

EXECUTION COPY

CONDITIONAL ACCESS LICENSE AND SERVICES AGREEMENT

by and between

DIRECTV OPERATIONS, INC.

and

NDS LIMITED

CASE NO.

SA CV 03-950 DOC (JTLx)

ECHOSTAR SATELLITE CORP., et al.,

vs.

NDS GROUP PLC, et al

PLAINTIFF'S EXHIBIT 1540

DATE _____ IDEN.

DATE _____ EVID.

BY _____
Deputy Clerk

Proprietary notice: *The information contained in this Agreement is provided herein, may not be disclosed or provided to any third Person permission.*

HIGHLY CONFIDENTIAL

Case No. SA CV03-950 DOC (JTL)

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August 13, 1999 AD

This **CONDITIONAL ACCESS LICENSE AND SERVICES AGREEMENT** (this "Agreement"), is made effective as of ~~July 1, 1999~~, and is entered into by and among **DIRECTV Operations, Inc.**, a Delaware corporation having its principal offices at 2230 East Imperial Highway, El Segundo, California, U.S.A. ("DIRECTV"), and **NDS Limited**, an English company (Registered No. 3080780) having its principal offices at 1 Heathrow Boulevard, 286 Bath Road, West Drayton Middlesex, UB7 ODQ, England ("Contractor"). DIRECTV and Contractor are hereinafter individually referred to as a "Party" and collectively as the "Parties."

RECITALS

- A. DIRECTV is a provider of a direct-to-home satellite broadcast service that distributes video, audio, data, information and entertainment programming in the United States.
- B. Contractor is a provider of broadcast and conditional access and addressing systems for television service providers.
- C. Effective as of February 2, 1992, DIRECTV's predecessor in interest, Hughes Communications Galaxy, Inc., entered into three agreements with Contractor, namely, (i) the Conditional Access Management Center Services Agreement (the "CAMC Agreement"), (ii) Conditional Access Segment Developer Agreement, and (iii) Conditional Access Security Services Agreement (collectively as heretofore amended, the "HCG Agreements"). Pursuant to the HCG Agreements, Contractor has provided DIRECTV with services relating to, among other things, the design and development of a portion of the conditional access segment of DIRECTV's service, the development and implementation of conditional access software and maintenance of such software, the operation of DIRECTV's conditional access management center and the development and distribution of conditional access modules ("CAMs"), which are the subscriber access cards used in integrated receiver/decoders ("IRDs"), and Contractor has granted DIRECTV a license pursuant to its terms under certain of Contractor's technology and intellectual property rights related to the portion of the conditional access segment of DIRECTV's service supplied by Contractor.
- D. On June 1, 1996, the Parties also entered into a DBS Services Agreement pursuant to which, among other things, Contractor provided and distributed units of a second-generation CAM ("P2 CAM").
- E. On April 1, 1998, DIRECTV and Contractor executed an amendment to the February 2, 1992 Conditional Access Security Services Agreement regarding the next generation CAM ("P3 CAM").
- F. The February 2, 1992 Conditional Access Security Services Agreement was further amended by a letter dated April 1, 1998 concerning a change in the Trigger Date as defined therein and certain price and quantity terms.

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G. On September 9, 1998, DIRECTV, Inc. (an Affiliate of DIRECTV) and Contractor executed a DSS Fulfillment and Card Processing Vendor Services Agreement (the "Fulfillment Vendor Agreement"), pursuant to which Contractor has agreed to distribute P3 CAMs.

H. Separately, Contractor is the provider of conditional access services and is the licensor of certain technology and intellectual property rights to DIRECTV Japan, Inc. and DIRECTV Galaxy Latin America, which are Affiliates of DIRECTV, pursuant to the terms of the respective agreements between Contractor and these entities.

I. DIRECTV desires to continue purchasing and Contractor desires to continue providing, pursuant to the terms and subject to the conditions set forth in this Agreement, conditional access goods and services for the DIRECTV Service.

J. As part of this Agreement, the Parties intend to amend and to extend the CAMC Agreement, by which Contractor will provide certain management services for operation of DIRECTV's conditional access management centers and other facilities of DIRECTV until DIRECTV assumes responsibility for such services, in accordance with Article 8 herein.

K. Contractor has entered into agreements with each of the manufacturers authorized by DIRECTV (the "Authorized Manufacturers") to make and sell IRDs for use by DIRECTV's subscribers. Those agreements grant the Authorized Manufacturers a license to Contractor's technology and intellectual property rights necessary for them to make IRDs that will perform the conditional access functions required by the portion of the conditional access segment provided by Contractor for DIRECTV's service and include terms for the sale of CAMs by Contractor to the Authorized Manufacturers for use in the IRDs and obligations for testing of the IRDs. As of the Effective Date of this Agreement, Contractor has such agreements with the following Authorized Manufacturers: Hughes Network Systems, Inc., Sony corporation, Thomson Consumer Electronics, Inc., Adaptec, Inc., Comstream Corporation, Daewoo Electronics Company Limited, Uniden America Corporation, Panasonic AVC American Laboratories, Inc., Philips Digital Video Systems (California), Philips Business Electronics B.V. (Netherlands), Samsung Information Systems America, Toshiba America Electronics, Zenith Electronics Corporation, TiVo Inc., WebTV Networks Inc. It is expected that Contractor will enter into agreements with additional Authorized Manufacturers.

