

TELECOM REGULATORY AUTHORITY OF INDIA NOTIFICATION

New Delhi the 24th August 2006

F. No. 11-13/2006- B&CS - In exercise of the powers conferred by section 36, and subclauses (ii), (iii) and (iv) of clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), read with the Notification No.39 {S.O No.44(E) and 45(E)} dated 9.1.2004 issued from file No.13-1/2004-Restg by the Government of India under clause (d) of sub-section (1) of section 11 and proviso to clause (k) of sub section (1) of section 2 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), the Telecom Regulatory Authority of India hereby amends the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 (13 of 2004) (hereinafter called the "Principal Regulation"), as follows:-

1. Short title, extent and commencement.-

i) This regulation shall be called 'The Telecommunication (Broadcasting and Cable Services) Interconnection (Second Amendment) Regulation, 2006 (9 of 2006)'

ii) It shall come into force from the date of its publication in the Official Gazette.

2. In clause 2 of the Principal Regulation, sub-clause (a) and entries relating thereto shall be substituted by the following sub-clause and the entries relating thereto, namely: -

“(a) **“addressable system”** means an electronic device or more than one electronic device put in an integrated system through which signals of television channels can be sent in encrypted or unencrypted form, which can be decoded by the device or devices at the premises of the subscriber within limits of the authorization made, on the choice and request of such subscriber, by the service provider to the subscriber.”

3. The existing clause 5 of the Principal Regulation shall be renumbered as clause 7.

4. In the Principal Regulation, after the existing clause 4 and the entries relating thereto, the following clauses and the entries relating thereto shall be added as clauses 5 and 6, respectively, namely :-

“5. Standard Interconnection Agreements

5.1 All broadcasters, multi system operators and cable operators shall mutually negotiate and finalise their interconnection agreements in respect of areas notified by the Central Government under section 4A (1) of the Cable Television Networks (Regulation) Act, 1995 (7 of 1995) vide notification no. S.O. 1231(E) dated 31.7.2006.

5. In case any of the service providers in the areas as notified by the Central Government vide notification no. S.O. 1231(E) dated 31.7.2006, are not able to arrive at a mutually acceptable interconnection agreement within a time-period to be specified by the Authority through a direction, then they shall enter into interconnection agreements in terms of the standard interconnection agreements as specified in Schedule I (between broadcaster and multi system operator) or in Schedule II (between multi system operator and cable operator) to this Regulation, as the case may be, within a time period to be specified by the Authority for entering into standard interconnection agreements.

Explanation

For removal of doubts, in respect of areas notified by the Central Government referred to in clauses 5.1 and 5.2 above, it is clarified that if the service providers have already entered into mutually acceptable interconnection agreements by such date as specified in the direction issued

by the Authority, then they need not take recourse to standard interconnection agreements specified in Schedules I and II. Further, those service providers, who have a preexisting interconnection agreement as on the date of issue of this regulation, will also have the option, after the expiry of their existing agreement, to either enter into a mutually acceptable interconnection agreement, or failing which to enter into interconnection agreements as per the standard agreements specified in Schedules I & II, within a period to be specified by the Authority in the direction.

5.3 If the provisions of the standard interconnection agreements in Schedule I and II are in conflict with any Act, rule, regulation, direction or order of the Government, TDSAT or TRAI, as the case may be, then the provisions of such Act, rule, regulation, direction or order shall prevail.

6. Prohibition of minimum guarantee clause

Where a distributor of TV channels is using a technology by which pay channels can only be seen through an addressable system, then no service provider shall stipulate, insist or provide for any clause in an interconnection agreement with such a distributor which would require such distributor to pay a minimum guaranteed amount as subscription fee for the services provided.”

5. This regulation contains at Appendix, an Explanatory Memorandum.

By Order
(RAKESH KACKER)
Advisor (B&CS - I)

Schedule 1

[Broadcaster and Multi System Operator (MSO)]

STANDARD TECHNICAL AND COMMERCIAL INTERCONNECTION AGREEMENT [CAS]

This Technical and Commercial Interconnection Agreement along with its Schedules and Annexures is executed on this _____ day of _____ 2006 by and between: M/s A & Co Ltd, a company incorporated under the Companies Act, 1956, having its registered office at 001, XYZ Colony ABC City (hereinafter referred to as “**Broadcaster**” which expression shall unless repugnant to the context or meaning thereof be deemed to include its successors and permitted assigns) of the **ONE PART**;

AND

M/s. B & Co Ltd, a company incorporated under the Companies Act, 1956, having its registered office at 00111, PQR Colony ABC City (hereinafter referred to as the “**Affiliate**” which expression shall unless repugnant to the context or meaning thereof be deemed to include the successors and permitted assigns) of the **OTHER PART**. The Broadcaster and the Affiliate are hereinafter individually and collectively referred to as “**Party**” and “**Parties**”, respectively.

WHEREAS:

a) The Broadcaster is engaged in the business of distribution of Television channel(s) and has the exclusive right to market and distribute Television Channels, in particular the Television

channels specified in Annexure A throughout the territory of India or in the territory comprised in ----- in India.

b) The Affiliate is engaged in the business of distribution of television channels including through a digital /analogue Conditional Access System (“CAS”) in the areas notified by the Central Government under Section 4A(1) of The Cable Television Networks Regulation) Act, 1995 (7 of 1995);

c) The parties have mutually agreed to execute this Agreement between them to govern the rights and obligations in regard to the subscription and distribution of Television channels, appropriately described in clause 1.1 of Article 1 of this Agreement read in conjunction with Annexure A, for the Term and in the Area specified herein

NOW THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, constituting good and valuable consideration, the Parties agree as follows: -

ARTICLE 1: SCOPE OF SERVICE, AREA SERVED, TERM AND ENTIRE UNDERSTANDING

1.1 SCOPE OF SERVICES

The Parties mutually agree that this Agreement seeking to govern the terms and conditions of rights and obligations between them shall be in respect of the services indicated herein below and as specifically described in Annexure A to this agreement for the area and for the term indicated in clause 1.2 and 1.3, respectively. Subscription to and distribution of the Television channels whether as an individual channel or as a part of a Bouquet and described in Annexure A to this Agreement through the Permitted Distribution System with Conditional Access System directly or

indirectly to the subscriber, For the purpose of ascertaining the scope of services at any point of time, the scope of services as indicated above shall be read with additions /deletions, if any, done through separate addendum agreements/ updation forms executed from time to time and till the date of reckoning.

1.2 AREA (S) SERVED

The parties mutually agree that the services referred in clause 1.1 of this Agreement shall have reference to the area specified in the city/cities of specified in the Government of India, Ministry of Information and Broadcasting notification number S.O. 1231(E) dated 31.7.2006.

1.3 TERM

1.3.1 The Agreement shall come into effect from DD/MM/YYYY ("Effective Date") and shall be valid for a period of 12 months ("Term") unless otherwise terminated prior to the expiry of validity period of 12 months in accordance with the terms and conditions of the Agreement.

1.3.2 Within 2 months prior to expiry of this Agreement, both parties agree to take steps towards renewal of the Agreement for extended period if it is mutually intended to continue the term of the Agreement beyond the date of expiry. The parties shall inform the subscribers through appropriate means of the intention to carry out the negotiations and consequences to the subscribers if negotiations fail to succeed.

1.3.3 If the parties mutually decide to extend the term to continue the Services referred to in clause 1.1 above with or without modification, the Parties may enter into a fresh agreement, in writing on mutually agreed terms and conditions.

1.3.4 In case if the parties decide not to extend the term and such decision could not be made before the expiry of the term of this Agreement and the services have continued in the meanwhile even after the said expiry of the term specified in clause 1.3.1 of this Agreement, the term would be deemed to have been extended till the date of such decision.

1.4 ENTIRE UNDERSTANDING

1.4.1 The Agreement contains the entire understanding between the parties with respect to the subject matter covered, in the manner, it is expected to be understood by the parties and that there is total agreement between the parties as to the manner in which the other party has understood various clauses of this Agreement.

1.4.2 The Parties agree that in addition to the principal terms stated herein, the Schedules and Annexures if any attached hereto form an integral part of the Agreement and shall be deemed to be incorporated herein and failure to comply with any of the terms, conditions, and/or provisions mentioned in any of the Schedules and Annexures hereto, shall constitute breach of the Agreement.

1.5 DEFINITIONS

The words and expressions used in this Agreement shall have meanings as assigned to them in the Schedule to this Agreement.

ARTILCE 2 : SUBSCRIPTION RIGHTS

2.1 Subject to due observance by the Parties of the terms and conditions of this Agreement and in consideration of the promise by the Affiliate to make payment of the Subscription Amounts which are due and payable in terms of this Agreement to the Broadcaster, the Broadcaster hereby grants to the Affiliate, for the duration of the Term of this Agreement, a non-exclusive right to avail the services indicated in clause 1.1 of Article 1 comprising in the right to subscribe to and to distribute the Subscribed Channels as described in Annexure A through CAS to the subscribers in the Area only via the Permitted Distribution System. The Affiliate shall have the right to distribute the viewing of the subscribed Television Channels only to subscribers in the Area and not to any other third party.

2.2 The subscription rights given to the Affiliate under this Agreement are confined to subscribers having an addressable set top box, in relation to whom the Affiliate compulsorily maintains the complete detailed data and transaction records in its CAS/ Subscriber Management System (SMS). This Agreement does not give the Affiliate or his agents rights to transmit by any mode of transmission from the head end of the Affiliate to the commercial operators and/or its subscribers other than through coaxial or optic fiber cable. A separately negotiated agreement would have to be entered into for the purpose of transmission through any other means such as DTH or HITS or any other mode.

2.3 Without prejudice to the remaining provisions of this Agreement, the Broadcaster reserves the right:

2.3.1 to commence or continue to provide the Service direct to other Affiliates and to appoint other Affiliates in the Area for the purpose of distributing the Service, subject, however, to the observance of the provisions of applicable law in force.

2.3.2 to discontinue any Channels which form part of the services as Broadcaster shall deem fit subject to and in compliance with the rules, regulation and orders , if any in this regard.

2.4 In the event of an increase/decrease in the number of the Subscribed Channels taken by the subscribers, it is obligatory on the part of the Affiliate to include, delete, increase or decrease the same, as the case may be, in his SMS/CAS and intimate the

same to the Broadcaster at the time of paying the Subscription Amount for the respective month according to the terms of this Agreement.

2.5 It is expressly agreed between the Parties that the Affiliate's right to receive and distribute the Service shall be conditional upon the performance by the Affiliate of all its obligations arising under this Agreement and mere possession of the Integrated Receiver Decoders (IRDs)/ Viewing Cards shall not entitle the Affiliate to receive and/ or to distribute the Service.

2.6 The Affiliate shall receive and de-code the Subscribed Channels only through IRDs recommended/approved by the Broadcaster.

2.7 The Affiliate shall further ensure that the Services of Subscribed Channels for which a fee is payable as specified in Annex A shall only be activated through the set top boxes which meets the specifications prescribed by BIS; otherwise the Broadcaster shall be entitled to de-activate the Service of the Affiliate. For the purpose of compliance of this clause, the Affiliate shall give a certificate to the Broadcaster that a mutually agreed procedure for verification is in place and that the same has been followed in respect of each subscriber.

2.8 The following conditions are a prerequisite for the execution of the present Agreement and shall subsist for continuing the same:

- The Affiliate shall install the CAS, which is linked and integrated, with SMS and activation/deactivation are processed through such SMS. Both CAS and SMS systems should be as per the standard prescribed by BIS. The reports generated by SMS should be in conformity with CAS and in a pre-defined read only format such as a suitable PDF format, which cannot be edited.
- The Affiliates operating system should be able to handle individual channels, packages, tiers, discounts, free offers, promotional offers;
- The CAS and SMS of Affiliate must have the capability or recording activation/deactivation history with respect to each addressable device (IRD/VC) and each service for every activation and deactivation in the system for a minimum period of 1 year.
- The Services of the Broadcaster shall be provided to the

subscribers only through CAS/SMS and no services shall be provided without recording, authorization, billing and accounting through the said system.

- The Affiliate shall be liable to provide to the Broadcaster, as and when demanded by the Broadcaster, from time to time a list of subscribers pertaining to any location along with the names and addresses of the subscribers within the Area to which it or its sub Operators is providing the Channel services including each dwelling for purposes of verification

ARTICLE 3. COMMERCIAL TERMS AND CONDITIONS OF AGREEMENT

3.1 SUBSCRIPTION AMOUNTS AND REVENUE SHARE ARRANGEMENTS.

A. SUBSCRIPTION AMOUNTS

3.1.1 Subject to the provisions set forth herein in this Agreement, and In consideration of the rights granted by the Broadcaster under this Agreement in terms of clause 2.1 of Article 2, the Affiliate agrees to pay to the Broadcaster the Subscription Amounts, determined as per the Revenue Share Arrangement indicated herein below, per subscriber per month and as specified in Annexure A for the services indicated in clause 1.1 of Article 1 of this Agreement and within the time limits as indicated in this Agreement.

3.1.2 The Broadcaster shall have the right to vary the Subscription Fees after giving notice of not less than one month to the Affiliate and in compliance with the applicable law in force. The Total Subscription Amounts payable by the Affiliate to the Broadcaster shall also vary accordingly.

B. REVENUE SHARE ARRANGEMENTS

3.1.3 The subscription amounts payable to the Broadcaster by the Affiliate shall be calculated with reference to the subscription fee indicated in Annexure A in respect of each channel or bouquet of Channels multiplied by the number of subscribers as recorded in the Subscriber Management System installed at the Head End of the Affiliate to be availing such service for each month. The revenue share arrangement for the purpose of calculating the subscription fee for each channel or bouquet of channels shall be as per the formula indicated below:

I Maximum Retail Price of a subscribed pay channel or bouquet of channels as Annexure A per subscriber per month Rs. X

II Percentage of Amount payable to the Broadcaster by the Affiliate, per subscriber per month 45% of X

III Percentage of Maximum Retail Price to be retained by Affiliate (to be shared between the Affiliate and the cable operator) 55% of X

3.1.4 The total Subscription Amount along with any other payments statutorily required to be made by the Affiliate to the Broadcaster for each month shall be payable within 21 days from the close of the relevant month (after adjusting/deducting and retaining the portion of revenue retainable by the Affiliate as per 3.1.3(III) supra).

3.1.5 In the event of default in payment of the Subscription Amount, simple interest at the rate of 15 % per annum shall be paid by the Affiliate on the arrears of such Subscription Amounts which may remain unpaid at the end of the 21 days.

3.1.6 The parties may enter into a separate Agreement as regards payments to be made/ received on account of Carriage /Placement fee.

3.1.7 The entire advertising revenue for the Subscribed Channels shall pertain to the broadcaster.

3.2 CHARGES FOR EQUIPMENT INCLUDING INTEGRATED

RECEIVER DECODER (IRD) IRD: The Broadcaster shall, supply or cause to supply the IRDs, on payment of the following charges:

a) IRD Deposit & Processing Fees:

Immediately upon execution of the Agreement the Affiliate shall pay such sums towards the processing fees per IRD (“**Processing Fees**”) and interest free refundable deposit per IRD (“**IRD Deposit**”), as required by the Broadcaster and specified in Annexure A. The Processing Fees and IRD Deposit are hereinafter collectively referred to as IRD Charges.

(b) **Other Charges/ Taxes:** The Affiliate shall pay courier charges, transportation charges, and all applicable taxes / levies, if any, for the IRD on actuals.

ARTICLE 4: RIGHTS AND OBLIGATIONS OF THE PARTIES

4.1 AFFILIATE’S RIGHTS

The Affiliate shall have the right to subscribe and distribute the Subscribed Channels conferred through this Agreement and shall

be conditional to the Affiliate's performance of all its obligations and on the basis of the representations, warranties and declarations made by the Affiliate to the Broadcaster.

4.2 The Broadcaster shall give to the Affiliate access to the Subscribed Channels, subject to the Affiliate meeting the following mandatory eligibility conditions: -

4.2.1 The Affiliate provides an undertaking that it has all necessary licenses and permits required under the Applicable Law(s) for distributing the Subscribed Channels;

4.2.2 The Affiliate provides an undertaking that it has internal guidelines in place to comply with non-discriminatory access provisions specified by The Telecom Regulatory Authority of India (TRAI) in its Telecommunication (Broadcasting & Cable Services) Interconnection Regulation, 2004 and other relevant regulations and guidelines introduced by TRAI/ Government, from time to time;

4.2.3 The Equipment, CAS and SMS used by the Affiliate shall comply with the following requirements at all times during the subsistence of this Agreement: -

(i) The systems are capable of monitoring and printing historical data relating to subscriber activation, deactivation and reactivation, as the case may be;

(ii) CAS and SMS are integrated and any activation or deactivation is processed simultaneously through both systems;

(iii) The SMS enables the location of each set top box and Smart Card to be recorded;

(iv) The CAS and SMS is from a reputed, well-known organization, which is currently being used by other Pay Television Services and has a demonstrated track record of fulfilling the technical requirements under this Agreement.

(v) Covert and visible fingerprinting to be supported by all set top boxes which should be compatible for running fingerprinting whether operated by the Affiliate or by the Broadcaster.

