiplied by DSAT Adult Impacts (in thousands) delivered by each Interactive Advertisement broadcast on the Channels.	The Broadcaster shall provide to SSSL: a) the total number of Interactive Advertisements which were broadcast on the Channel(s) together with a list of campaign names and BACC Copy Numbers to which they relate, broken down by Channel;

<b>Activity to which the charge applies</b>	<b>Additional Charges</b>	<b>Information to be provided pursuant to Clause 7.6</b>
		<p>b) the number of Adult Impacts achieved by each Interactive Advertisement broadcast on the Channels, broken down by Channel;</p> <p>c) the Channel CPT for each relevant Channel; and</p> <p>d) the Proportion of Viewing</p> <p>for each relevant Channel.</p>
Retail Transactions	<p>£0.04 per authentication that results in a Retail Transaction; and</p> <p>2% of Transaction Revenue.</p>	The Broadcaster shall provide details of the aggregate value of all Transaction Revenue for each calendar month.
Marketing Registrations	<p>Ten pence (£0.10) for each Marketing Registration other than Marketing Registrations listed below for which no Additional Charges shall apply:</p> <ol style="list-style-type: none"> <li>1. second and subsequent Marketing Registrations for the same individual or the same household, provided that the scope of any Consent given in the second or subsequent Marketing Registration is no broader than any Consent given in the original Marketing Registration;</li> <li>2. the modification of existing Identifying Details about an individual or household, after a Marketing Registration in respect of such individual or household has been obtained, provided that a charge was payable, for the Marketing Registration in respect of which the original Identifying Details were</li> </ol>	<p>The Broadcaster shall provide:</p> <ol style="list-style-type: none"> <li>(a) a list of interactive services which have caused Marketing Registrations to occur in the relevant calendar month;</li> <li>(b) the total number of Marketing Registrations recorded, excluding those for which no Additional Charge applies, for each calendar month; and</li> <li>(c) the amount payable to SSSL for Marketing Registrations in the relevant calendar month calculated in accordance with this table.</li> </ol>

<b>Activity to which the charge applies</b>	<b>Additional Charges</b>	<b>Information to be provided pursuant to Clause 7.6</b>
	<p>obtained;</p> <p>3. a Marketing Registration where a person provides incomplete or false details, provided that the Broadcaster neither uses nor retains (other than on a temporary basis) any details provided; and</p> <p>4. A Marketing Registration which takes place via a Relevant Online Infrastructure.</p>	
Chargeable Calls	<p>The greater of (a) four pence (£0.04) per Chargeable Call or (b) five percent (5%) of the Call Charges in respect of the Chargeable Call, provided that no Additional Charges shall arise under this paragraph in respect of Calls connecting via a Relevant Online Infrastructure.</p>	<p>The Broadcaster shall provide the following information on a monthly basis:</p> <p>(a) a list of the activities which during the previous month gave rise to Chargeable Calls; and</p> <p>(b) the total number of Chargeable Calls and total Call Charges in the previous month, broken down by telephone tariff.</p>
Email Service	<p>£0.04 per authentication that results in a Customer accessing an Email Service.</p> <p>The Additional Charges for Email Services do not apply where the relevant Call to the Email Service is a Chargeable Call.</p>	Not applicable
Voting Services	<p>£0.04 per Voting Call.</p> <p>The Additional Charges for Voting Services do not apply where the relevant Voting Call is a Chargeable Call.</p>	Not applicable
Game Response Calls	£0.04 per Game Response Call.	Not applicable

<b>Activity to which the charge applies</b>	<b>Additional Charges</b>	<b>Information to be provided pursuant to Clause 7.6</b>
	The Additional Charges for Game Response Calls do not apply where the relevant Game Response Call is a Chargeable Call.	
SMS Services	<p>£0.04 per authentication that results in a Customer accessing an SMS Service.</p> <p>The Additional Charges for SMS Services do not apply where the relevant SMS is a Chargeable Call.</p>	Not applicable