L. The Parties now desire to terminate and cancel without penalty all of the HCG Agreements and all other prior agreements between Contractor and DIRECTV relating to the subject matter hereof except for (i) such terms of the HCG Agreements that would survive as expressly provided in the relevant agreements; except for the transition obligations set forth in Sections 13.1 and 13.2 of that certain Conditional Access Security Agreement effective as of February 2, 1992 and except for the license under Section 6.4 and Section 8.2 of that certain Conditional Access Segment Developer Agreement effective as of 2nd February, 1992; (ii) such terms that the Parties explicitly identify herein as surviving, (iii) the CAMC Agreement as

amended and extended herein, and (iv) the Fulfillment Vendor Agreement (which shall remain in effect), and to supercede and replace them with this Agreement.

M. The Parties also intend that henceforth DIRECTV, rather than Contractor, sell CAMs to the Authorized Manufacturers. Accordingly, simultaneously with the execution of this Agreement, DIRECTV intends to enter into new agreements with the Authorized Manufacturers which provide that DIRECTV will procure CAMs from Contractor and sell them to the Authorized Manufacturers. Effective as of the Effective Date, Contractor will use its commercially reasonable efforts to make amendments to its agreements or enter into new agreements with the Authorized Manufacturers with the intent that such amended or new agreements are consistent herewith.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and for other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, DIRECTV and Contractor hereby mutually agree as follows:

1. **Definitions.**

As used in this Agreement, the terms listed below shall have the following meanings:

"*Affiliate*" means, as to any Person, any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person. For purposes of this definition, the term "control" of (including the terms "controlling," "controlled by," "under common control with" and "Controlling Interest in") a Person means the possession, direct or indirect, of the power to vote 50% or more of the Voting Interests of such Person or to direct or cause the direction of the general management and policies of such Person, whether through the ownership of Voting Interests, by contract or otherwise. For purposes of this Agreement, each of DIRECTV Japan, Inc. and DIRECTV Galaxy Latin America is acknowledged to be an Affiliate of DIRECTV as of the Effective Date.

"*Authorized Manufacturer*" means any Person identified in writing from time to time by DIRECTV to Contractor as an "Authorized Manufacturer" of IRDs for use in the DIRECTV Service.

"*Breach*," used either as a verb or noun, has the meaning ascribed to it in Section 11.1 of this Agreement.

"*Business Day*" means a day of the year on which banks are not required or authorized by law to close in California.

"**CAM**" means a conditional access module, which is a microelectronic card for insertion into an IRD and which receives and stores viewing entitlement data from DIRECTV's Customer Service Center and CAMC and the pay-per-view purchase history of a Subscriber, determines whether a Subscriber is entitled to receive and view a program broadcast as part of the DIRECTV Service, and provides keys for decryption, the functionality, features and attributes of which are more particularly described in the applicable specifications.

"**CAMC**" means the Conditional Access Management Center(s) used by DIRECTV in the DIRECTV Service, including those at the Castle Rock Broadcast Center, the Los Angeles Broadcast Center, DIRECTV's corporate offices known as Building R8 and any other Conditional Access Management Center maintained now or hereafter by DIRECTV.

"**CAM Changeover**" means any replacement of CAMs (i) in response to a Security Breach or (ii) as a result of the Introduction of a new generation of CAMs.

"**CAM Development Period**" means the period specified in Section 4.5.4 subsequent to the Parties agreeing on the specifications for the relevant new generation of CAMs to be developed.

"**CAM Developmental Milestone Fees**" means the CAM Developmental Milestone Fees set forth in *Exhibit 9.1*.

"**CAM Replacement Plan**" has the meaning ascribed to it in Section 8.10.1.

"**CAM Testing Period**" means the six-month (6-month) period specified in Section 4.5.5.1.

"**Change In Control**" means any of the following: (a) the acquisition after the Effective Date, by a single Person or group of Persons that are Affiliates, in a single transaction or series of transactions, of a Controlling Interest in a Person having beneficial ownership of a Controlling Interest in a Party; or (b) any other acquisition of a Controlling Interest in a Party (or its parents or ultimate parents which beneficially own a Controlling Interest in the Party) or of substantially all of the assets of a Party (which for Contractor shall mean the assets pertaining to the provision of conditional access services), whether by merger, stock purchase, asset purchase, exchange, reorganization, consolidation, liquidation, dissolution or otherwise.

"**Change Order**" has the meaning ascribed to it in Section 2.5.1.

"**Change Order Work**" means any work which is performed by Contractor upon request by DIRECTV pursuant to a Change Order.

"**Change Request**" has the meaning ascribed to it in Section 2.5.1.