4.3 BROADCASTER'S RIGHTS

4.3.1 In consideration of the grant of rights in terms of clause 1.1 of Article 1 of this Agreement the Affiliate shall pay to the Broadcaster, the following on the due dates with or without any deduction or set-off:

a) All Subscription Amounts and or all revisions or modifications thereof, due and payable to the Broadcaster shall be paid within the time period and in the manner and mode as may be agreed to between the parties and specified in Annexure A on the basis of specific invoices raised , whether or not the subscriber/ sub operator has been Invoiced or whether or not the payment is received by the Affiliate from his subscriber / sub operator and irrespective of any discounts or other concessions given by Affiliate to its subscribers or commercial operators.

b) Any other sum payable by the Affiliate to the Broadcaster under the terms of this Agreement.

c) Any other payments statutorily required to be made by the Affiliates to the Broadcaster.

4.3.2 In case the payment is not received by the due dates, a simple interest at the rate of 15% per annum from the date of default will be charged from the Affiliate without prejudice to any other rights of the Broadcaster. For this purpose the due date shall be the twenty first day of the calendar month following the month in which the Services were subscribed.

4.3.3 The Affiliate shall be responsible for payment of all taxes, levies, charges imposed by or under a statute, law, regulations, relating to the Services and payable by the Affiliate as also for collection of such amounts attributable to such taxes, levies, charges imposed by or under a statute, law, regulations, relating to the Services and payable by the Broadcaster and for remitting the same promptly to the Broadcaster with in the respective due dates.

4.3.4 If the Subscription Amount, or any other amounts payable to the Broadcaster as specified in this Agreement is not paid by the Affiliate on due date, the Broadcaster may take all or any of the following actions without prejudice to any other rights but subject to the applicable rules/regulations, if any, issued by the Competent Authority including issuance of prescribed notice stipulated by the Interconnection Regulations.

4.3.4.1 De-authorize the reception of Broadcaster's services by Affiliate, his agents and/or his subscribers subject to the compliance of the applicable rules /regulations of the Competent Authority.

4.3.4.2 Terminate this Agreement, by giving Notice required

under this Agreement and subject to compliance of the Applicable Laws in force.

4.3.4.3 Immediately take back possession of the IRD(s) belonging to the Broadcaster;

4.3.4.4 Charge a simple interest at the rate of 15% from the date such amounts became due until they are fully paid;

4.3.4.5 Intimate all the subscribers of such non-receipt of subscription amounts or other charges and consequences thereof on the subscribers.

4.3.5 Any discounts, special schemes, free periods etc as offered by the Affiliate to its agents or subscribers or sub operators shall be at the cost and responsibility of the Affiliate. No burden of such discounts or other promotional schemes shall be passed on to the Broadcaster.

4.3.6 The Affiliate shall not make his subscribers take other channels or services or fulfill any other commercial consideration as a precondition to receiving the Broadcaster's channels or services.

4.3.7 In the event the Affiliate is required under the Income Tax Act, 1961 to withhold or deduct tax or other duties or levies that are required by law to be made from a payment due under the Agreement (including without limitation, the Subscription Amounts), all of the following conditions shall apply:

a) The Affiliate shall, promptly upon becoming aware that it is required to make any withholding or deduction (or that there is any change in the rate or the basis of a withholding or deduction), notify Broadcaster accordingly;

b) The Affiliate shall deliver to Broadcaster, receipts, certificates or other proof evidencing the amounts (if any) paid or payable in respect of any such withholding or deduction and the Affiliate shall co-operate in completing any requirements necessary to obtain authorization to make that payment without any withholding or deduction.

4.3.8 The Subscription Amounts payable by the Affiliate to the Broadcaster shall be exclusive of all government taxes, levies, cess, including service tax, education cess, etc., save and except the withholding as provided under the Income Tax Act, 1961. The Subscription Amounts shall accordingly be increased to the extent of such government taxes, levies, cess, etc.

4.4 AFFILIATE OBLIGATION ON RECEPTION AND DISTRIBUTION OF SERVICE

4.4.1 The Affiliate shall at its own cost and expense cause the Subscribed Channels as specified in Annexure A to be received only from the designated satellite(s) as notified by Broadcaster from time to time, and shall distribute the Subscribed Channels to subscribers via the Permitted Distribution System using the same original audio and visual signals and sound tracks

(including any stereo tracks) as provided by the Broadcaster to the Affiliate, in accordance with the restrictions, terms and conditions set forth herein and in an encrypted/ scrambled form using encryption and CAS that are capable of Fingerprinting.

4.4.2 The Affiliate shall be responsible, at its sole cost and expense, for obtaining all licenses and permits necessary to carry on its business as contemplated herein;

4.4.3 The Affiliate shall use its best endeavor within all its means and control to maintain a high quality of signal transmission for the Subscribed Channels. The Affiliate further agrees and undertakes that it shall cause continuous distribution of the Subscribed Channels to all its subscribers during its telecast without blacking it out or interfering with it in any manner whatsoever, subject however to such continuous and high quality of service being provided by Broadcaster;

4.4.4 The Affiliate shall ensure that the Permitted Distribution System is maintained on a standard capable of delivering as per Bureau of Indian Standards Act, 1986 (“BIS”) specifications broadcast quality signals to subscribers, and that the Subscribed Channels are distributed to subscribers at such broadcast quality level, which in any event should be no less favorable than the quality of signal delivered by the Affiliate to its subscribers for any other channel.

4.4.5 The Affiliate shall comply with all laws and regulations affecting its marketing, sale and distribution of the Subscribed Channels in the Area in connection with its performance under the Agreement including, without limitation, (i) obtaining and maintaining all relevant approvals, consents and registrations and (ii) paying all charges, levies and duties imposed on or charged to it under any law or regulation or by any Government Authority;

4.4.6 Without prejudice to the above general obligations as above the Affiliate subject to the terms of this Agreement shall take the following steps as set out herein under:

- a) The Affiliate shall on receiving the encrypted signals as prescribed by the Broadcaster shall decode the same using an IRD which is compatible with the CAS of the Broadcaster,
- b) After receiving the Signals and decoding the same, the Affiliate shall re-encrypt the signals with his own CAS and further distribute the encoded signals through cable networks only to those subscribers who have installed set top boxes and whose names and complete details are properly entered in the CAS & SMS, as per their choice/ request for individual channels on an a-la-carte basis or number of channels of the different bouquets on offer as opted by the subscriber. The above said receiving of signals and de-encoding shall be done only at the head end address as mentioned in the Affiliation Registration details to this Agreement or as approved by the Broadcaster by an appropriate addendum to the same. The re-encrypting and further transmission shall be done only through the coaxial or optic fiber cable network of the Affiliate or of his authorized sub operator only and shall not be transmitted even partially or intermediately through any other means such as satellite, head-end in the sky, very small aperture terminal (v-sat), internet, etc.
- c) The Affiliate shall maintain complete records of its subscribers, commercial operators, their viewership details, like addresses, services taken, periods for which they were taken,
- d) The Affiliate will not distribute the services to subscribers out of the area without the prior written permission of the Broadcaster,
- e) The Affiliate may provide the services to the subscribers either by himself or through his sub operators,
- f) The Affiliate shall be responsible for making all payments under this Agreement notwithstanding any default by his sub operators and subscribers,
- g) The Affiliate is obliged and shall endeavor in the task of protection of Broadcaster's intellectual property rights, preventing piracy of the Broadcaster's services, disclosing correctly all the information as required by the Broadcaster,

distribution by commercial operator only to persons in the Affiliate's SMS database and operating within the limits of the subscription rights as conferred in terms of this Agreement. The Affiliate shall endeavor in the task of ensuring that the subscribers shall not further distribute the Broadcaster's services to others whether or not for commercial consideration. It is understood that these obligations would comprise of taking all necessary steps promptly within the control of the Affiliate.

4.4.7 The Affiliate shall take all necessary actions to prevent any unauthorized access to the Subscribed Channels in the Area and shall obtain and provide to Broadcaster regularly updated piracy reports at least once every quarter. The Affiliate shall take appropriate remedial actions to curb piracy in the Area.

4.4.8 The Affiliate undertakes that it shall not either itself, or through others acting on its instructions, copy, store or otherwise reproduce any part of the Subscribed Channels. The Affiliate further undertakes that it shall not copy or store programmes for resale or deal in any copied programmes and shall immediately notify the Broadcaster of any unauthorised copying, storage or use of any part of the Subscribed Channels and shall fully cooperate with all requests by Broadcaster to take such steps as are reasonable and appropriate to cause such activities to cease. It is understood that this does not apply to subscribers having STBs in their houses which have the capacity to record and playback programmes.

4.5 AFFILIATE OBLIGATIONS ON SUBSCRIBER REPORTS

4.5.1 The Affiliate shall prepare and provide to the Broadcaster complete and accurate monthly reports ("Subscriber Report") for the Subscribed Channels within 15 days after the end of each month detailing:

- i) Total number of subscribers, including their names and addresses and the Subscribed Channels on the first day and the last day of the month subscribed to;
- ii) Maximum Retail prices charged for the tiers that include Subscribed Channels;
- iii) Details of tiers that include Subscribed Channels offered to the subscribers (details such as channels in each tier and number of the subscribers subscribing to each tier);

iv) Such other information as Broadcaster may require for determining the Subscription Amounts.

Upon Broadcaster's written request, the Affiliate shall provide number of subscribers by category, tier, location, suboperator/ last mile operator that Broadcaster may require with prior intimation and sufficient Notice to the Affiliate

4.5.2 Each Subscriber Report shall be signed and attested by an officer of the Affiliate of a rank not less than Head of Department/Chief Financial Officer responsible for the Affiliate's SMS, who shall certify that all information in such Subscriber Report is true and correct. The Affiliate acknowledges that any requests for further information from time to time by the Broadcaster would not be unreasonably withheld. This obligation shall survive termination of the Agreement until Broadcaster receives the Subscriber Reports for each relevant month and all outstanding monies have been paid.

4.6 OBLIGATIONS REGARDING EPG (ELECTRONIC PROGRAMME GUIDE)

The Affiliate shall create an electronic programming guide (EPG) which shall contain the details of programming schedules of each of the channels and for that purpose the Broadcaster shall provide to the Affiliate the required information in a format that is requested by the Affiliate.

4.7 PACKAGING, PLACEMENT AND PROMOTION RELATED OBLIGATIONS

a. Apart from the packages provided by the Affiliate the channels should also be offered on an a-la-carte basis.

b. In addition to the other packages/ tiers, including the Subscribed Channels of the Broadcaster, offered by the Affiliate to the subscriber, the Affiliate shall also offer the Subscribed Channels to subscribers in the same bouquets as offered by Broadcaster to the Affiliate.

4.8 MARKETING OBLIGATIONS

4.8.1 In all its marketing efforts including but not limited to on-air and off-air promotion, the Affiliate would provide the Subscribed Channels:

i) An equivalent amount of marketing support as it provides to channels of the same genre;

ii) Equal treatment in all its material whereby Channel logos or names appear with the same size and prominence and page as other channels;

iii) Equal opportunity to participate in events/promotions the Affiliate undertakes.

4.8.2 The Affiliate shall not use the Channel Marks or the Broadcaster's trade names or trademarks in any manner that is not expressly provided in the Agreement, unless it has obtained the prior written agreement of Broadcaster. For the removal of doubts, the Affiliate shall not use the Broadcaster's trade names or trademarks in a manner that will adversely affect the goodwill and reputation of Broadcaster and its products and services.

4.8.3 The Affiliate acknowledges that Broadcaster shall have the sole discretion to approve the use of Channel Marks by the Affiliate, including with respect to the programmes included in the Subscribed Channels. The Affiliate further agrees that that by reason of the Agreement, it shall not acquire any proprietary or other rights or interest in the Channel Marks.

4.9 OBLIGATIONS OF INTELLECTUAL PROPERTY RIGHTS AND RIGHTS PROTECTION

4.9.1 The Affiliate shall use its best efforts to promote an awareness of the Subscribed Channels among its subscribers and potential subscribers.

4.9.2 It is expressly agreed and understood that the Affiliate shall not acquire any intellectual property rights, ownership or other rights, including but not limited to rights relating to any trade marks, service marks or copyrights (whether registered or unregistered), with respect to the Subscribed Channels or Additional Channels except as expressly set forth in the Agreement, nor shall the Affiliate grant to others, the right to use the Subscribed Channels or any other rights in and to the Subscribed Channels except as specifically set forth in the Agreement.

4.9.3 The Affiliate shall not acquire and agrees not to take advantage of any legal possibility to acquire any proprietary or other rights in the trade names and marks to which the Broadcaster or its principals (the owners or the channel providers of the Subscribed Channels) assert proprietary or other rights ("**Channel Marks**") and further agrees not to use the Channel Marks in any corporate

or trade name.

4.9.4 The Affiliate agrees that upon discovering or coming to Notice of any actual or impending infringement or unauthorised use by or through the subscribers of the Channel Marks or any other intellectual property rights or ownership rights relating to the Subscribed Channels, the Affiliate shall immediately report to Broadcaster with full details.

4.10 SUBSCRIBER RECORDS, ACCESS & AUDIT RIGHTS

4.10.1 The Affiliate shall keep accurate, complete and up to date records of every subscriber's details, details of the location of every set top box, Smart Card, records and accounts of billings including historical billing data, type of subscribers, sublicenses and all relevant matters ("Subscriber Records"). The Affiliate shall ensure that its SMS and billing software allows for monitoring and printing historical data relating to subscriber activation and/or deactivation, going back to at least 12 months at any point of time.

4.10.2 The SMS and all Subscriber Records that are relevant to the Subscribed Channels for the operation of the Agreement shall be available for inspection and audit by Broadcaster/Broadcaster's representative(s) (where such representatives are members of an internationally recognized accounting firm and agree in writing to be bound by confidentiality obligations) during the Term at any time during normal business hours and for three months after the expiry or premature termination of the Agreement, as the case may be, to ensure compliance with the Anti-Piracy Obligations, and (ii) on three days prior written notice during normal business hours to ensure compliance with all other terms of the Agreement up to four times within any 12-month period and for three months after the expiry or premature termination of the Agreement, as the case may be. The Affiliate shall give Broadcaster/Broadcaster's representatives any assistance they may reasonably require in connection with their audit investigations. In the event a breach of the Agreement has been discovered during the course of such audit or inspection,

Broadcaster/Broadcaster's representatives shall have the right to take printouts, photocopies and computer copies of the Subscriber Records, or any portion thereof, reasonably required

to provide evidence of such breach, and the Affiliate agrees to extend reasonable co-operation in this regard.

4.10.3 In the event an audit or inspection by Broadcaster/Broadcaster's representative(s) under Clause 4.10.2 reveals that the Affiliate has under-reported or has misrepresented any item having a bearing on the computation of the amounts payable to Broadcaster, the Affiliate agrees to immediately pay all amounts due based on the actual and true items together with simple interest at the rate of 15% per annum for the periods from the dates when the respective payments should have been made until the actual date or dates of payment. In addition to the above payment, the Affiliate shall also pay all costs and expenses incurred by Broadcaster for such audit/ inspection. This obligation shall survive the termination of the Agreement. If within a period of two weeks from the date of demand by the Broadcaster, the Affiliate fails to pay any amounts found due on the basis of such audit/ inspection, including the cost and expenses of such audit/ inspection, the Broadcaster shall have the right to deactivate/disconnect the Subscribed Channels and/or terminate the Agreement as per the law applicable without prejudice to its right to claim such amount referred to above in addition to any other action that may be deemed appropriate.

4.11 ANTI-PIRACY OBLIGATIONS

4.11 The Affiliate shall, at its own expense, take all necessary steps to prevent and stop unauthorized or illegal use of the Subscribed Channels or signals thereof as described below:-

4.11.1 The Affiliate represents, warrants and undertakes that the systems, processes and controls in place regarding the distribution of set top boxes and Smart Cards so as to ensure that they are only sold within the Area by the Affiliate or by its authorized dealers and such sales are only made to *bona fide* subscribers residing in the Area and installations are made at a residential address is adequate and steps taken to ensure adequate systems, processes and controls shall include, without limitation, the Affiliate:

- (a) Investigating any multiple Smart Cards issued under one individual name or address, including visiting the premises of such individuals or addresses from time to time;
- (b) Ensuring compliance by its authorized dealers including through unannounced visits to dealers' premises from time to

time;

(c) Requiring that for every change of address on the system and therefore relocation of a set top box, there is an independent physical verification of the new residential address; and

(d) Deauthorising any set top box or Smart Card that is found outside of the Area or in the possession of a person who is not a *bona fide* subscriber.

4.11.2 The Affiliate represents, warrants and undertakes that all of its set top boxes and Smart Cards: (i) are sold and installed together as a pack only in the Area and only at the premises of subscribers whose address has been verified in accordance with Clause

4.11.1; and (ii) employ card-pairing technology that ensures once a Smart Card is activated, it is paired to a particular set top box and that the Subscribed Channels cannot be viewed if such Smart Card is removed and used with any other set top box.

4.11.3 The Affiliate represents, warrants and undertakes that all installations of set top boxes and Smart Cards are done directly by the Affiliate or through its authorised dealers and only within the Area, and that the installer for every installation physically checks and ensures before installation and activation of a set top box and Smart Card that the address where the installation is being done matches with the address as supplied by the subscriber at the time of purchase of the set top box and which is the same as detailed in the SMS. In accordance with Clause 4.11.1, the Affiliate's SMS shall contain all of the following information items for each subscriber prior to activation of a set top box and, where separately issued, Smart Card for such subscriber:

(a) Name;

(b) Installation address;

(c) Billing address (if different);

(d) Telephone number of the installation address, where applicable;

(e) Subscriber's unique subscriber reference or subscription agreement number;

(f) Service/Channels/Packages that have been selected;

(g) Details of the dealer who sold the set top box;

(h) Details of the authorized dealer who sold the subscription;

(i) Details of the installer;

- (j) Smart Card number; and
- (k) Set top box number.