<b>Activity to which the charge applies</b>	<b>Additional Charges</b>	<b>Information to be provided pursuant to Clause 7.6</b>
Charitable Donations	<p>£0.00 per authentication that results in a Charitable Donation; and</p> <p>(a) £0.00 for each Single Donation made.</p> <p>(b) £0.00 for each Multiple Donation made.</p>	<p>(a) a list of Charities in respect of which Charitable Donations have been collected in the relevant month;</p> <p>(b) the total number of Single Donations and the total number of Multiple Donations recorded in the relevant month; and</p> <p>(c) a calculation of the amount due to SSSL for Charitable Donations for the relevant month calculated in accordance with this table.</p>
Advertising Responses	<p>£0.04 per authentication that results in an Advertising Response; and</p> <p>£0.03 for each Advertising Response where Advertising Response Identifying Details are collected within the Advertising Response and passed on to the Advertiser or its agent.</p> <p>For the avoidance of doubt, Advertising Responses containing Advertising Response Identifying Details, which are retained by the Return Path Services Provider or by any party other than the relevant Advertiser (or its agent) shall be considered to be Marketing Registrations and may give rise to further Additional Charges for Marketing Registrations.</p>	<p>(a) a list of interactive advertising campaigns, listed by unique name or BACC Copy Number, which have caused Advertising Responses to occur via the Online Server in the relevant month;</p> <p>(b) a list of channels on which the interactive advertisements that gave rise to the Advertising Responses appeared;</p> <p>(c) the total number of Advertising Responses collected via the Online Server in the relevant month;</p> <p>(d) the total number of Advertising Responses for which Advertising Response Identifying Details were collected and provided to the Advertiser in the relevant month;</p> <p>(e) the amount due to SSSL for Advertising Responses in the relevant month calculated in</p>

<b>Activity to which the charge applies</b>	<b>Additional Charges</b>	<b>Information to be provided pursuant to Clause 7.6</b>
		accordance with this table.
Gambling Services	25 % of Gross Margin; and  £0.01 per authentication that results in the customer access a Gambling Service	The Return Path Services Provider shall provide details of the Gross Margin on a monthly basis.
Ticket Transactions	£0.04 per authentication that results in a Customer conducting a Ticket Transaction.	Not applicable
Travel Transactions	(i) £0.04 per authentication that results in a Travel Transaction; and  (ii) 1.5% of Transaction Revenue.	The Broadcaster shall provide details of the aggregate value of all Transaction Revenue for each calendar month.

1.4 Where the Broadcaster launches Relevant Applications other than those which are comprised of the activities which are listed in Paragraph 1.3 above, the Additional Charges (if any) shall be agreed between the parties from time to time in accordance with this Paragraph 1.4 and Paragraphs 1.5 to 1.9 below. For the avoidance of doubt, the parties acknowledge their mutual understanding that:

1.4.1 a range of appropriate charges will be developed to cover the range of activities and services which are comprised in Relevant Applications. For example, but without limitation, circumstances in which differing charges to those set out in Paragraph 1.3 may be appropriate include:

1.4.1.1 businesses which generally, and bona fide, operate on an agency basis (e.g. estate agencies and third-party retailers of financial services providers); and

1.4.1.2 account management (e.g. such as where the end user accesses a bank account or a utilities account).

1.4.2 Additional Charges shall be payable by the Broadcaster in respect those activities which are made available using any Relevant Application, including without limitation where the activity is undertaken by a Content Provider and not by the Broadcaster; and

1.5 Where there is a proposal to launch a Relevant Application which includes a New Service, then the following procedure shall apply:

1.5.1 the Broadcaster shall notify SSSL that it is contemplating providing a New Service and shall provide SSSL with reasonable details as to the type of service to be provided and, if necessary, reasonable levels of supporting information necessary for the determination of an appropriate charge for such New Service. This obligation to provide supporting information in

- respect of any New Service shall be a continuing obligation until the charge or set of charges for the New Service has been agreed or determined under this Paragraph 1.5;
- 1.5.2 SSSL shall consider the New Service and determine whether an existing charge or set of charges previously agreed with a Third Party ("Existing Charge") should apply to the proposed New Service. In the event that SSSL reasonably determines that an Existing Charge should apply to the proposed New Service, SSSL shall notify such determination together with details of the Existing Charge to the Broadcaster;
  - 1.5.3 where SSSL reasonably determines that no existing charge or set of charges should apply to the proposed New Service, SSSL shall propose a charge or set of charges which should apply to the New Service ("Proposed Charge"). SSSL shall notify such determination together with details of the Proposed Charge to the Broadcaster.
  - 1.5.4 If the Broadcaster disagrees with an Existing Charge or a Proposed Charge notified to it pursuant to Paragraph 1.5.2 or 1.5.3 above, the parties shall negotiate in good faith with a view to agreeing the appropriate charge or set of charges for the proposed New Service;
  - 1.5.5 in the event that the parties are unable to agree a charge or set of charges pursuant to Paragraph 1.5.4 above for the New Service within sixty (60) days of notification to SSSL of the proposed New Service, the charge or set of charges shall be such charge or set of charges as SSSL reasonably determines shall apply to the New Service;
  - 1.5.6 where the parties have agreed a charge or set of charges, or SSSL has determined a charge or set of charges pursuant to this Paragraph 1.5, the New Service in respect of which it applies, the charge or set of charges and the period of such charge or set of charges will be set out in an amendment to Paragraph 5 of Annex A to this Agreement. For the avoidance of doubt, the charges will become legally binding from the date agreed by the parties or, if SSSL determined the charges pursuant to Paragraph 1.5.5 above, the date as determined by SSSL and notified in writing by SSSL to the Broadcaster (as the case may be).
- 1.6 Where a Relevant Application has launched which includes any Unapproved New Service, then the Broadcaster shall promptly provide SSSL with reasonable details of the Unapproved New Service and, if necessary, reasonable levels of supporting information necessary for the determination of an appropriate charge for such Unapproved New Service. This obligation to provide supporting information in respect of any Unapproved New Service shall be a continuing obligation until the charge or set of charges for the Unapproved New Service has been agreed or determined under this Paragraph 1.6. The procedure set out in Paragraph 1.5.2 to 1.5.6 shall apply mutatis mutandis in respect of such Unapproved New Service PROVIDED THAT any charge or set of charges agreed between the parties or determined by SSSL pursuant to this Paragraph 1.6 shall apply retrospectively from the launch of the Unapproved New Service.
  - 1.7 For the avoidance of doubt, the Broadcaster acknowledges that where SSSL is considering whether an existing charge or set of charges previously agreed with a Third Party should apply to a proposed the New Service, the fact that a charge or set of charges has previously been agreed with a Third Party in respect of an identical service does not mean that that charge or set of charges will necessarily be appropriate for the proposed New Service.

- 1.8 For the avoidance of doubt, but without limitation, the parties acknowledge that the charge or set of charges to be agreed pursuant to Paragraphs 1.5 and 1.6 may include:
- 1.7.1 a charge equal to a percentage of the revenue attributable to any Transaction, where the percentage may vary based on the nature of the Transaction undertaken; and/or
  - 1.7.2 different bases for determining what the revenue attributable to any economic activity should be based on the nature of the Transaction undertaken; and/or
  - 1.7.3 Charges on bases other than the revenue attributable to any Transaction, for example, a charge per interactive advertisement, per 'lead generation' or per 'commission,' etc.
- 1.9 For the further avoidance of doubt, the parties acknowledge that the charge or set of charges to be agreed pursuant to Paragraphs 1.5 and 1.6 may be for periods shorter than the remaining term of this Agreement.
- 1.10 In the event that the Broadcaster holds either:
- (i) an agreement for Authentication Services with SSSL; or
  - (ii) an agreement with a third party pursuant to which such third party provides the Broadcaster with the benefit of Authentication Services,

and in either case an activity which would attract an Additional Charge under this Schedule 3 takes place via a Relevant Online Infrastructure, there shall be no Additional Charge under this Agreement in respect of that particular activity PROVIDED THAT the appropriate additional charge in respect of such activity has been paid by the Broadcaster or relevant third party (as appropriate) pursuant to the relevant agreement for Authentication Services with SSSL.

## **SCHEDULE 4 - CONFIDENTIALITY AGREEMENT**

This Agreement is made the        day of

### **BETWEEN**

- (1) [BROADCASTER] of [ADDRESS], (referred to as "Broadcaster"); and
- (2) [PRODUCER] of [ADDRESS], (referred to as "Producer")

### **WHEREAS**

- (1) The Broadcaster and Sky Subscriber Services Limited ("SSSL") have entered into a contract dated [INSERT DATE] under which the Broadcaster is provided with the tools for signing interactive applications to be executed in digital satellite set top boxes (the "Application Signing Agreement").
- (2) In order to be able to execute interactive applications in digital satellite set top boxes the applications need to be signed with the Signing Tool, Producer Certificate and Private Keys provided by SSSL pursuant to the Application Signing Agreement.
- (3) The parties wish to cooperate in relation to the development, authoring and signing of interactive applications to be broadcast by the Broadcaster in digital satellite set top boxes and matters associated therewith ("the Purpose").
- (4) The parties acknowledge that the performance of the Purpose may entail the disclosure by the Broadcaster to the Producer of Sky Confidential Information (as defined below) subject to the terms of this Confidentiality Agreement ("Agreement").