4.11.4 The Affiliate agrees and undertakes that it shall not activate, or otherwise reactivate, as the case may be, those Smart Cards, wherein the Subscribed Channels can be accessed from addresses which are:

- (a) not *bona fide* or do not match the addresses as supplied by the relevant subscribers as detailed in the SMS; or
- (b) outside of the Area.

4.11.5 In order to ensure that the Smart Card is only activated for *bona fide* subscribers, the Affiliate further represents, warrants and undertakes that there are adequate controls to ensure (a) a Smart Card is not activated before installation with its paired set top box; and (b) that such Smart Card is activated at the address of the subscriber which matches with the address as supplied by the subscriber at the time of purchase of the set top box and which is the same as detailed in the SMS.

4.11.6 The Affiliate represents, warrants and undertakes that its SMS: (a) allows viewing and printing historical data, in terms of total activation, de-activation and reactivation of all subscribers and all other records required under Clause 4.11.3;

4.11.7 In the event the Affiliate is found to be in breach /violation of the terms and its obligation under Article 4.11 of the Agreement the Broadcaster shall be entitled to deactivate/de-authorise the Subscribed Channels after following the procedure laid down in the Regulations/Directions/Orders of the TRAI or any other statutory authority.

4.12 FINGERPRINTING

4.12.1 The Affiliate shall ensure that it has systems, processes and controls in place to run Fingerprinting at regular intervals as per the specifications/ guidelines provided by the Broadcaster. A certificate at periodical intervals by the Affiliate giving the details of systems, processes and controls in place to run fingerprinting which detail is verifiable by the broadcaster would be sufficient compliance of this clause.

The Affiliate shall ensure that all set top boxes should support both visible and covert types of Fingerprinting and should be compatible for running Fingerprinting whether operated by the Affiliate or by the Broadcaster.

4.12.2 The Affiliate shall ensure that it shall be able to operate the Fingerprinting across all subscribers or any sub-set of subscribers based on pre-set parameters and such Fingerprinting should, apart from the foregoing, be possible and available on global, group and regional bases at all times.

4.12.3 The Affiliate shall ensure that the following processes shall be deployed to keep a check on piracy and misuse of the signals of the Subscribed Channels:

4.12.3.1 The Subscribed Channels' Fingerprinting should pass through without masking or tampering with respect to time, location, duration and frequency;

4.12.3.2 Fingerprinting to be provided by the Affiliate on the Subscribed Channels, as per the scheme provided by the Broadcaster; the Broadcaster shall have a right to give the time, location, duration of Fingerprinting at a reasonably short notice (i.e. at least 30 minutes prior notice or more).

4.13 BROADCASTERS OBLIGATIONS

4.13.1 The Broadcaster and the Affiliate would work closely together to decide on the promotional schemes/ offers for the subscribers with an objective to persuade them to subscribe to the channel(s) of the Broadcaster.

4.13.2 Broadcaster will take all necessary approvals and permissions as may be laid down by law.

4.14 It is clearly understood that all the relevant laws of the country, including the rules, notifications and orders issued by the Government under such laws as well as any order, direction or regulation of TRAI or any Regulatory Authority would be binding on both parties and none of the clauses contained herein shall be interpreted in a manner as may be in derogation of the said provisions, notifications, rules, orders, directions and Regulations.

ARTICLE 5: RESTRICTIONS

5.1 The Affiliate shall subject to constraint of factors beyond his control, distribute each Subscribed Channel in its entirety, without interruption, alteration, addition, deletion or editing except as may be required by any Applicable Laws in the Area.

5.2 The Affiliate shall not, without the Broadcaster's prior written consent:

i) Distribute or exhibit or authorize, license or permit the

distribution or exhibition of the Subscribed Channels by any such medium or devices, now known, or hereafter devised throughout the Area other than in accordance with the terms of the Agreement. The Affiliate shall not, without Broadcaster's prior written permission, distribute the Subscribed Channels via any distribution system or medium other than the Permitted Distribution System. Further, the Affiliate subject to the applicable law shall not distribute the Subscribed Channels to any Commercial Establishments in the Area unless specifically provided herein.

- ii) Copy any of the programmes, data or content included on the Subscribed Channels for the purpose of distributing them later, or for any other reason, except as may be required by any Applicable Laws within the Area provided that the Affiliate promptly notifies the Broadcaster before making any copy;
- iii) Cut, edit, dub, voice-over, sub-title, reformat or otherwise change or make additions to any programmes, data or content included on the Subscribed Channels except as may be required by any Applicable Laws within the Area;
- iv) Except for the services specifically permitted vide clause 1.1 of Article 1 in this Agreement, the Affiliate shall not incorporate any Subscribed Channel the programmes, data or content therein as part of any Free TV, or Interactive TV, Internet Protocol TV (IPTV), Pay Per View (PPV), Video On Demand (VOD) or Near Video On Demand (NVOD) services or On-line Services, or otherwise exhibit or cause the exhibition of any stills, extracts or data from any Subscribed Channel or the programmes therein via the Internet or any other local or area wide computer network or mobile telephone or handheld device;
- v) Reformat any Subscribed Channel so that it appears on less than the full screen of a television or add or super-impose any data, crawlers, buttons or other items to any Subscribed Channel;
- vi) Superimpose or otherwise add any third party or non-Broadcaster advertising, promotions, programmes, data, content, copyright, trademarks, trade names, logos, names and / or licenses on any Subscribed Channel, Channel

Mark or Broadcaster Promotional Materials;

vii) Use any copyright, trademarks, trade names, logos, names and / or likenesses, or any part of them, included in programmes on any Subscribed Channel, or which Broadcaster uses for marketing purposes, except in connection with its receipt or promotion of the Subscribed Channels;

viii) Allow or authorize any other person to do any of the acts mentioned in subclause (vii) except with the permission of Broadcaster and in accordance with the Agreement;

ix) Remove or shift or allow to be removed or shifted, the Equipment from the agreed Address detailed in clause 3 of the Agreement or allow anybody else to do the same, and shall indemnify Broadcaster against any damage, destruction or theft or loss of the Equipment;

ARTICLE 6: REPRESENTATION AND WARRANTIES OF AFFILIATE

The Affiliate undertakes, represents and warrants to the Broadcaster as under:

6.1 It has the requisite power and authority to enter into the Agreement and to fully perform its obligations hereunder and it has not entered and shall not enter into any agreement that may conflict with its obligations under this Agreement.

6.2 It shall comply with all laws and regulations with respect to the services in terms of the Agreement and it shall pay all charges, levies, taxes and duties imposed on or charged to it under any Applicable Laws, rules and regulations or government orders (including service tax, entertainment tax etc.);

6.3 It shall submit to the Broadcaster a copy of its registration as a cable operator, with the postal authority or with such other competent authority as may be appointed from time to time, The Affiliate further confirms that it shall renew such registration as and when required and shall keep it in full force and shall duly inform the Broadcaster in the event of any changes or termination in its registration, within two weeks of such change;

6.4 It shall not misuse the Subscribed Channels and shall not conceal/misrepresent the details of subscribers in the Area. The Affiliate further confirms that it shall promptly inform the Broadcaster by SMS Report furnished every month within 15

days following the expiry of each month in case of any change in the names and addresses and other details of its subscribers and addition/ change in sub-operators, last mile operators and/or franchisees through whom the Subscribed Channels are being delivered to the subscribers;

6.5 It shall pay all duties, taxes, fees and other outgoings payable in respect of the Equipment as and when the same becomes due and payable and shall indemnify the Broadcaster against any default or non-payments in this regard;

6.6 It shall keep the Equipment in good and serviceable order and condition to the satisfaction of the Broadcaster and bear all expenses for general repairs and maintenance of the same and it shall immediately notify the technical cell of the regional office of the Broadcaster in the event of any mechanical/ technical fault in the Equipment;

6.7 It shall not pledge, charge or encumber or in any way part with the possession of the Equipment without the prior written permission of Broadcaster. Further, it shall not remove or replace any or all parts of the Equipment. The Affiliate shall allow authorized employees or agents of Broadcaster free access to the address mentioned at clause 1.1 of Article 1 to check whether the Equipment is being properly used;

6.8 It shall not modify, misuse or tamper with the Equipment including the seal (paper seal to prevent opening of the Equipment) or any signals emanating therefrom, in a manner that prevents the identification of the Equipment number or interferes with the signals emanating therefrom. Any such act by the Affiliate shall be construed as a breach of its obligations hereunder;

6.9 The Affiliate undertakes that it shall not do anything, which might tend to indicate that any TV programme is from any source other than the channel forming part of the Subscribed Channels under the Agreement;

6.10 In case Broadcaster desired to enter into any new contract superceding the earlier Agreement or add or delete certain terms and conditions because of change in Applicable Laws then the Affiliate shall sign such new contract. Provided further that the Affiliate may choose not to sign if the terms as per the new contract is less favorable to the Affiliate vis-à-vis the terms contained in the superceded agreement. If the Affiliate further

agrees to adhere to and abide by the new contract or by any such additional terms and conditions, the Affiliate, shall sign a new contract superseding the Agreement, incorporating any such additional terms and conditions, within one month of the issue of such new contract by Broadcaster. If the Affiliate does not agree the parties may mutually agree to proceed to terminate the Agreement after following the procedure provided in this Agreement and complying with any regulations, orders or directions that may be issued by the Government or any regulatory body;

6.11 The Affiliate acknowledges that it shall be deemed to have notice of any regulations and guidelines issued by competent Authority, as and when the same are issued;

6.12 The Affiliate represents and warrants that it has the appropriate net worth and necessary infrastructure (including office, support staff and the equipment) for running the cable operations smoothly and efficiently and discharging its entire obligations under the Agreement. The Affiliate shall pay the Subscription Amounts to Broadcaster on the basis of invoices raised and on or before the due dates without any delay or default. The Affiliate further undertakes to pay the increased Subscription Amounts in the event of any increase in the actual number of subscribers as may be derived from the Subscriber Management System(SMS)The Affiliate recognizes that it has been appointed hereunder,based among other things, on the above-mentioned representations and its confirmation that th Agreement and the payments to be made hereunder and the obligations to be discharged are for the definite Term provided in clause 1.5 of the Agreement unless expressly provided otherwise in the Agreement;

6.13 It is expressly recognized between the Parties that the breach of any of the above, shall constitute an event of default under the Agreement and shall entitle Broadcaster to disconnect the access to the Subscribed Channels hereunder provided and to terminate the Agreement and disconnect/deactivate the Subscribed Channels as per the law in force. All representations and warranties shall survive the termination of the Agreement.

ARTICLE 7: REPRESENTATIONS & WARRANTIES OF BROADCASTER

7.1 The Broadcaster represents and warrants to the Affiliate that it has the requisite power and authority to enter into the Agreement and to fully perform its obligations hereunder and it has not entered and shall not enter into any agreement that may conflict with its obligations under the Agreement;

7.2 The Broadcaster shall comply with all laws and regulations with respect to services referred to in clause 1.1 of this Agreement and it shall pay all charges, levies, taxes and duties imposed on or charged to it under any Applicable Laws, rules and regulations or government orders (including service tax, entertainment tax etc.);

7.3 The Broadcaster understands that TRAI has issued certain regulations and guidelines and agrees that it shall adhere to and strictly abide by such regulations and guidelines and any amendments thereto or any new regulations and guidelines that may be in force from time to time. The Broadcaster acknowledges that it shall be deemed to have notice of any regulations and guidelines issued by TRAI, as and when the same are issued; The Broadcaster represents and warrants to the Affiliate that downlink license has been applied for/obtained with respect to all channels;

7.4 The Broadcaster further represents and warrants to the Affiliate that the satellite signal of the Subscribed Channels shall be in standard PAL or NTSC format as designated by Broadcaster and have one or more audio tracks;

7.5 The Broadcaster shall ensure good quality and uninterrupted service to the Affiliate except for reasons beyond control and undertakes that it has all the requisite rights, authority and approval to broadcast the programme and that such broadcast shall not infringe the copy rights of any other person;

7.6 The Broadcaster represents that the equipment including IRD if any supplied by it will be compliant with the existing BIS standards;

7.7 It is expressly recognized between the Parties that the breach of any of the above, shall constitute an event of default under the Agreement and shall entitle the Affiliate to disconnect the carriage of the Subscribed Channels hereunder provided and to terminate the Agreement as per the law in force. All representations and warranties shall survive the termination of the Agreement.

ARTICLE 8: OBLIGATIONS RELATING TO EQUIPMENT

The Broadcaster shall, at the request of the Affiliate supply or cause to be supplied the Equipment to the Affiliate (or if it has already supplied such Equipment directly or through suppliers nominated by it) upon the following terms and conditions:-

8.1 IRDs

(i) The IRD shall be used by the Affiliate exclusively for distribution of the Subscribed Channel for which it is issued and shall at all times remain the sole and exclusive property of the Broadcaster and the Affiliate shall forthwith return the same to the Broadcaster upon expiry or termination of the Agreement as per the provisions and procedure laid down in this Agreement.

(ii) In the event, that the Affiliate merges or amalgamates with another entity or ceases to carry on business of a multi system operator (MSO) or a cable operator, the Affiliate shall intimate the same to the Broadcaster immediately and shall take steps to forthwith return the IRD to the Broadcaster within 10 days. In the event, the Affiliate fails to return the IRD to the Broadcaster without reasonable cause, the Affiliate shall be liable to pay a sum of Rs.1,000/- per day per IRD to the Broadcaster for the period during which the default continues.

(iii) The Affiliate shall not, under any circumstances, reverse engineer, decompile or disassemble the IRD Box or Viewing Cards or reproduce or allow the reproduction of any of them or the technology included in them. The Affiliate will ensure that the IRD is not tampered with in any way.

8.2 VIEWING CARDS

(i) The Viewing Card(s) supplied by the Broadcaster shall at all times remain the sole and exclusive property of the Broadcaster and the Broadcaster shall forthwith deactivate the same upon expiry or termination of the Agreement as per the provisions and procedure laid down in this Agreement

(ii) The Affiliate shall use the Viewing Card(s) only in terms of the Agreement and at the installation address mentioned in clause 1.1 of Schedule to this Agreement. The Affiliate shall not make any unauthorized use or tamper with the Viewing Card(s) in any manner whatsoever. However, in the event the Affiliate desires to

move the Viewing Card(s) to some other address, the Affiliate shall obtain prior written permission from the Broadcaster and such permission shall not be unduly delayed or refused by the Broadcaster. The Affiliate shall not sell, exchange or transfer the Viewing Card(s) in any manner whatsoever. If, upon any investigation or inspection, it is found that any Viewing Card(s) is being misutilised, mishandled or used in any manner, other than what has been specifically provided for under this Agreement, then, the Affiliate shall be liable to compensate the Broadcaster for any loss or damages caused to the Broadcaster by such misutilisation or mishandling or unprescribed use. In any such event the Broadcaster shall also be entitled to immediately take back possession of the Viewing Card(s) and also to initiate appropriate civil/criminal proceedings in respect of such unauthorized use in addition to any other action that it deems appropriate under the law.

(iii) The Broadcaster shall not be liable for any defect in the Viewing Card(s) that is attributable to any unauthorized use, tampering or damage due to negligent use of the same by the Affiliate or any other person. In the event, the Viewing Card(s) is lost, stolen or damaged, the Affiliate shall immediately inform the Broadcaster. In the event, the Affiliate desires new Viewing Card(s) for any channel forming part of the Subscribed Channels, the same may be issued at the discretion of BROADCASTER on payment of such charges as may be specified by the Broadcaster from time to time.

In the event of deactivation of the Viewing Card(s) for any reason whatsoever, including non-payment of Subscription Amounts, the Affiliate shall be liable to pay to the Broadcaster such charges as may be determined by the Broadcaster from time to time for reactivation of the Viewing Card(s). In the event, any of the Viewing Card(s) is not in use by the Affiliate, the same shall be returned to the Broadcaster immediately.

8. 3 RECEIPT OF EQUIPMENT

It is expressly agreed between the Parties that where the Broadcaster has dispatched the Equipment as per request of the Affiliate and informs him about the same but the Affiliate does not intimate the Broadcaster of the receipt or non-receipt of the Equipment within a period of thirty days of the receipt of such intimation of dispatch by the Broadcaster, then it will be deemed

that the Affiliate has received the Equipment.

8.4 RESTRICTIONS ON EQUIPMENT

8.4.1 In the event the Affiliate fails to pay the Subscription Amounts and/ or, upon expiry of, or termination of the Agreement, the Broadcaster shall be entitled to take back the possession of the Equipment from the Affiliate and deactivate the Viewing Card(s). Upon return of the Equipment in proper working condition by the Affiliate, the IRD Deposit shall be refunded to the Affiliate. In the event, the Affiliate fails to return the Equipment to the Broadcaster without reasonable cause, the Affiliate shall be liable to pay a sum of Rs.1,000/- per day per IRD to the Broadcaster for the period during which the default continues. In case the Affiliate returns the IRD, but the Viewing Card and remote (where applicable) are damaged or missing, then the Affiliate shall be liable to pay to the Broadcaster such charges as may be determined by the Broadcaster. The Broadcaster shall be authorized to deduct the cost of damages from the IRD Deposit.

8.4.2 The Affiliate shall get the IRD insured immediately on execution / renewal of the Agreement. In case of damage to the IRD, the Broadcaster shall recover the actual repair cost from the Affiliate. However, in case the IRD cannot be repaired or is beyond repair the Affiliate shall be liable to pay to Broadcaster the book value of the IRD. The Broadcaster shall be entitled to deduct the book value of such IRD from the IRD Deposit and/or Security Deposit. The premiums if any paid by the Affiliate would be adjusted from the amounts due to the Broadcaster on account of subscription amounts.

8.4.3 In order to recover possession of the Equipment from the Affiliate, the Affiliate shall ensure that the authorized personnel of the Broadcaster are allowed free and unobstructed access to the premises of the Affiliate where the Equipment are installed and take possession of the same. The Affiliate shall not interfere with such procedure provided that such authorized personnel of the Broadcaster visit the premises for the purposes of taking the possession of the Equipment during normal office hours.

8.4.4 The Affiliate acknowledges and recognizes that mere possession of the Equipment does not automatically entitle the Affiliate to receive the Subscribed Channels.

8.4.5 Any violation/breach of this Clause 8 shall entitle Broadcaster to disconnect and deny access to the Subscribed Channels subject however to the compliance of applicable laws as well as to terminate the Agreement as laid down in this Agreement.

8.4.6 The parties to the Agreement have verified that all the representations and warranties made herein above are true, accurate and correct and that no material information, particulars or details have been omitted, concealed or otherwise not disclosed or remained to be furnished.

8.4.7 It is expressly recognized between the parties that the breach by either party of any of the representations, warranties or covenants set out in this Agreement shall constitute an event of material default by the other party under this Agreement and shall entitle the other party to terminate the Agreement and claim damages without prejudice to any other rights.

ARTICLE 9: INDEMNITY AND THIRD PARTY CLAIMS

9.1 If for any reason or resulting from any cause whatsoever, any statement, representation or warranty of the Affiliate/Broadcaster set forth herein is found to have been materially incorrect, untrue when made, fails to prove to be true, the breaching party which provided such materially incorrect, untrue statement or representation or warranty, shall be fully liable to the other party for any and all liability, damage, costs, and expense including attorney fees, arising from such representation, breach or incorrect statement.

9.2 Both parties agree that each party shall forever keep and hold the other party and its affiliated companies, officers, directors, employees and agents fully indemnified and harmless against all liabilities, claims, costs, damages and expenses (including, without limitation, reasonable fees of a counsel of the other party's choice) arising out of any breach of any representation and warranties set out herein or any of its obligations pursuant to this Agreement.

ARTICLE 10: CONFIDENTIALITY

10.1 The Parties agree to keep all information including without limitation, data pertaining to the business of the other Party, details of the other Party's Affiliates, subscriber details, Subscription Amounts, pricing, etc. regarding the strategy and volume of business of the other Party strictly confidential at all

times unless required by applicable law to disclose such information.

10.2 Any information provided by one Party to the other Party under the Agreement is to be held strictly in confidence by the other Party and shall not be used by the other Party for a purpose other than the purpose for which it is intended under this Agreement without written consent of the other. Disclosure of any such information is to be made only to such employees of the Parties who need to use the Confidential Information and it is the responsibility of the Parties to bind and ensure that any such employee shall hold in confidence all such confidential information including but not limited to the terms and conditions of the Agreement and that such an employee does not disclose, publish or make copies of the Agreement or the Confidential Information (unless it is required by law to do so) without the prior written consent of the other Party.

This clause shall survive the termination of this Agreement.

ARTICLE 11: NO PUBLIC ANNOUNCEMENTS

The Parties shall not make, and shall not permit any of their respective directors, employees, officers, or Associates to make, any public announcement about the subject matter of the Agreement or any of its business and operating plans from time to time, whether in the form of a press release or otherwise, without first consulting with the other Party and obtaining the other Party's written consents, save as required to satisfy any requirement (whether or not having the force of law) of a stock exchange on which the shares of the Parties or an Associate of the Parties or holding company of the Parties are traded or the securities laws, rules or regulations applicable to the Parties or an Associate of the Parties or holding company of the Parties in any jurisdiction in which its shares are traded or any relevant governmental or regulatory body or as otherwise required by law or regulation. In the event that disclosure is required, the other Party shall be given a reasonable opportunity to review and comment on any such required disclosure.

ARTICLE 12 : TERMINATION AND EFFECT OF TERMINATION

12.1 TERMINATION

12.1.1 The Agreement shall automatically terminate by efflux of time i.e.on the completion of the Term unless on or before the

expiry of completion of the term, the parties have executed another agreement on the same subject or have agreed to or have started a process of negotiation to extend the term of the Agreement with or without modification in terms of clause 1.3.2 of this Agreement.

12.1.2 Either of the Parties may, subject to clause 12.1.3 and clause 24 below, terminate the Agreement at any time by giving a reasoned written notice of one month to the other Party.

12.1.3 The parties shall have the right to terminate the Agreement, subject to Applicable Laws, upon the occurrence of any of the following events:

12.1.3.1 Where one of the parties is in material breach of any provision of the Agreement as defined in clause 1.3 of the Schedule;

12.1.3.2 Where the Broadcaster fails to provide conditions necessary for proper exercise of the rights of subscription as envisaged in Article 2 of this Agreement;

12.1.3.3 Where the Affiliate fails to provide to the Broadcaster, true and accurate information pertaining to the names, addresses and details of (i) the subscribers; and (ii) any cable operators, sub-operators, last mile operators and/or franchisees through whom the Subscribed Channels are being delivered to the subscribers pertaining to any location within the Area as and when demanded by the Broadcaster, from time to time for purposes of verification. The details of subscribers should be verifiable through the Subscriber Management System (SMS);

12.1.3.4 Where the Affiliate fails to provide the Subscriber Report as required by the broadcaster duly attested within fifteen days from the expiry of each month;

12.1.3.5 Where the Broadcaster has provided the Affiliate with evidence to the effect that any of the Affiliate's sub operators are engaging in piracy of the Subscribed Channels, and the Affiliate has failed to take reasonable remedial action (including deactivating or confiscating Viewing Cards, Smart Cards, set top boxes or Receiver Boxes, as applicable) within two days of its receipt of such evidence and a notice by the Broadcaster requiring it to take such remedial action;

- 12.1.3.6 Where the Affiliate is in breach of the Anti-piracy Obligations set forth in the Agreement;
- 12.1.3.7 Where the Broadcaster has provided the Affiliate with reasonable evidence that any of Affiliate's active Smart Cards or set top boxes are lost or stolen or found being sold outside of the Area, or the Subscribed Channels or proprietary information or technology in the Smart Cards or set top boxes are in immediate and apparent danger of unauthorised use and the Affiliate has failed to take remedial action in accordance with the Anti-Piracy Obligations (including deactivating or confiscating such Smart Cards or set top boxes, as the case may be) within two days of its receipt of a written notice by Broadcaster requiring it to take such remedial action;
- 12.1.3.8 Where the Broadcaster has increased the Subscription Fees as provided under clause 3.1.2 of this Agreement and the Affiliate does not want to continue the business relationship on account of such increase in Subscription Fee;
- 12.1.3.9 In the event of Bankruptcy or insolvency of any of the parties;
- 12.1.3.10 Where winding up proceedings/liquidation proceedings have been initiated against any of the parties;
- 12.1.3.11 Where the Affiliate in any manner has jeopardised or interfered with the Broadcaster's intellectual property rights in any of the Subscribed Channels or part thereof;
- 12.1.3.12 Where the Affiliate's distribution of all or any of the Subscribed Channels, exposes the Broadcaster or its Associates to any liability, civil or criminal;
- 12.1.3.13 Where any of the parties attempts to make or makes any transfer, assignment or sublicense of any of their rights under the Agreement without prior written consent of the other party;
- 12.1.3.14 Where there is any change in the Control of the Affiliate/Broadcaster by way of any Competitor gaining Control of the business of the Affiliate/Broadcaster ("**Control**" meaning, for this purpose, the power to

manage, directly or indirectly, the operation of the business of the Affiliate/Broadcaster, whether through the ownership of voting securities, by contract or memorandum or articles of association or any constitutional documents of the Affiliate/Broadcaster or otherwise) ("**Competitor**" meaning, for this purpose, any person whose business is that of a service provider and/or multi system operator (MSO) and/or distribution and/or broadcasting and/or owner (whether direct or indirect) of one or more television channels in one or more markets in the world).

12.1.4 Where the Broadcaster's authority to distribute all of the Subscribed Channels is revoked and/or terminated, then the Agreement shall stand automatically terminated;

Provided, however, that in the case of revocation or termination of the Broadcaster's authority to distribute some of the Subscribed Channels and not all of the Subscribed Channels, the Broadcaster shall at the first opportunity of knowing about the imminent possibility of such revocation or termination of authority, inform the Affiliate about such possibility and its consequences, so as to enable the latter to decide whether to continue with the Agreement or not.

12.1.5 Where the Broadcaster is subjected to legal, governmental or other adverse action under applicable treaties, tariffs or Applicable Laws that restrict the right of the Broadcaster to provide the Subscribed Channels or any part thereof to the Affiliate or limit the Affiliate's right or authorisation to offer the Subscribed Channels or in the event of any court order which cannot be reviewed or appealed against, which prevents/restricts the Broadcaster to provide the Subscribed Channels to the Affiliate under the terms of the Agreement then the Agreement shall stand automatically terminated.

12.1.6 Upon the termination of the Agreement, distribution of the Subscribed Channels\ shall be unauthorized and illegal and the Broadcaster shall be entitled to disconnect /deactivate the distribution of the Subscribed Channels but subject to observance of applicable rules /regulations/orders if any.

12.2 CONSEQUENCES OF TERMINATION

12.2.1 Upon termination of the Agreement:

(i) the parties to the Agreement shall cease to exercise their

rights and to perform obligations arising out of this Agreement unless expressly provided otherwise in this Agreement

- (ii) the Affiliate shall cease to provide services as defined in clause 1.1 of Article 1 and specifically referred to in Annexure A including distribution of Subscribed Channels to its subscribers directly or indirectly.
- (iii) the Affiliate shall return the IRD / Viewing Cards in the same condition as they were made available by the Broadcaster subject to normal wear and tear.
- (iv) the Affiliate shall prepare and deliver to the Broadcaster a final Subscriber Report relating to Subscription Amount due to the Broadcaster on termination;
- (v) all Promotional Materials of the Broadcaster, which are in the Affiliate's possession or under its control shall be delivered to the Broadcaster or otherwise disposed of in accordance with the Broadcaster's directions;
- (vi) the parties shall immediately cease to make any representations that they are associated with each other in the Area;
- (vii) the Parties in addition to their other rights and remedies under law or equity, shall be entitled to receive all outstanding monies due to each other including the Subscription Amounts /IRD Deposit /Security Deposit due or to become due under the Agreement and these shall immediately become due and payable on the date of termination;
- (viii) the indemnity obligations and the confidentiality obligations of the parties will continue to stand and survive termination; and
- (ix) the Affiliate shall cease to use the intellectual property and sign a confirmation of cessation of the use of Intellectual property as may be required by the Broadcaster.

ARTICLE 13: LIMITATION OF LIABILITY

13.1 It is expressly understood and agreed between the Parties that neither Party shall have any liability or obligation whatsoever under this Agreement, towards any other party arising from and in respect to:-

- (a) Any defect or damage in the equipment including

IRD(s)/Viewing Card(s) not attributable to the Affiliate. (Any defect in the IRD(s)/ Viewing Card(s) attributable to or resulting from any unauthorized or improper use, tampering, negligence or failure to follow the Broadcaster's instructions or any use of the IRD(s) with any apparatus or equipment not authorized by the Broadcaster shall be deemed to be actions attributable to the Affiliate);

(b) Any problem in the CAS or any other equipment due to system failure, any reason beyond the reasonable control of the Affiliate;

(c) Any action, failure to act or default on the part of any equipment distributor or installer;

(d) Any delay or failure in performance of this Agreement caused by any reason or event beyond the reasonable control of the Broadcaster/ Affiliate;

(e) Any indirect or consequential loss resulting or any other default on the part of the Broadcaster or any of its officers, employees, suppliers, distributors or agents or any vendor of an IRD; and

(f) Withdrawal or suspension of any Channel or programs by the Channel Owners without providing adequate opportunity to the Broadcaster to suitably notify the Affiliate of such an eventuality;

13.2 It is expressly agreed and understood between the parties that the Broadcaster shall have no liability or obligation towards the Affiliate, its sub operator and/or subscriber due to deactivation of services if such services have been deactivated by the Broadcaster as per the terms of this Agreement and in compliance of the orders/regulations in this regard, if any.

ARTICLE 14: AGREEMENTS WITH SUBSCRIBERS

Any agreement entered into by the Affiliate with a subscriber or any Agreement entered into by the Broadcaster with the channel provider shall not relieve the Affiliate or the Broadcaster of any of its obligations under this Agreement towards the other and the Affiliate and Broadcaster shall ensure that such agreements are not in any way prejudicial to the rights and obligations between the Parties arising out of this Agreement.

ARTICLE 15: NO WAIVER

The exercise of or failure to exercise any, or all of the foregoing remedies by the Parties shall not operate as a waiver on the part

of the Parties of its rights to exercise any other remedy available to the Parties under the Agreement, at law or equity, and all of the foregoing remedies shall be deemed cumulative. The failure of the parties to enforce anytime or for any period any one or more of the terms and conditions of the Agreement shall not be a waiver of them or of the right at any time subsequently to enforce such right unless such subsequent exercise of the right is barred by limitation as provided by law or otherwise limited by this Agreement.

ARTICLE 16: NO AGENCY

Neither the Affiliate nor the Broadcaster shall be or hold itself out as the agent of the other under the Agreement. No subscribers shall be deemed to have any privity of contract or direct contractual or other relationship with the Broadcaster by virtue of the Agreement or by the Broadcaster's delivery of the Subscribed Channels to the Affiliate. The relationship between the Broadcaster and the Affiliate is "Principal to Principal".

ARTICLE 17: BINDING NATURE

All the obligations and benefits arising under the Agreement shall pass to and be binding on the respective assigns transferees and successors of the Parties hereto.

ARTICLE 18: MODIFICATIONS

This Agreement cannot be modified, varied or terminated except in writing. Any variation of the Agreement including Addendum Agreements, Annexures, Schedules or any other document, called by whatever name, but executed relating to this Agreement, shall be mutually agreed to in writing and executed by or on behalf of the Parties through their respective authorized representatives.

ARTICLE 19: NO PARTNERSHIP

Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between the Broadcaster and the Affiliate and neither party shall enter into any contract or obligation that purports to bind the other.

ARTICLE 20: NOTICES

All Notices given hereunder shall be given in writing in English, by personal delivery or by Registered Post Acknowledgement Due (RPAD), at the correspondence addresses of the Affiliate and of the Broadcaster set forth in this Agreement unless either party at any time or times designates another address for itself by

notifying the other Party thereof by Registered AD Post only, in which case all notices to such Party shall thereafter be given at the address so notified.

Notice shall be deemed to have been received, (a) if delivered Personally, upon delivery and (b) if sent by RPAD, upon delivery of the mail or upon expiry of 7 days from the date of dispatch.

ARTICLE 21: RIGHTS AND VALIDITY

The rights and remedies set out in the Agreement are cumulative and not exclusive of any rights or remedies provided by law.

ARTICLE 22: SUPERSESSION

Except as provided herein, this Agreement constitute the whole agreement between the Parties relating to the subject matter hereof and supersedes any other prior agreements or understanding relating to such subject matter. Provided, however, that it shall not prejudice the rights and obligations which have arisen out of the prior agreements and continuing to subsist unless otherwise agreed to be relinquished or abrogated through this Agreement.

ARTICLE 23: ASSIGNMENT

Notwithstanding anything contained in this Agreement, the parties shall not have the right, without the prior written consent of the other, to assign or transfer the Agreement or any of their respective rights or obligations, under this Agreement. Any breach, actual, potential or threatened, of this clause, shall entitle the parties to terminate the Agreement and take any other measures as may be appropriate.

ARTICLE 24: FORCE MAJEURE

Failure on the part of the Broadcaster/Affiliate to perform any of its obligations, shall not entitle either party to raise any claim against the other or constitute a breach of this Agreement to the extent that such failure arises from an event of Force Majeure. If through Force Majeure the fulfillment by either party of any obligation set forth in this Agreement is delayed, the period of such delay will not be taken into account in computing periods prescribed by this Agreement. Force Majeure will include any war, civil commotion, strike, Satellite Jamming, Satellite Failure, lockout, accident, epidemic or any other event of any nature or kind whatsoever beyond the control of the parties herein that directly or indirectly hinders or prevents either of the parties from commencing or proceeding with the consummation of the

transactions contemplated hereby. The Party affected by such Force Majeure event shall promptly notify the other party of the occurrence of such event. It is agreed between the Parties that lack of funds shall not in any event constitute or be considered an event of Force Majeure. Were the condition of Force Majeure to continue for a period exceeding one month, the Parties shall meet to decide upon the future performance of the Agreement. If the Parties are unable to agree upon a plan for future performance, then the Agreement shall be terminated upon notice of either party to the other, on expiry of one month from the date such notice is given.