### **NOW IT IS HEREBY AGREED AS FOLLOWS:**

1. For the purposes of this Agreement the term "Sky Confidential Information" shall mean:
  - 1.1 all Signing Tools, Producer Certificates and Private Keys provided by SSSL to the Broadcaster pursuant to the Application Signing Agreement and subsequently distributed by the Broadcaster to the Producer;
  - 1.2 all information (whether oral or otherwise) and material (whether electronically recorded, in writing or otherwise) relating directly or indirectly to the Purpose; and
  - 1.3 all information (whether oral or otherwise) and material (whether electronically recorded, in writing or otherwise) relating directly or indirectly to the business, affairs, customers, products, developments, trade secrets, know-how and personnel of SSSL or Sky UK Limited (together "Sky") (or any other associated company of Sky) which has been disclosed by Sky to the Broadcaster under an obligation of confidentiality in connection with the Purpose.
2. The Producer shall at all times keep confidential the Sky Confidential Information communicated to it by the Broadcaster and shall use the Sky Confidential Information only for the Purpose.

3. The Producer may disclose the Sky Confidential Information to such of its directors and employees as, in each such case, require access to the Sky Confidential Information on a strict need-to-know basis solely for the Purpose ("Permitted Disclosees").
4. The Producer shall ensure that its Permitted Disclosees comply with the terms of this Agreement.
5. Subject to Clauses 3 and 9, the Producer shall not, without the prior written consent of Sky, copy, re-produce, adapt, divulge, disclose, publish, confirm, deny or circulate (or authorise or permit anyone else to do any of the same in respect of) any of the Sky Confidential Information disclosed or communicated to it by the Broadcaster.
6. The Sky Confidential Information and all copies thereof shall be returned to SSSL by the Producer within seven days of a request for such return by Sky or the Broadcaster.
7. The Producer acknowledges and confirms that the terms of this Agreement are intended to confer benefits on Sky and are intended to be enforceable by Sky as against the Producer.
8. As between the Broadcaster and the Producer, all rights of whatever nature in and to the Sky Confidential Information (and to the matters referred to therein) are reserved by the Broadcaster and no rights or licences in or to the Sky Confidential Information (or the matters referred to therein) are granted to the Producer.
9. The Producer shall not have any obligation to the Broadcaster or Sky hereunder in respect of any information which:
  - 9.1 is or becomes publicly known otherwise than as a consequence of a breach of this Agreement by the Producer; or
  - 9.2 is developed by the Producer independently of and without reference to anything provided to the Producer by the Broadcaster; or
  - 9.3 is obtained by the Producer from a third party which is bona fide entitled to disclose such information; or
  - 9.4 is already in the lawful possession of the Producer and at its free disposal before the Broadcaster's disclosure to the Producer; or
  - 9.5 is ordered to be disclosed by law, government or court of competent jurisdiction or competent regulatory authority.
10. The Producer acknowledges and confirms that, in the event of a default by it, damages will not be a sufficient remedy for the Broadcaster or Sky. Accordingly, in addition to any and all other remedies which may be available to the Broadcaster or Sky at law or in equity, the Broadcaster and Sky shall be entitled to seek injunctive relief or specific performance of the Producer's obligations hereunder.
11. No failure or delay by either party in exercising any rights, power or legal remedy available to it hereunder shall operate as a waiver thereof.
12. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this

Agreement but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been set forth herein, and the Agreement shall be carried out as nearly as possible according to its original terms and intent.

13. The undertakings given by the parties in this Agreement are of unlimited duration in time and shall continue in full force and effect notwithstanding the completion or other termination of the discussions of the parties relating to the Purpose.
14. This Agreement shall be governed by and interpreted in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the courts of England in relation to any legal proceedings arising out of or in connection with this Agreement.
15. This Agreement includes the entire understanding of the parties with respect to the subject matter hereof, unless otherwise agreed to in writing and signed by both parties.
16. In this Agreement, the following words and expressions shall have the meanings set against them:

**"Private Key":** A unique series of bytes allocated to the Broadcaster and used by the Signing Tool in applying a valid digital signature to an application.

**"Producer Certificate":** A software file incorporating the Public Key to be inserted into an application to enable digital satellite set top boxes to recognise the application as a valid application.

**"Public Key":** A series of bytes embedded in the Producer Certificate which is used by digital satellite set top boxes to recognise the digital signature as valid.

**"Signing Tool":** The software toolkit provided by SSSL to the Broadcaster in order to enable a digital signature to be applied to the Broadcaster's applications.

IN WITNESS whereof the parties hereto have executed this Agreement the day and year first above written.

Signed by

for and on behalf of

**[BROADCASTER]**

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Signed by

for and on behalf of

**[PRODUCER]**

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