ARTICLE 25: SEVERABILITY

In the event that any provision of this Agreement is declared by any judicial, quasi judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, the Parties shall amend that provision in such reasonable manner as achieves the intention of the Parties without illegality or at the discretion of the Parties, it may be severed from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect unless the Parties decide that the effect of such declaration is to defeat the original intention of the Parties in which event, Parties shall be entitled to terminate this Agreement by a months' notice.

ARTICLE 26: JOINT AND SEVERAL

Joint and several: All agreements on the part of either of the Parties which comprises more than one person or entity shall be joint and several and the neuter singular gender throughout this Agreement shall include all genders and the plural and the successors in title to the Parties.

ARTICLE 27: DISCRETION

No decision, exercise of discretion, judgment or opinion or approval or provision of information on any matter mentioned in this Agreement or arising from it shall be deemed to have been made by either of the Parties to the other except if in writing and shall be at its sole discretion unless otherwise expressly provided in this Agreement.

ARTICLE 28: GOVERNING LAW AND DISPUTE RESOLUTION

28.1 The rights and obligations of the Parties under the Agreement shall be governed by laws of India.

28.2 The Parties agree that they shall not seek injunctions or any interim/ad-interim orders from any court or judicial tribunal/authority in India with respect to any claims, dispute or differences between the Parties arising out of this Agreement save and except before the Telecom Disputes Settlement and Appellate Tribunal, New Delhi (“TDSAT”). The Parties agree that all disputes between the Parties shall be resolved solely through proceedings instituted before the TDSAT.

IN WITNESS WHEREOF the Parties hereto have executed the Agreement on the day, month and year mentioned hereinabove.

For and on behalf of M/s. A & Co Ltd)

_____) In the presence of

Authorised Signatory 1.

2.

For and on behalf of M/s. B &CO. Ltd.)

_____)

Authorised Signatory In the presence of

1.

2.

Annexure-A

Details of Subscribed Channels, subscription fees, MRP, Security Deposit, IRD fees, etc

Item (1): SUBSCRIPTION FEE

A) A - la – Carte Channels

SUBSCRIBED

CHANNELS

IRD Number Viewing Card

Number if any

Maximum Retail Price per subscriber per month

Subscription Fee per subscriber permonth

B) Bouquets

SUBSCRIBED

CHANNEL BOUQUETS

IRD Number

Viewing Card Number

if any

Maximum

Retail Price

Per subscriber

per month

Subscription
Fee per
subscriber
Name of per month
Bouquet
Channels
included in
the Bouquet

Item (2): IRD DEPOSIT & PROCESSING FEES

[Read with Clause 8 of the Agreement]

CHANNEL IRD DEPOSIT(One Time)

(Rs.)

PROCESSING FEES (One Time)

(Rs.)

Annexure B

Copy of Identification Certificate furnished by Affiliate

Schedule: Registration Details of the Affiliate & Broadcaster

1.1 AFFILIATE REGISTRATION AND OTHER DETAILS:

Cable Television Registration No. □□□□□□□□□□□□□□□□□□□□

Date of issue: □□□□□□ Date of expiry: □□□□□□

PAN No.: □□□□□□□□□□

Service Tax registration No. □□□□□□□□□□□□□□□□□□□□

Date of issue: □□□□□□

Entertainment Tax Registration No.: □□□□□□□□□□□□

Date of issue: □□□□□□

The Affiliate shall provide a self-attested copy of the above registration certificates.

Installation Address (*if different from address details provided above*)

Contact Person (Mr./Ms) □□□□□□□□□□□□□□□□□□□□□□□□

Installation Address □□□□□□□□□□□□□□□□□□□□□□□□

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Village □□□□□□□□□□□□□□□□

City / Taluka □□□□□□□□□□□□□□□□

District □□□□□□□□□□□□□□□□ PIN □□□□□□

State □□□□□□□□□□□□□□□□□□□□□□□□

Telephone Number □□□□□□□□□□□□□□□□

Fax Number □□□□□□□□□□□□□□□□

(If in case of more than one head end the above details (1.1) would be repeated)

Note : Strike Out whichever is not applicable/ Add any other details that are relevant.

1.2 Broadcaster Registration and Other Details.

Details of Registration Certificate :

PAN No.: □□□□□□□□□□

Service Tax registration No. □□□□□□□□□□□□□□□□

Date of issue: □□□□□□

Entertainment Tax Registration No.: □□□□□□□□□□□□□□□□

Date of issue: □□□□□□

Note : Strike Out whichever is not applicable/ Add any other details that are relevant

DEFINITIONS AND INTERPRETATIONS

A. DEFINITIONS

In the Agreement unless the context requires otherwise, the following words and expressions shall have the meanings set out herein below:

“Affiliate” means a multi system operator (MSO) including its agents or intermediaries who provides services as agreed to and as described in Clause 1.1 of Article 1 of this Agreement through the Permitted Distribution System. For the purposes of this Agreement the definition shall be interpreted with reference to the party of the Other Part ie M/s. B & CO Ltd on whose behalf this Agreement has been signed.

“Agreement” means this Commercial and Technical Agreement and all its Schedules, Annexures and/or addenda agreements, updation forms particularly referred as forming part of this Agreement as amended from time to time.

“Applicable Laws” means and includes any law, regulation, direction, notification, policy, guideline or order, including amendments thereto, enacted or issued by any constitutional, legislative, judicial, quasi-judicial or administrative authority concerning

Broadcasting and Distribution of TV channels and matters consequential upon and incidental thereto.

“Area” means the area referred to in clause 1.2 of Article 1 of the Agreement, within which the Subscribed Channels through a permitted distribution system with CAS are to be distributed by the Affiliate, directly or indirectly, through its agents and would include flats, apartments, buildings, dwelling units, whether in a single family or in a multi unit building. Each television set connected to a set top box in a single dwelling would hereby constitute a subscriber for the purposes of computing the number of subscribers in the Agreement.

“Associates” means: (i) in the case of a person other than a natural person, any other person that, either directly or indirectly through one or more intermediate person(s), controls, is controlled by, or is under common control with such person, and (ii) in the case of a person that is a natural person, any other person that, either directly or indirectly through one or more intermediate person(s), controls, is controlled by or is a relative of such natural person. For the purposes of this definition, "control" means the power to direct the management or policies of a person, whether through the ownership of over 50% of the voting power of such person, through the power to appoint over half of the members of the board of directors or similar governing body of such person or by virtue of the articles or other constitutional document of such person or otherwise, or through contractual arrangements or otherwise.

“Bouquet” means a combination of more than one Television Channels and/ or selling of a combination of Channels together as a package.

“Broadcaster” means a Broadcaster as defined in The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004

“Channel(s)” means the television channel(s) with a set of

frequencies used for transmission of a programme and particularly specified in Annexure A, whether forming a part of a bouquet or not.

Commercial Establishment” means a commercial cable subscriber as defined in “The Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Fourth Amendment) Order, 2006.

“Conditional Access System” or “CAS” means any Addressable System containing features as indicated in the Explanation (a) below Section 4A of The Cable Television Networks (Regulation) Act, 1995 (7 of 1995).

"Confidential Information" means : (a) any information concerning the organization, business, technology, trade secrets, know-how, finance, transactions or affairs of a Party or any of its Associates, directors, officers or employees (whether conveyed in written, oral or in any other form and whether such information is furnished before, on or after the date hereof) of the parties, (b) any material/ information, which results in the violation of any conditions imposed by the Broadcaster or its programme suppliers and disclosed to the Affiliate by the Broadcaster for the purposes of this Agreement, including any information of any kind whatsoever which is made known to the Affiliate as being confidential in nature and vice versa (c) any information or materials prepared by a Party or its representatives that contains or otherwise reflects, or is generated from Confidential Information.

“Competent Authority” means the Authority specified in this Agreement to be the Competent Authority for the purpose indicated therein and would include any Authority as has been notified /declared or as may be notified/ declared from time to time as a constitutional or legislative or judicial or quasi judicial or Administrative or Regulatory Authority concerning matters of Broadcasting and Distribution of TV channels and matters incidental or relating thereto.

“Electronic Programme Guide” or "EPG"

means an electronic program guide maintained by the Affiliate that lists television channels and programmes, and scheduling and programming information therein and includes any enhanced guide that allows subscribers to navigate and select such available channels and programs.

“Equipment” means and includes the IRDs and the Viewing Card(s), collectively referred to as Equipment.

“Fingerprinting” means a process whereby code words/numbers are made overtly to appear on the screen of a television and / or covertly in the signal of a Subscribed Channel that enables identification of the Viewing Cards being used to access the signal.

“Integrated Receiver Decoder” or “IRD” means a device, decoder, receiver cum decoder used in conjunction with a Viewing Card by the Affiliate in order to receive a Television Channel and may include a remote control, where applicable and which has the recommendation/ approval of Broadcaster on the basis of mutually agreed parameters between the parties.

“Promotional Material” means such materials, information, merchandise, etc. made by the Broadcaster, or by the Affiliate for the purpose of promoting the Subscribed Channels/programmes of the-subscribed Channels, and shall without limitation include flyers, banners, hoardings, stickers, handouts, etc.

“Material Breach” includes but is not limited to any of the following breaches of the terms and conditions of this Agreement

- i) non payment or part payment of the subscription amounts which have been established to be due and outstanding in terms of the mutually agreed procedure for determining the due and outstanding payment of subscription amounts.
- ii) in the event of a statement / warranty of the party is found to be untrue.
- iii) tampering with SMS or CAS systems and records and failure to provide records despite the procedure of making such requests have been followed.

iv) Change of location of IRDs/ Viewing Cards by the Affiliate without consent of the Broadcaster.

“Notice” means a written communication by one party to the other, issued pursuant hereunder and is addressed and delivered personally or by post at the place indicated in this Agreement or in the Addendum Agreements as the case may be as address for the purpose of the notice.

“Permitted Distribution System” means a system of distribution of the Television Channels to the subscribers in encrypted analogue or digital format through the Cable Television Network as defined under the Cable Television Networks (Regulation) Act, 1995 (7 of 1995). For avoidance of doubts, it is clarified that for the purposes of this Agreement, Permitted Distribution System would not include distribution of Television Channels to subscribers through any other method such as Head-ends In The Sky, Direct-To-Home, Multipoint Microwave Distribution System/ Multi Channel Multipoint Distribution System (MMDS), Terrestrial Transmission, or through cellular mobile network or any other medium or technology or device

“Set Top Box” or “STB” means a device, which is connected to, or is part of a television and which allows a subscriber to receive in unencrypted/descrambled form subscribed pay channels through an addressable system.

“Smart Card” means, in relation to a subscriber, a card or other device either issued by the Affiliate to the subscriber or embedded in the set top box which when enabled by CAS, has the functionality of enabling the subscriber’s set top box to receive the Subscribed Channels offered by the Affiliate.

“Pay Channel” means a pay channel as defined under the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 and specified in Annexure A to have been subscribed as a pay channel for distribution through the permitted distribution system to the subscribers directly or indirectly.

“Subscription Fee” means the fee payable by the Affiliate to the Broadcaster per subscriber per month in respect of any particular subscribed channel or in respect of any particular subscribed bouquet of channels as per the revenue share arrangement indicated in clause 3.1.3 of this Agreement.

“Total Subscription Amount” means the total amount payable by the Affiliate to the Broadcaster for each month. It shall be calculated by taking the subscription fee for each channel or bouquet of channels and multiplying the same by the number of subscribers for that channel or bouquet of channels, as the case may be, as reflected in the SMS of the Affiliate and by adding up the sums in respect of all channels and bouquets of channels covered under this Agreement.

“Subscriber” means a person who receives the services described in clause 1.1 of Article 1 of the Agreement read with Annexure A, either in full or in part, through the permitted Distribution System either directly or indirectly from the Affiliate without transmitting it to any other person and has been declared to be a subscriber for such service as per the Subscriber Management System (SMS) installed at the Head End of the Affiliate. For the purpose of the definition every television set connected to a set top box located within duly occupied residential flats, apartments, or other residential dwelling units located in single unit or multi-unit buildings or a place indicated for receiving the Subscribed Channels from the Affiliate shall be counted as one subscriber.

“Subscribed Channels” means the channels as described in Item (1)(A) and (1)(B) of Annexure A to this Agreement.

“Subscriber Management System” or “SMS” means a system or device which stores the subscriber records and details with respect to name, address etc as well as information regarding the hardware being utilized by the subscriber, channels /bouquets of channels subscribed to by the subscriber, price of such channels or bouquets of channels as defined in

the system, the activation / deactivation dates and time for any channel or bouquet of channels, a log of all actions performed on a subscriber's record, invoices raised on each subscriber and the amounts paid by the subscriber for each billing period.

“Services” means Services referred in Clause 1.1 of Article 1 and described appropriately in Annexure A of this Agreement.

“Term” means the term of this Agreement as specified in clause 1.3 of Article 1.

“Viewing Card” means the Broadcaster approved viewing card to be used in conjunction with the IRD for the Affiliate to access and decode each Subscribed Channel.

B. INTERPRETATION

In this Agreement, unless the context otherwise requires:

(a) Any reference to the singular in the Agreement shall include a reference to the plural and vice versa and words importing one gender only shall include all other genders unless the context otherwise requires.

(b) The word “person” shall include individuals, corporations, partnerships, association of persons and any other entities;

(c) Any references to Article, clauses, sub-clauses, appendices, annexure and schedules are references to Articles, clauses, sub-clauses, appendices, annexure and schedules to the Agreement unless the context otherwise expressly provides;

(e) References to a “month” are to a calendar month;

(f) Headings and titles are for ease of reference only and shall not affect the interpretation of this Agreement and in no way be read to give a construction not harmonious with the interpretation of various clauses of this Agreement done otherwise independent of the title.

(g) Any reference to law, regulation, statutory provision, order, guideline, policy, etc, includes references to such law or regulation or provision, order, guideline, policy, etc., as modified, codified, amended or re-enacted from time to time.

Schedule 2

[Between multi system operator (MSO) and cable operator (CO)]
**STANDARD TECHNICAL AND COMMERCIAL
INTERCONNECTION
AGREEMENT [CAS]**

This Technical and Commercial Interconnection Agreement along with its Schedules and Annexures is executed on this _____ day of _____ 2006 by and between:

M/s. B & Co Ltd, a company incorporated under the Companies Act, 1956, having its registered office at 00111, PQR Colony ABC City (hereinafter referred to as the “**multi system operator (MSO)**” which expression shall unless repugnant to the context or meaning thereof be deemed to include the successors and permitted assigns) of the **ONEPART**.

AND

***[M/s C & Co., a partnership firm** having its office at 123, MNO Road, XYZ City and having as partners Mr. _____ s/o _____, r/o _____ and Mr. _____ s/o. _____ r/o. _____]

OR

***[M/s. D & Co. Ltd., a company incorporated** under the Companies Act, 1956, having its registered office at 456, LMN Road, EFG City]

OR

***[M/s. E Associates, a proprietary concern,** having its office at 789, IJK Colony, UVW City owned by Mr. _____ s/o

_____, r/o _____, carrying on business in the name and style of Alpha Beta Gamma Cable Vision]

(* strike out whichever is not applicable or modify suitably in case of

Association of Persons or Body of Individuals) (hereinafter referred to as the “**Affiliate**” which expression shall unless repugnant to the context or meaning thereof, be deemed to include the successors in business and permitted assigns, legal heirs, executors) of the **OTHER PART**

The **multi system operator (MSO)** and the **Affiliate** are hereinafter individually and collectively referred to as “**Party**” and “**Parties**”, respectively.

WHEREAS

A. The multi system operator (MSO) is engaged in the business of distribution of television channels including through a digital /analogue Conditional Access System (“CAS”) in the Areas notified by the Central Government under Section 4A(1) of The Cable Television Networks (Regulation) Act, 1995 (7 of 1995);

B. The Affiliate is registered as a cable operator with the local post office having its postal registration No. _____ dated _____ and is authorized to provide Cable T.V. Service to subscribers by means of Cable T.V. Network having subscribers in the Territory.

C. The parties have mutually agreed to execute this agreement between them to govern the rights and obligations in regard to the subscription and distribution of Television channels in the Territory.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, constituting good and valuable consideration, the Parties agree as follows: -

1. DEFINITIONS

The words and expressions used in this Agreement shall have meanings as assigned to them in the Schedule to this Agreement.

2. PROVISION OF SERVICE

2.1 The multi system operator (MSO) hereby grants to the Affiliate and the Affiliate hereby accepts from the multi system operator (MSO), the right to receive Cable T.V. Signals through the Trunk Line for further instant re-transmission by the Affiliate to the subscribers in the Territory on the terms and conditions herein set out.

2.2 The multi system operator (MSO) shall make available Channels to the Affiliate based on sufficient demand and as per prevailing norms, policies, the applicable Laws and rules, regulations, directions and orders of the concerned Authorities, so as to make a complete wholesome service, and subject to commercial feasibility. This shall include such number of Free To Air channels as may be specified under the law for inclusion in the package of channels forming the basic service tier. In case any Channel is not received and/or transmitted by the multi

system operator (MSO) for reasons not solely attributable to multi system operator (MSO), Affiliate shall not hold the multi system operator (MSO) responsible for the same.

3. BILLING AND PAYMENT FOR PAY CHANNELS

3.1 The Affiliate shall pay the Subscription Amounts for each month to the multi system operator (MSO) for the Pay Channels in accordance with the statement furnished to him by the multi system operator (MSO). The Subscription Amounts will be based on the maximum retail price for each channel/ bouquet of channels of the respective Pay Broadcasters and the number of subscribers subscribing to each channel or bouquet of channels.

3.2 above statement will contain the details of the Pay Channel subscribers and the amounts payable by the Affiliate. This may be used by the Affiliate to invoice and collect the amounts from his subscribers. The Affiliate shall bill the subscribers for the channels or bouquet of channels subscribed by them at an amount not exceeding the maximum retail price of individual channels or a bouquet of channels as subscribed by the subscribers.

3.3 i) The Affiliate will pay to the multi system operator (MSO) each month, 75 % of the total amount calculated by taking the maximum retail price for each pay channel or bouquet of pay channels and multiplying the same by the number of subscribers for that channel or bouquet of channels, as the case may be and by adding up the sums in respect of all pay channels and bouquets of pay channels provided by the multi system operator (MSO). The Affiliate will retain the remaining 25% as his margin out of the total amount on account of pay channels.

ii) The multi system operator (MSO) shall give due notice of any change in the maximum retail price of any of the pay channels or bouquet of channels, of a minimum of 21 days or as may be prescribed by law, as the case may be.

FOR BASIC SERVICE TIER/ FREE TO AIR CHANNELS AND CARRIAGE CHARGES

3.4 No charges for the Basic Service Tier/ Free To Air channels shall be payable by the Affiliate to the multi system operator (MSO).

Any amount collected by the Affiliate from his subscribers for the Basic Service Tier/ Free To Air channels shall be retained by the Affiliate. However, the Affiliate shall have no claim to get any share from the Carriage Fee, if any, received by the multi system operator (MSO) from any broadcaster and the entire amount so received by the multi system operator (MSO) shall be retained by the multi system operator (MSO).

3.5 All amounts billed as per statements/ invoices shall be payable on or before the due dates as mentioned therein.

3.6 The Affiliate will also collect rent, instalment and security deposit for the Hardware or any other amount as may be specified by the multi system operator (MSO) from the subscribers concerned from time to time and hand over the same to the multi system operator (MSO) without any deduction.

SECURITY DEPOSIT

3.7 The Affiliate shall deposit with the multi system operator (MSO) a sum of Rs. _____ (Rupees _____ Only) interest free and refundable security deposit. This security deposit will only cover the cost of the set top boxes provided to him. At the time of expiration or termination of this Agreement, Affiliate shall be entitled to refund amount of the security deposit, subject to the adjustment of arrears of bills, and any other payments due from the Affiliate to the multi system operator (MSO). This shall be settled within 30 days of the expiry/ termination of the agreement.

TAXES

3.8 The multi system operator (MSO) and the Affiliate shall be responsible for payment of all taxes, levies, charges and penalties levied or imposed by or under a statute, law, regulations, relating to the Services and which are due to be paid by them, respectively. The Affiliate shall also be responsible for collection of such amounts attributable to such taxes, levies, charges imposed by or under a statute, law, regulations, relating to the Services and payable by the multi system operator (MSO) and by Broadcaster and for remitting the same promptly to the multi system operator (MSO) within the respective due dates.

DEFAULTS

3.9 Without prejudice to such rights and remedies that the

multi system operator MSO) may have in law or under the provisions of this agreement, in the event of any delay or failure by the Affiliate to make payments of subscription amounts on or before the respective due dates, the multi system operator (MSO) shall have the right:

(i) to disconnect the services to the Affiliate subject to the compliance of the applicable rules, regulations, directions or orders of the competent authority.

(ii) to terminate this agreement, subject to compliance of the applicable laws in force.

(iii) to charge a simple interest at the rate of 15 percent per annum from the date such amounts became due until they are fully and actually paid.

(iv) to appoint another Affiliate, other than the defaulting Affiliate, for the Territory. Provided however, that the multi system operator (MSO) may, at its discretion, waive its right to disconnect the service and to terminate this Agreement, upon such terms and conditions as the multi system operator (MSO) may deem fit and proper, which shall, inter-alia, include the receipt by the multi system operator (MSO):

(a) of the entire arrears of subscription amounts, together with simple interest accrued thereon at the rate of 15 percent per annum from the date immediately succeeding the due date, till they are fully paid; and

(b) reasonable reconnection charges as may be mutually decided.

3.10 Upon disconnection of the service as mentioned in clause 3.9 above, whether accompanied by termination of this Agreement or not, the Affiliate shall be liable to deposit forthwith all sums payable by it to the multi system operator (MSO). In the case of termination, accounts shall be settled within 30 days and for delayed payments by either party, simple interest at the rate of 15 percent per annum shall be charged.

4. AFFILIATE'S COVENANTS

4.1 The Affiliate hereby undertakes that it shall be responsible for

- (i) booking of orders from subscribers for provision of the Hardware, getting the necessary registration forms filled up by the subscribers, getting signatures of the subscribers under his certification, collection of the rents or instalments and the security deposits and forwarding promptly to the multi system operator (MSO) such forms, along with the requisite payments, as also requests from the subscribers for changes, if any, from time to time, duly countersigned by the Affiliate to enable the processing of the same;
- (ii) Storage of the Hardware supplied by the multi system operator (MSO), payment of the security deposit therefor and distribution and installation thereof to the subscribers and for repossession of the same at the request of the multi system operator (MSO) and for handing over the same to the multi system operator (MSO);
- (iii) Billing, collection of the amounts from the subscribers and handling all calls, queries, complaints of the subscribers; and
- (iv) Physical verification of the address of each subscriber of pay channels after getting proof of residential address such as a ration card, Voters Identity Card, Bank Pass Book or any other such documentary proof of residence;

4.2 The Affiliate shall -

- (i) protect, safeguard and maintain services provided to the existing and also to the future subscribers;
- (ii) ensure the deployment and usage of only such set top boxes and Smart cards at the subscriber's end, as are approved by the multi system operator (MSO) and are compatible with the network of the multi system operator (MSO);
- (iii) not transmit or retransmit, interpolate or mix any signals to subscribers which are not transmitted or generated by the multi system operator (MSO) without the prior written consent of the multi system operator (MSO);
- (iv) not insert any commercial or advertisement or information on any signal transmitted by the multi system operator (MSO). Any such tampering of signals or interpolating of signals shall be deemed to be a violation of this agreement

and shall constitute sufficient cause for termination of this agreement by the multi system operator (MSO) by giving such notice as prescribed under the law;

(v) not interfere in any way with the signals provided by the multi system operator (MSO) and also not to use any decoding, receiving, recording equipment(s), counterfeit set top box or Smart card and any other like equipments;

(vi) not provide any feeder line from its end to any other cable operator, commercial establishment, institution or any other person, association of persons (whether registered or unregistered) or company, without the prior written permission of the multi system operator (MSO);

(vii) supply/provide the multi system operator (MSO) a copy each of the return filed with the Entertainment Tax Department, Service Tax Department, Central Government under the Cable Television Networks (Regulation) Act, 1995, and any other authority under any law for the time being in force on request;

(viii) make payment of bills by the fifteenth of succeeding month, in respect of the services it availed during a month, by such mode as may be notified by the multi system operator (MSO), or, if directed and authorized by the multi system operator (MSO), to deposit the same in a designated bank account notified by the multi system operator (MSO) for that purpose;

(ix) inspect the set top boxes and Smart cards with the subscribers on a sample basis every month so as to ensure that the set top boxes and Smart cards are not altered, tampered, misused, replaced, removed or shifted without the written consent of the multi system operator (MSO) from their original address, and also whether or not, the subscribers are using, either before or after the set top box, any decoding, receiving, recording equipment(s), counterfeit Smart cards other than the set top box, Smart cards and other equipments supplied/ approved by the multi system operator (MSO).

(x) not perform or, not induce another person to perform or offer to perform –

(a) any alteration, tampering with the Hardware including the seal (seal to prevent opening of set

top box), misuse, replacement, removal and shifting of Smart card(s) and/or set top box(es) without the written consent of multi system operator (MSO) from their respective original addresses,

(b) any use, either before or after the set top box, of any decoding, receiving, recording equipment(s), counterfeit set top box(es), Smart card(s) other than the set top box(es), Smart cards and any other equipments supplied/ approved by the multi system operator (MSO), and to take actions as directed by the multi system operator (MSO) against such subscribers, and

(c) any piracy or other activities, which has the effect of, or which shall result into, infringement and violation of trade mark and copyrights of the multi system operator (MSO), the broadcaster, or any other person associated with such transmission.

(xi) intimate the multi system operator (MSO) promptly about any alteration, tampering with the Hardware including the seal, misuse, replacement, removal and shifting of Smart cards and set top boxes, without the written consent of multi system operator (MSO), from their respective original addresses and also about the use, either before or after the set top boxes, of any decoding, receiving, recording equipment(s), counterfeit set top box(es) and Smart card(s) other than the set top box(es), Smart card(s) and any other items of Hardware supplied by the multi system operator (MSO), and to take actions as directed by the multi system operator (MSO) against such subscribers;

(xii) comply with all the applicable statutes or laws for the time being in force, or any rules, codes, regulations, notifications, circulars, guidelines, orders, directions etc. issued, published or circulated under any law for the time being in force;

4.3 The Affiliate shall not provide any connection to any person for further retransmission of the Cable T.V. signals for any purpose. Also, the Affiliate shall not receive, transmit or retransmit any signal directly or indirectly, which is transmitted or retransmitted from any third party.

Explanation: This clause shall have no application where the Affiliate receives, transmits or retransmits any signal from a third party through a separate independent network, having no connection whatsoever with the network of the Affiliate, utilized for transmission/ retransmission of signals received from the multi system operator (MSO).

4.4 The Affiliate shall not record and then retransmit Cable T.V. Signal or otherwise to block or add or substitute or otherwise tamper with the signal being transmitted by the multi system operator (MSO) or with the Trunk Line nor shall allow any other person to do so.

4.5 The Affiliate shall extend all reasonable co-operation, to the multi system operator (MSO), to enable the multi system operator (MSO) to conduct such inspections etc. so as to satisfy itself with regard to the fulfillment of the conditions mentioned in this Agreement, on the part of the Affiliate.

4.6 The Affiliate shall not do any act or thing as a result of which, any right or interest of the multi system operator (MSO) in respect of the Cable T.V. signals under this Agreement or any property of the multi system operator (MSO) may be infringed or prejudiced.

4.7 The Affiliate shall provide true and accurate information pertaining to the names, addresses and details of (i) the subscribers; and (ii) any sub operators, through whom the services are being delivered to the subscribers, within two weeks from the date of this Agreement, and thereafter at the end of each month to the multi system operator (MSO).

4.8 The Affiliate shall have no right, without the prior written consent of the multi system operator (MSO), to assign or transfer any of its rights or obligations under this Agreement. Any breach, actual, potential or threatened of this clause, shall entitle the multi system operator (MSO) to terminate this Agreement and to take any other measures as may be appropriate under the law after giving the prescribed notice.

4.9 RIGHTS & OBLIGATIONS OF MULTI SYSTEM OPERATOR (MSO)

(i) To carry out modifications, if found necessary, in its network. These modifications may include replacement of the old cables and equipment with new ones, which are

capable of handling the services of the multi system operator (MSO) and to carry out improvements/ upgradation therein. Entire network as well as all improvements carried out in the territory shall be the exclusive property of the multi system operator (MSO) and the Affiliate shall not have any right whatsoever on the same;

(ii) To provide facility to the Affiliate to register and resolve the subscribers' complaints, and to forward and execute pay channel viewing choices and requests of subscribers;

(iii) To arrange for the provision of Subscriber Management System (= SMS);

(iv) To notify and inform the specifications of set top boxes and Smart cards which are compatible with its network and the authorized sources from where these can be procured/purchased by the subscribers;

(v) To receive complaints on technical aspects from the Affiliate and arrange to provide necessary advice/ assistance to carry out the required rectification work by the Affiliate. The multi system operator (MSO) will provide all technical consultancy and help to the Affiliate as and when required by him for up-gradation of its system and enhancement of quality of signals;

(vi) To deploy finger printing mechanism or any other mechanism/ method/ system in its network to detect any piracy, violation of copyrights and unauthorized viewing of channels, transmitted through its network, by the Affiliate, subscribers or any other person;

(vii) To make inspections at the premises of the Affiliate so as to satisfy itself with regard to fulfillment of the conditions, on the part of the Affiliate, mentioned in this Agreement;

(viii) To deal with satellite channel broadcasters; and

(ix) To make physical verification of the network, from time to time.

5. UNDERTAKINGS

5.1 Each party shall recognize the exclusive ownership of the property owned and installed by the other party and shall not have or claim any right, title or interest or lien of whatsoever nature.

5.2 Nothing contained herein shall constitute either Party as

the agent or partner or the representative of the other for any purpose and neither Party shall have the right or authority to assume, create or incur any liability or obligation of any kind, express or implied, in the name of or on behalf of the other Party and the relationship between the multi system operator (MSO) and the Affiliate is on “Principal to Principal” basis.

5.3 (i) It is expressly understood by the parties that “_____” logo(s) is a Registered Trade Mark of the multi system operator (MSO), and the Affiliates shall use the said logo only during the currency of this agreement for the benefit of the cable television networking business of the multi system operator (MSO). Consent of the multi system operator (MSO) be and is hereby given to the Affiliate to use the said logo, to the extent of or in connection with the business of the multi system operator (MSO).

(ii) It is clearly understood and accepted by each party that it shall have no right to use any intellectual property of the other on its Cable T.V. Service or otherwise on or after the withdrawal by the other party of its consent for such uses.

5.4 In case of the Affiliate decides to transfer its interest in respect of its business of providing Cable T.V. Service to any other party / person (third party), in whole or in part, the Affiliate shall give prior notice to the multi system operator (MSO). The multi system operator (MSO) shall not have any objection to such transfer if the Affiliate has complied with its obligations under this contract and has paid all its dues.

Provided, however, that such other third party shall sign & execute a deed of adherence to the terms & conditions of this Agreement and other undertaking/ bonds to the satisfaction of the multi system operator (MSO) in order to give effect to the provisions of this Agreement.

5.5 The Affiliate undertakes to the multi system operator (MSO) to maintain and continue to maintain its Postal Registration Certificate renewed from time to time in accordance with the Cable TV Networks (Regulation) Act,

1995 and to comply with the terms and conditions of the license certificate issued by the Postal Authority.

5.6 Both the parties shall comply with the Laws, as applicable to them.

6. REVENTION OF PIRACY

6.1 The Affiliate shall not indulge or allow any person to indulge in Piracy or in reverse engineering any technology used in the Hardware or any component thereof nor shall he use the Hardware to be connected to any equipment for setting up a mini head-end for retransmission of the signals generated from the same. Any subscriber shall be disconnected by the Affiliate after giving due notice, if found to be indulging in or abetting any Piracy.

6.2 The Affiliate represents, warrants and undertakes that all set top boxes and Smart Cards as provided by the multi system operator (MSO):

(i) are sold and installed together as a pack only in the Territory and only at the premises of a subscriber whose address has been verified in accordance with Clause 4.1.(iv); and

(ii) employ card pairing technology that ensures once a Smart Card is activated, it is paired to a particular set top box and that the Channels so subscribed by the subscribers cannot be viewed, if such Smart Card is removed and used with any other set top box.

6.3 For relocation of a set top box of any subscriber, the Affiliate shall conduct an independent physical verification of the new residential address and forward due intimation of the same to the multi system operator (MSO).

6.4 The Affiliate shall furnish the following items of information for each subscriber prior to activation/ allowing activation of a set top box and where separately issued, Smart Card for each subscriber: -

(a) Name;

(b) Installation address;

(c) Billing address (if different);

(d) Telephone number of the installation address, where applicable;

(e) Subscriber's unique subscriber reference or

subscription agreement number;

7. DISCLAIMER AND INDEMNITY

7.1 In no event, either multi system operator (MSO) or the employees thereof shall be liable to the Affiliate or to any subscribers of Affiliate or any other person for any indirect, special, incidental or consequential damage arising out of or in connection with the disruption, interruption or discontinuance of the Service or for any inconvenience, disappointment or due to deprivation of any programme or information or for any indirect or consequential loss or damage, whether or not attributable to any act or omission of the multi system operator (MSO) or of any of its employees or otherwise.

7.2 Affiliate shall indemnify the multi system operator (MSO) from all cost, expense and damages by reason of any claim, action or proceedings from any third party or from subscribers for any inconvenience, loss or annoyance caused to them due to any default of the Affiliate or due to termination of the Agreement or suspension of the Service due to Affiliate's breach.

8. TERM AND TERMINATION

8.1 The Agreement until terminated, will remain in effect.

8.2 This agreement can be terminated by either party if the other Party;

a. fails to comply with any of the terms and conditions of this agreement and such failure, if capable of remedy, is not rectified within 30 days of receipt of written notice of such failure from the other party; or

b. goes into liquidation or becomes insolvent either compulsorily or voluntarily (save for the purpose of reconstruction or amalgamation) or if a receiver is appointed in respect of the whole or any part of their assets.

8.3 This agreement can be terminated by the multi system operator (MSO), if the Affiliate fails to pay the subscription amounts on or before the due date after following the procedure prescribed under the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 and amendments made thereto from

time to time.

8.4 If the Affiliate indulges in, or allows or induces any person to indulge in Piracy, this Agreement can be terminated by the multi system operator (MSO) after following the procedure prescribed under the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 and amendments made thereto from time to time.

9. EFFECT OF TERMINATION

9.1 In case of default by the Affiliate, the multi system operator (MSO) may instead of terminating the Agreement, suspend the transmission of the Cable T.V. Signal after complying with the requirements under regulations made by the TRAI in this regard, without any liability, responsibility or obligation to any subscriber, for such period until the Affiliate remedies the default. If any subscriber makes any claim or takes any action against the multi system operator (MSO), due to the disconnection or termination by the multi system operator (MSO), the Affiliate shall make good for all costs and consequences for such claim and action which are incurred or suffered by the multi system operator (MSO). Services may be restored at the discretion of the multi system operator (MSO) upon such advance payment and the payment of all outstanding.

9.2 In the event of the Termination, the Affiliate shall pay all amounts due and payable by the Affiliate upto the date of the Termination.

9.3 The Affiliate shall, within Five (5) days of the expiration or termination, as the case may be, of this Agreement in terms of the provisions mentioned herein, hand over to the multi system operator (MSO) all properties and assets belonging to the multi system operator (MSO), which are in the possession of the Affiliate. The Affiliate shall also be liable to make good all losses or damages caused to such properties and assets belonging to the multi system operator (MSO) in the custody of the Affiliate within seven (7) days of expiration or termination of this Agreement.

Explanation:-

The requirement of this clause shall not have any

application in respect of the Hardware or any other equipment belonging to the multi system operator (MSO), which are installed at the premises of the subscribers.

9.4 If the Affiliate fails to hand over the Assets or make good losses or damages caused to such properties and assets within the above said period, the Affiliate shall be liable to make payment for the same along with simple interest at the rate of 15 percent per annum.

9.5 All rights and obligations of the Parties shall terminate upon termination of this agreement except that any obligation, express or implied, following such termination which survives by its very nature shall survive. Any continuation of Cable T.V. Signal after the termination shall be merely an extension of the Agreement for which the Affiliate shall continue to be liable to pay as provided under this Agreement or any terms as modified in writing or otherwise from time to time.

9.6 The expiration and termination of this Agreement shall be without prejudice to the rights which have already accrued to either party.

9.7 Upon termination of this Agreement, the parties may, by mutual consent, revive this Agreement. The multi system operator (MSO) shall reconnect the service upon such revival subject to such terms and conditions as are mutually agreed.

10. GOVERNING LAW AND DISPUTE RESOLUTION

10.1 The rights and obligations of the Parties under the Agreement shall be governed by laws of India.

10.2 The Parties agree that they shall not seek injunctions or any interim/ ad-interim orders from any court or judicial tribunal/ authority in India with respect to any claims, dispute or differences between the Parties arising out of this Agreement save and except before the Telecom Disputes Settlement and Appellate Tribunal, New Delhi (“TDSAT”). The Parties agree that all disputes between the Parties shall be resolved solely through proceedings instituted before the TDSAT.

11. FORCE MAJEURE

11.1 Failure on the part of the multi system operator (MSO)/Affiliate to perform any of its obligations, shall not

entitle either party to raise any claim against the other or constitute a breach of this Agreement to the extent that such failure arises from an event of Force Majeure. If through Force Majeure the fulfillment by either party of any obligation set forth in this Agreement is delayed, the period of such delay will not be taken into account in computing periods prescribed by this Agreement. Force Majeure will include act of god, earthquake, tides, storm, flood, lightening, explosion, fire, sabotage, quarantine, epidemic, arson, civil disturbance, terrorist attack, war like situation, or enactment of any law or rules and regulation made by the Authorities or any circumstances beyond the reasonable control of the parties herein that directly or indirectly hinders or prevents either of the parties from commencing or proceeding with the consummation of the transactions contemplated hereby. The Party affected by such Force Majeure event shall promptly notify the other party of the occurrence of such event. It is agreed between the Parties that lack of funds shall not in any event constitute or be considered an event of Force Majeure. Were the condition of Force Majeure to continue for a period exceeding one month, the Parties shall meet to decide upon the future performance of the Agreement. If the Parties are unable to agree upon a plan for future performance, then the Agreement shall be terminated upon notice of either party to the other, on expiry of one month from the date such notice is given.

11.2 Any accrued payment obligation of a Party prior to the commencement of Force Majeure shall survive the termination of this agreement pursuant to such Force Majeure.

12. NOTICES

Any notice to be served on any party by the other shall be deemed to have been validly sent if sent by Registered Post Acknowledgement Due (RPAD) or by hand delivery duly acknowledged at the address mentioned in the beginning or at such other changed address as the party may inform and the date of receipt of such notice will be the date of receipt by the other party or shall be 7 days from the date of dispatch of the notice by RPAD, whichever is earlier.

13. RESTRICTION ON TRANSFER

The Affiliate shall not remove, sell, assign, mortgage, transfer/sublet, encumber all or any part of the network which belongs to the multi system operator (MSO). If the Affiliate indulges in any of the above-mentioned acts, the said acts shall be illegal and void ab-initio and the Affiliate shall also be liable for any action under the applicable law.

14. CONFIDENTIALITY

14.1 The parties shall keep in strict confidence, any confidential information received by one from the other while participating in the affairs/business of each other and shall not disclose the same to any person or party not being a party to this Agreement.

14.2 The parties shall also bind their employees, officers, advisors, associates, contractors, agents, authorized persons and other similar persons to whom the above mentioned information may be disclosed, to the obligations of confidentiality as prescribed in clause 14.1 above.

15. MODIFICATIONS

The Agreement cannot be modified, varied or terminated except in writing. Any variation of the Agreement, including Addendum Agreements, Annexures, schedules or any other document, called by whatever name, but executed relating to this agreement, shall be mutually agreed to in writing and executed by or on behalf of the Parties.

16 BINDING EFFECT

16.1 This agreement modifies all prior understanding of the parties as to the subject matter hereof and shall not be amended except in writing by both the parties. Any other understanding between the parties (if any) with regard to any other matter such as Internet, etc or any accrued rights and obligation of the Parties, if any, shall continue to be in full force and effect.

IN WITNESS WHEREOF the parties have set and subscribed their respective hands to this agreement on the date and year appearing hereinabove.

Signed on behalf of the multi system operator (MSO)

_____)

In the presence of

1.
2.
Signed on behalf of the AFFILIATE)
_____)

In the presence of

1.
2.

Schedule: Definitions and Interpretation.
DEFINITIONS AND INTERPRETATIONS

A. DEFINITIONS

In the Agreement unless the context requires otherwise, the following words and expressions shall have the meanings set out herein below:

“Act” means the Cable Television Networks (Regulation) Act, 1995 (7 of 1995).

“Addressable System” shall have the same meaning as assigned to it in the Act.

“Authority” means any authority constituted under any statute, any department or sub-division thereof, any court or tribunal, including the department of post and tax authorities.

“Basic Service Tier” shall have the same meaning as assigned to it in the Act.

“Cable T.V. Network” means the network of cable and other equipment such as amplifiers, splitters owned and installed either by the multi system operator (MSO) or by the Affiliate for the purpose of providing Cable T.V. Service.

“Cable T.V. Service” means the provision of Cable T.V. Signal to the subscribers.

“Cable T.V. Signal” means the audio visual program signals of cable channels, Basic Service Tier and Pay Channels transmitted by the multi system operator (MSO).

“Channel” means a set of frequencies of Cable T.V. Signal used for transmission of a television program.

“Finger Printing” shall mean the mechanism deployed by multi system operator (MSO) in its network so as to detect any piracy, copyrights violation

and/or unauthorized viewing of channels transmitted through its network.

“Free To Air channel” shall have the same meaning as assigned to it in the Act.

“Hardware” means a multi system operator (MSO) approved set top box to enable the decryption of signals of Pay Channels transmitted in encrypted form, the remote and other associated components and accessories.

“Headend” means a facility that contains satellite receivers, modulator, compression equipment, multiplexes, and conditional access facilities, other transmission equipments and has antennas which receive signals from local TV studios, and sometimes has TV studios inside the facility which produce shows and send the signals to other locations by satellite or antenna. When a headend facility receives signals from a satellite, it retransmits the signals (analog and/or digital) at frequencies the network can use.

“Network” means all assets and materials, established within the specified area, such as head end, control room equipments, dishes, receivers, amplifiers, modulators, integrated receiver transcoders, feeder lines, set top boxes, cassettes, computers, studio equipments, cameras, editing machine, stands, equipments, tools, wires, cables and services which consists of uplinking, downlinking, receiving and sending digital and analog channels, which has the ultimate purpose of facilitating the subscribers to access the channels of his choice or request.

“Package” means the type of the Channels either individual or in the form of bouquets subscribed by the subscriber which may include the Pay Channels as availed by the subscriber from time to time.

“Pay Channel” means the Channels transmitted by the multi system operator (MSO) in encrypted form which can be accessed by the subscribers only by means of the Hardware.

“Piracy” means unauthorized reception of Cable T. V. Signal by any person by any means and modes including but not limited to any alteration, tampering of the seal or any component or accessory thereof or misuse, replacement, removal and/or shifting of Hardware without the written consent of multi system operator (MSO) from their original address or any use, either before or after the set top box, any decoding, receiving, recording equipment(s), counterfeit or unauthorized devices or any activity, which has the effect of, or which may result into, infringement and violation of trade mark and copyright of the multi system operator (MSO) or the broadcasters as the case may be .

“Service” means the provision of encrypted and/or unencrypted Cable T.V. Signals to the Affiliate for the purposes of and subject to the terms of this Agreement for retransmission to the subscribers.

“Smart Card” means the card duly approved by the multi system operator (MSO) as part of the Hardware, which enables the subscriber to gain access to the Cable T.V. signals of Pay Channels.

“Subscriber” means the end viewers/individual households who receive Cable T.V. Signal through the Affiliate. For removal of doubts it is clarified that each television set connected to a set top box in a single dwelling would constitute a subscriber.

“Territory” means the area of operations of the Affiliate and the multi system operator (MSO).

“Trunk Line” means the coaxial/optic fiber cable network and other allied equipment such as receiver

nodes, amplifiers, splitters etc. owned and installed by the multi system operator (MSO) or its associate companies for the purpose of transmitting Cable T.V. Signal to various affiliates till the receiving end of various affiliates, including the Affiliate, to enable them to re-transmit the Cable T.V. Signal to their respective subscribers.

B. INTERPRETATION

In this Agreement, unless the context otherwise requires:

(a) Any reference to the singular in the Agreement shall include a reference to the plural and vice versa and words importing one gender only shall include all other genders unless the context otherwise requires.

(b) The word “person” shall include individuals, corporations, partnerships, association of persons and any other entities;

(c) Any references to Article, clauses, sub-clauses, appendices, annexure and schedules are references to Articles, clauses, sub-clauses, appendices, annexure and schedules to the Agreement unless the context otherwise expressly provides;

(e) References to a “month” are to a calendar month;

(f) Headings and titles are for ease of reference only and shall not affect the interpretation of this agreement and in no way be read to give a construction not harmonious with the interpretation of various clauses of this agreement done otherwise independent of the title.

(g) Any reference to law, regulation, statutory provision, order, guideline, policy, etc, includes references to such law or regulation or provision, order, guideline, policy, etc., as modified, codified, amended or re-enacted from time to time.

APPENDIX

EXPLANATORY MEMORANDUM

Hon’ble High Court of Delhi on 10.3.2006 had directed that Conditional Access System (CAS) be implemented in the notified areas of three Metros of Mumbai, Kolkata and Delhi on a petition filed by a group of multi system operators (MSOs). During the consequent meetings that the Government of India had organized to discuss the manner of implementation of CAS, the Stakeholders had given a suggestion that there should be standard forms of interconnection agreement between

broadcasters & multi system operators (MSOs) and between multi system operators (MSOs) & Cable Operators, and that the Authority should formulate the same in consultation with stakeholders. Accordingly, the Authority had placed on the website a draft Standard Agreement for Interconnection for CAS areas between broadcasters and multi system operators (MSOs) and between multi system operators (MSOs) and cable operators on 12.6.2006.

2. The Authority received responses from some of the stakeholders. Based on the comments received, the Authority held further discussions with stakeholders. Discussions were held with the broadcasters on 20th July, 2006 and on 10th August, 2006; with the multi system operators (MSOs) on 29th June, 2006 and on 18th August 2006; with the cable operators on 3rd July, 2006; with all the stakeholders who had responded on 17th July, 2006 and with the consumer groups on 19th August, 2006. The MSO Alliance, through their letter dated 31.7.2006 had also put forth their views regarding revenue sharing. In the meanwhile, the Hon'ble High Court of Delhi had passed an order on July 20, 2006 according to which CAS has to be implemented in the notified areas of the three cities of Delhi, Mumbai and Kolkata by December 31, 2006. In accordance with these orders, the Government of India has issued a notification on 31.7.2006 according to which CAS has been mandated in the notified areas of these 3 cities by December 31, 2006. Accordingly, the Authority has, after carefully considering the feedback received from the stakeholders, finalised the standard interconnection agreements between broadcasters and multi system operators (MSOs) and between multi system operators (MSOs) and cable operators. These standard interconnection agreements are being mandated through the present amendment to the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 (13 of 2004) dated 10th December, 2004. The objective of having standard interconnection agreements is to ensure that implementation of CAS does not get delayed on account of inability of service providers to enter into mutually acceptable interconnection agreements through negotiation. Therefore, the standard interconnection agreements are being provided for the areas

notified by the Central Government vide notification no. S.O. 1231(E) dated 31.7.2006 only.

Standard Interconnection Agreements

3. As already stated in para 2 above, the standard terms and conditions for interconnection agreements between broadcasters and multi system operators (MSOs) on the one hand and between multi system operators (MSOs) and cable operators on the other, are being prescribed through this Regulation. The important issues raised by the stakeholders on various provisions of the draft standard interconnection agreements during the consultation process, along with the Authority's comments thereon, are set out below.

Some stakeholders have made suggestions regarding changes in the draft standard forms by highlighting the changes proposed by them in track change mode on the draft posted by the Authority on its website. Such suggestions are not listed in this memorandum, but the suggestions have been duly considered and, where accepted, appropriate changes have been made in the standard interconnection agreements. The details of the changes proposed in the MSO-CO draft standard interconnection agreements have not been discussed in detail here since they were all in track change mode. However, these were considered in detail and changes made wherever necessary.

A. Clauses where changes have been made in the standard interconnection agreement between broadcaster and multi system operators (MSOs) in CAS areas

(Comments of stakeholders in Bold – the Authority's comments in Italics)

1. Once there is CAS, the question of area of operation of a multi system operator (MSO) or a cable operator becomes redundant since the number of subscribers will be known transparently through the Subscriber Management System. Accordingly the area of operation should be allowed to cover the entire area of a city notified by the Government.

This position is correct. In the interests of consumer choice and competition multi system operators (MSOs) should be free to market their services in any part of the notified area. Accordingly the draft has been changed to reflect this.(Clause 1.2)

2. The provisions in Clauses 3.2.4 to 3.2.7 which provide for furnishing/replenishing/ forfeiture of Security deposit have

been objected to. The objection is that this is not the current industry practice.

It is a fact that the current practice is to provide credit and not to ask for a security deposit. Since these clauses involve a departure from the current industry practice, they are being deleted.

3. Clause 4.3.2 needs to be changed to provide for payment after 21 days of the relevant billing cycle if no credit is being provided.

This is a reasonable request and has, therefore, been accepted and necessary changes made in this clause and corresponding changes in clause 3.1.4 & 3.1.5.

4. The provisions of clauses 4.4.5 and 6.3 need to be recast since the payment of music rights, if any, is the responsibility of the broadcaster.

This is a valid point. At present the broadcasters are paying music right royalties. As and when this eventuality arises this would have to be commercially negotiated between the parties. There is no need to provide for it now and accordingly the relevant portions of these two clauses have been deleted.

5. The provisions of Clause 4 define the rights and obligations of the parties. It has been pointed out that while there are obligations of the multi system operators (MSOs) there are no obligations of the broadcasters in this clause. Certain additions have been suggested to set right this position.

Some of the obligations of the broadcasters have already been laid out elsewhere in the draft especially in Clause 7. There is no need for duplicating these under clause 4. Certain additions have, however, been made broadly on the suggestions in clause 4.13. In addition, the provision for termination has been made on a reciprocal basis in clause 7.7

6. The provisions of clause 4.4.6 (f) and (g) should be deleted/modified since the cable operator is not an agent of the broadcaster but another principal.

This suggestion is broadly acceptable. However the multi system operator (MSO) is obliged to ensure the protection of the IPR through all means at his disposal including switching off any offending cable operator. To make the position clear, the wordings of both the sub clauses have been modified.

7. Clauses 4.7 (a),(b) and (d) should be deleted since the

marketing and packaging is the responsibility of the multi system operators (MSOs). It has also been pointed out that each channel would claim preferential treatment and this is not possible.

This is a commercial matter and depending on the terms agreed some channels could be placed in the basic tier which is the most common one. Clauses 4.7 (a), (b) and (d) are being deleted.

8. Clause 4.11 should be amended to provide for joint action by the broadcaster and the multi system operator (MSO) to prevent piracy. Further, the need for proof of residence for identifying subscribers is not necessary.

Provision of joint action would dilute the responsibility of the multi system operator (MSO) and could lead to disputes as to who has to take action in a particular case. The need for proof of residence is unnecessary and those sub clauses have therefore been done away with.

9. In clause 12.1.4.3 the requirement for an affidavit giving the list of subscribers should be deleted.

This has been done and certain other minor changes made in this clause

10. Reference to Carriage Fee should be deleted in Part III of Article 3.

Since there is no sharing of Carriage Fee this has been deleted.

11. The need to harmonise the provisions of clause 4.7 (c) with

Rule 9 of the Cable Rules has also been brought out.

Rule 9 has since been changed. The Regulation has also been amended to specifically provide that any law, rule, regulation, direction or order of the Government, TDSAT, TRAI or any other Regulatory Authority shall prevail over the provisions of the standard interconnection agreements.

12. The provision of 7days in clause 2.4 to report changes in the number of subscribers has been considered too short by the multi system operators (MSOs).

It would be sufficient if these details are provided at the time of making payment for which 21 days have been given. The clause has been changed accordingly.

13. Clause 12.1.1 needs to be changed to bring it in conformity with the Interconnection Regulations.

Explanation for point no. 11 above applies here also.

14. Clause 4.4.6 (c). Whereas addresses of subscribers with set top box may be possible, obtaining the “complete network map” of the operator may not be possible. Only areas need be specified as hithertofore.

Accepted and necessary changes made.

15. Clause 4.4.8. Subscribers may opt for set top boxes with PVR facilities which may have storage facilities. Multi system operator (MSO) cannot monitor what the subscriber does with the content.

Changes made in 4.4.8. to reflect this concern.

16. Clause 4.12.2. “OSD should support minimum of 78 characters”. Generally, the smart card number and/or the set top box number is displayed, which is sufficient to track a set top box. This may be less than 78 characters.

Deleted for the present and could be reviewed later.

17. Clause 4.3.6 should be deleted as the multi system operator (MSO) cannot be made liable for consequential damages arising out of loss of revenue from advertising etc due to the default of the multi system operator (MSO).

This was to be read along with clause 4.3.7 which placed a reciprocal liability on the broadcaster. Both these clauses, namely, 4.3.6 & 4.3.7 have been deleted.

18. Details of listing of the channels on the EPG is the prerogative of the multi system operator (MSO) and no permission should be required from the broadcaster for this.

Necessary changes have been made.

Apart from these changes, there have also been certain other changes aimed at bringing about greater clarity in the provisions of the standard interconnection agreements as well as changes which are of a purely drafting nature. The rate of interest has been made uniform for all cases of default at 15% to ensure uniformity and also to bring in discipline in prompt payments by all concerned.

B. Comments on changes suggested in standard interconnection agreement between broadcasters and multi system operators (MSOs) in CAS areas, but where these changes have not been accepted.

1. Digital set top boxes should be mandatory since analogue set top boxes are not credible.

Since the BIS standards allow analogue set top boxes these cannot be disallowed.

2. The term of the contract should be for 36 months and only the commercial terms should be reopened after 12 months. There should be no room for mutually agreed terms.

The purpose behind prescribing the standard interconnection agreements is to ensure that CAS implementation is not held up for lack of an agreement. If parties can mutually arrive at contracts that are more suitable for them, then there should not be any opposition to the same. Accordingly, the validity of the contract as per the standard interconnection agreement has been kept only at 12 months.

3. The agreement should also cover other modes of distribution also specially HITS.

The broad features of this agreement can be applied to HITS also. However HITS can also reach the entire country and therefore there may be need for other clauses to protect the IPR of the broadcasters. Those operators who want to use HITS should use this standard interconnection agreement and finalise the same with the broadcasters with whatever changes may be necessary for HITS. In case of any difficulty they can come back to the Authority for issue of appropriate directions or regulations.

4. The agreement should be aimed at providing effective interconnection. Disconnection should not be allowed except for serious breach of agreement causing irreparable harm,

The entire agreement is subject to the provisions of the Interconnection Regulations which also provide for a procedure for disconnection. The regulations will help in ensuring that disconnection is done only in exceptional cases and even then the affected party is given enough time to respond and react.

5. Clause 4.2.2. should be deleted as it casts a Must Carry obligation which has not been mandated by the Interconnection Regulations.

The Clause does not require any must carry obligation. There is only an obligation to abide by Interconnection Regulation

issued by the Authority. Deletion of this clause is not warranted.

6. There should be a clause prohibiting any minimum subscription period for subscribers. This is particularly an issue with the Sports Channels.

This cannot be done since certain broadcasters specially Sports channels may have high demand only during certain months or even days. Their costs for the other periods also has to be picked up. Broadcasters could of course have different and higher rates for subscription for shorter periods along with the normal rate for annual or any other periodicity of contract.

7. Clause 5.2. needs to be amended to recognize the right of the multi system operator (MSO) to supply signals to the commercial subscribers.

No change is required since the present position is in conformity with the order of the TDSAT dated January 17th 2006 and the Authority's Tariff orders dated March 7th and 24th, 2006. The Authority has also impleaded itself in this matter which is pending in the Supreme Court. Changes, if any, in this clause can be considered only after a decision is taken in the matter by the Supreme Court or permission is given to the Authority to finalise its tariff order for commercial subscribers.

8. Clause 12.12 which provides for termination by either party after giving notice of one month is fraught with danger as this could lead to broadcasters terminating the contract even when an multi system operator (MSO) has fulfilled its contract.

The circumstances under which the agreement can be terminated have been spelt out. Moreover, the Interconnection Regulations also provide for notice to be given before disconnection. Therefore, there cannot be any arbitrary termination of agreement.

9. Clause 2.8 & 4.2.3. The multi system operator's (MSO's) business model may include bulk issue of set top boxes to an operator for the purpose of speedy implementation. In this case only the area can be given and not each dwelling unit.

The operator should be asked to provide these details.

Clause 4.2.3. Covert fingerprinting NOT understood and also not available.

Covert fingerprinting is a well established technology and is already in use in India. There is no need to delete this requirement.

10. Clause 4.4.6 (g). Piracy – “subscriber shall not distribute”. A subscriber may choose to have only one set top box with three TVs in the same house. The audio-video signal may be distributed to all three TVs where the same channel is seen by all TVs in the house.

The agreement states that the subscriber should not distribute to others – there is no need for any change.

11. Clause 4.4.7. Affiliate to “provide updated piracy report”. The multi system operator (MSO) does not have the wherewithal to provide this.

The multi system operator (MSO) must provide the report within whatever is the means available to it.

12. Clause 4.11. Anti piracy is the broadcaster’s requirement. It is he who should report instances of piracy, based on which the multi system operator (MSO) will take appropriate action. The procedure for this could be laid out.

The multi system operator (MSO) also has responsibility and the agreement sets this out.

13. Clause 4.12.3.1. “Channel’s fingerprinting should pass through”. This has no utility. For example, the entire network in a metro is fed from a single head-end (thus single IRD). The channel’s fingerprint will point to the head-end alone. On the other hand, the multi system operator’s (MSO’s) fingerprint will indicate the set top box from which the signal is being “stolen”, which can then be switched off and investigations carried out.

There is no objection to this by the broadcasters so they perceive some utility in this clause. Therefore this should remain for the present.

14. Clause 2.6: Would like to include: Or mutually agreed IRDs, as permissible. This is to reduce cost overheads.

This can be done mutually if agreed to by a broadcaster. In the standard interconnection agreement there is no need for change.

15. Clause 2.7: BIS specification for set top box is a separate matter. Need not be linked here to make this regulation

simple.

This is to ensure that BIS specifications are followed. This will have to be done and there is no harm if this is also put in the agreement.

16. Clause 3.1.2: There should be no increase or adjustments for subsequent increase in charges or taxes/ levies in respect of advance payments made under quarterly/ half yearly/ annual advance subscription agreements.

Notice for revision of tariff will either be governed by the tariff order or through mutual negotiation. This clause does not need change in either case.

17. Clause 3.1.3: Some percentage of revenue should be kept aside for Telecom type of Universal Service Fund, else the same would later get extracted from core multi system operator (MSO) margins

There is no USO fund for Cable TV and therefore this suggestion cannot be accepted.

18. Clause 3.1.7 & 3.2.2: Similar bank guarantee/ escrow/ deposit by broadcaster with regulator in case broadcasters cut-off without due notice & TDSAT ruling proves broadcasters wrong, as a rein / restraint provisioning to protect advance paid subscribers & pay for damages suits from advance paid Quarterly/ Yearly subscribers.

Separately the provisions relating to security deposit to be provided by the multi system operator (MSO) to the broadcaster have been deleted. Accordingly, the issue has been addressed.

19. Clause 3.2.1: We need BIS specifications for broadcasters IRDs too

This cannot be done within the ambit of this agreement.

20. Clause 3.2.1.b & 3.2.3: Charges should be mutually agreed

& beyond purview of these recommendations. This recommendation should only be a guideline that such charges should be explicitly defined in the agreement, as a checklist.

This will have to fixed by each broadcaster as per current industry practice

21. Clause 4.3.6: Similar adjustments to be applied even for revenue share percentages for loss days/dates

Clause 4.3.7: Similar Interest penalty for reimbursing

subscribers/affiliate/ multi system operator (MSO) too @ SBI prime lending rate.

The suggestion is no longer relevant as both 4.3.6 and 4.3.7 have been deleted.

22. Clause 4.4.3/4: Similar norms & standards to be defined for received signal/ sound 'leveled across ADs' quality for input/ received signal quality of broadcaster to multi system operator (MSO)/ affiliate's central Headend. There should also be provision for related penalties & damages to re-imburse subscribers with interest, penalty charges.

The obligations are on both parties and the agreement does not seem to require any change

23. Clause 4.4.5: Copyright, etc monitoring onus cannot be solely on multi system operator (MSO). This is not multi system operators (MSOs) focus/ line of core business. The role of multi system operator (MSO) is just a pass through/ distribution operation. Already laid rules/orders to be interlinked here

The obligations in this clause are very general and cannot be regarded as unreasonable.

24. Article 24: Similar Force Majeures covering/ protecting Affiliate/ multi system operator (MSO) for cable cut by third part agency, infrastructure road expansion/digging work, flooding, riot, fire, etc. may be included.

The obligations are on both parties and the provisions of the Article are couched in general terms. It is not necessary to list out all possible Force Majeure events in an exhaustive manner.

25. Concerns on distribution only through Cable & Fiber: How is the regulator to address level playing field & prevent wresting of advantages to new convergent license entrants. Inter city growth through MAN/broadband is restrained – some/many multi system operators (MSOs) already using these means to circumvent HITS & required by multi system operator (MSO) to use cheaper spread/ expansion means using third party (heterogeneous) paths/ networks/ shared-access with emerging Tech breakthroughs permitting cheaper access vide the listed prohibited means of wire-less/ broadband/ HIT/ IP/ Internet means of expansion & distribution

This is beyond the scope of this document

26. Subscribers should pay for the number of days that they got the service– thus if someone disconnects on the 15th day of a month he should pay only half the amount fixed for a month.

This is not an interconnection issue between the two parties and therefore should not form part of interconnection agreements.

4. Revenue Share Arrangement:

4.1 Along with the draft interconnection agreements for CAS areas, the Chairman's letter to the stakeholders had also raised certain issues on the arrangements for revenue sharing. In response to these questions, the multi system operators (MSOs) had made certain proposals for sharing of revenue. According to these the revenue from the pay channels is to be shared between the broadcasters, multi system operators (MSOs) and the cable operators. According to these proposals, the proposed share of the broadcasters ranges from 35% to 50%, the proposed share of the multi system operators (MSOs) ranges from 25% to 35%, and the proposed share of the cable operators ranges from 20% to 30%. On behalf of the cable operators, the Cable Operators Federation of India (COFI) had proposed a revenue share split of 50% for the broadcasters and 25% each for the cable operators and multi system operators (MSOs). While some multi system operators (MSOs) wanted sharing of the charges for the basic service tier in the initial response, others did not favour such sharing. The draft agreement put out by the Authority also did not envisage any sharing either of the basic service tier charges or the carriage charges. Subsequently, during the interaction with the stakeholders, most of the multi system operators (MSOs) preferred that there should be no sharing of either the basic service tier or the carriage charges. The cable operators also agreed with this approach. It was, however, made clear on behalf of the cable operators that if there is to be any sharing of revenue of the basic service tier, then there should be also sharing of the carriage fee. COFI also revised their revenue sharing formula which now provided for the share of the pay channels revenue at 30% for the broadcasters, 30% for the multi system operators (MSOs) and 40% for the cable operators. The multi system operators (MSOs) also later revised their stand, vide their letter

dated 31.7.2006, and wanted a share of the basic service tier charges as well as 100% of the carriage charges.

4.2 The Authority has considered these different proposals and also the practice in Chennai. The share of the broadcasters in Chennai varies from 42.5% to 65% for pay channels. There is no standard formulation of the share between the multi system operators (MSOs) and the cable operators. In contrast with Chennai, the markets in Delhi, Mumbai and Kolkata are expected to have a much higher penetration of set top boxes. Accordingly, the share of the broadcasters for pay channels has been kept at 45% which is in the lower range of the Chennai experience.

4.3 Sharing of the basic service tier between the cable operators and the multi system operators (MSOs) could lead to frequent disputes since there is no transparent way of knowing the total subscriber base for subscribers who do not buy the set top boxes. Similarly, there could be disputes on the total carriage charges, the method of apportioning this amount to the areas notified for CAS, apart from the principles for sharing. Accordingly, it would be simpler to allow for no revenue sharing for both these components, i.e., basic service tier charges and the carriage charges. On this principle, the share for multi system operators (MSOs) in the pay channels should also be higher than the share of the cable operators and, therefore, this is being kept at 30% for the multi system operators (MSOs) and 25% for the cable operators.

4.4 The broadcasters have not given any proposal but have indicated that the Regulator should not standardize a commercial transaction. The Authority has undertaken the present exercise only with a view to ensuring that implementation of CAS does not get held up for want of commercial agreements between the service providers, which may take its own time. Accordingly, freedom has been given to the service providers to enter into interconnection agreements that are different from the terms indicated in the standard agreement. It is also being provided that the standard agreement would be valid for only one year so that there is enough time for service providers to work out their mutually acceptable long term arrangements.

4.5 The broadcasters have taken a plea that these are commercial arrangements and, therefore, should not be subject to regulation.

This plea cannot be accepted since it is well known that agreements can take months to be negotiated. Adoption of such a process will unduly delay the implementation of CAS. Accordingly what has been decided by the Authority is to keep this agreement for a short period of only 12 months. Even in this period, the service provider can enter into mutually acceptable agreements which are different from the standard agreements. It has been specifically provided in the standard interconnection agreement between broadcasters and multi system operators (MSOs) through clause 12.1.1 that the standard interconnection agreement shall automatically terminate before the expiry of completion of its term if the parties execute another interconnection agreement on the same subject. Thus, the parties are free to enter into mutually acceptable interconnection agreements which may differ from the standard interconnection agreement even after signing the standard interconnection agreement. After a period of 12 months the agreements can be suitably revised and if there is any need for issue of a regulation at that stage the same can be considered then. It should also be noted that in some cases the broadcasters have reported that they have been doing business in the CAS areas for more than two years without any written agreement. This is clearly not a desirable way of doing business and could lead to disputes and disruption of services. One of the objectives of CAS is to introduce systems and transparency that would help reduce disputes and avoid disruption in service so that the subscribers are not affected. Accordingly the Authority is of the view that Standard agreements including the revenue sharing arrangements must be regulated at least in the initial stages of the implementation of CAS. Accordingly, these revenue shares have been specified in the standard interconnection agreements being prescribed.

5. Minimum Subscriber Guarantee

In accordance with the decisions taken by the Authority and contained in the recommendations on issues relating to broadcasting and distribution of TV channel of October 1st, 2004 (paragraph 6.30) a clause has been added in the Interconnection Regulation prohibiting minimum subscriber guarantee where the distribution of signals is through an addressable system. In the draft this had not been specifically made applicable to all

addressable platforms. It is now being made clear so as to be applicable to all addressable platforms including DTH, IPTV and such like and is also in accordance with the rationale of the earlier decision of the Authority as contained in the aforesaid recommendations. Some stakeholders have objected to such a clause on the ground that this would adversely affect their commercial freedom and that such issues should not be regulated or standardized. The reasons for imposing this restriction have been spelt out in the aforesaid recommendations in para 6.26 and the same are reiterated. Incentives for higher performance can always be given through volume discounting but the imposition of a minimum subscriber guarantee can defeat the introduction of new addressable platforms. This would adversely affect the subscribers who can get choice in an addressable platform. It would also adversely affect the industry which is plagued by disputes on subscriber base in the current non addressable regime: with addressability the scope for such disputes would become negligible if not vanish totally. Thus, it is in no one's interest to put any hurdle in the way of the introduction of such addressability. Accordingly, such a regulation is necessary to speed up the very slow introduction of addressability in the market. The TDSAT in its judgment in Petition No. 136© dated July 14 2006 (ASC Enterprises vs. Star India) has also taken a similar view.

Accordingly, the Authority sees no reason to change its earlier view and has decided that there should be such a prohibition of minimum guarantee clauses in all interconnection agreements where addressable systems are in place. The definition of addressable systems has been changed to cover all addressable platforms.