"Competing Person of Contractor" means any Person (other than Contractor and its Affiliates) who is a full-service provider of complete conditional access systems including for installation and use at the subscriber location, in the distribution of television programming service via direct-to-home services, cable or broadband distribution channels, excluding DIRECTV and its Affiliates to the extent that they fall within the foregoing definition as a result of the provision of systems or services to DIRECTV or its Affiliates.

"Competing Person of DIRECTV" means any Person (other than DIRECTV and its Affiliates) who directly or indirectly, in the Territory, (a) engages in the delivery of multichannel video and audio services to paying subscribers viewed by a television and (b) derives at least ten percent (10%) of its revenues from such business in the U.S.A. or where the Territory is extended to include Canada or Mexico, in any country of the Territory but in any event not including (i) video, audio or data services delivered via terrestrial broadcast; (ii) the development, production, ownership, or supply to distribution systems of programming content; (iii) video, audio or data services intended for personal computers or smart-phones or personal communicators; (iv) Sky Latin America LLC and its affiliates as of the date hereof (which shall be deemed to include Sky Latin America Partners, Netsat Servicios Ltda., Innova S. de R.L. Corporation Novavision S. de R.L., Sky Multi-Country Partners, Sky Colombia S.A., Sky Chile Television Directa al Hogar Ltda. y Compania en Comandita par Acciones and Sky Argentina S.C.A); (v) Cyberstar; (vi) Fox Television Stations, Inc., Fox Broadcasting Company or its local broadcast network affiliates including television stations owned and operated by Fox Television Stations, Inc.; and (vii) for the avoidance of doubt, the delivery or broadcasting of data or data services which does not include television programming. For purposes of this Agreement, "multichannel" shall mean any television distribution system with 20 or more cable network channels, and in the case of cable distribution, such systems shall also have a minimum of five million (5,000,000) subscribers and in respect of any other distribution system shall have a minimum of two million (2,000,000) subscribers.

"Conditional Access Segment" means the conditional access segment of the DIRECTV Service that, among other things, (i) controls access by Subscribers to the DIRECTV Service, (ii) provides encryption security for the DIRECTV Service, and (iii) provides the means by which DIRECTV is able to address defined messages or services to individual Subscribers, CAMs, or defined groups of Subscribers and CAMs. The Conditional Access Segment includes the CAMC, the conditional access uplink system, the call-back server, the Licensed Technology, Verifier, signature servers and the CAMs used in the DIRECTV Service.

"Conditional Access Services" mean the services including the supply of CAMs required by DIRECTV to operate the portion of the Conditional Access Segment of the DIRECTV Service supplied or to be supplied by Contractor as more particularly described in this Agreement and in the Statement of Work attached hereto as *Exhibit 2.2*.

"Contract Year" means each of the consecutive 12-month periods during the Term with the first of such periods starting on the Effective Date.

"Contractor Documentation" means all documentation and materials related to the Licensed Technology, including all installation guides, user guides, manuals, specifications and other written materials, in printed or machine-readable form, including Source Code, now existing or hereafter created.

"Contractor's IPR" means all of the Intellectual Property Rights owned by or licensed to Contractor or which Contractor hereafter acquires by ownership or license and which relate to the Licensed Technology in accordance with this Agreement, excluding any right relating to the IPPV Technology.

"Controlling Interest" shall have the meaning ascribed in the definition of Affiliate.

"Controlling Person" means a Person who holds a Controlling Interest in the Person or Party in question.

"Cure," used as a verb or noun, occurs when Contractor has implemented adequate measures such that any Pirate device causing a Security Breach can no longer be used to effect a single Security Failure during a continuous period of at least twenty-four (24) hours or such that an identified Security Hole cannot be utilized in the future by a Pirate to effect a Security Breach.

"Customer Service Center" means any customer service center reasonably designated by DIRECTV.

"Derivative Works" means (i) for expressions subject to copyright or mask work right protection, any work which as a whole, represents an original work of authorship, and is based upon one or more pre-existing works, such as a revision, modification, translation, abridgment, condensation, expansion, collection, compilation or any other form in which such pre-existing works may be recast, transformed or adapted, (ii) for patentable subject, any adaptation, subset, addition, improvement or combination of such matter, and (iii) for material, information, expressions and things subject to trade secret protection, any new material, information, expressions or things relating thereto and derived therefrom, including new material, information, expressions or things which may be protectable by copyright, patent or other proprietary rights, and, with respect to each of the above, the preparation, use and/or distribution of which, in the absence of this Agreement or other authorization from the owner, would constitute infringement or misappropriation under applicable Law.

"DIRECTV Satellite" means any satellite used by DIRECTV in providing the DIRECTV Service.

"DIRECTV Service" means the direct-to-home services now or hereafter provided by DIRECTV or its Affiliates in the Territory, including the distribution and delivery of video, audio, data, information and entertainment programs, events and signals.

"DIRECTV Technology" means all technology, software, trade secrets, know-how and Proprietary Information of DIRECTV relating to the DIRECTV Service and which is covered by DIRECTV's or any Predecessor-in-Interest of DIRECTV's Intellectual Property Rights.

"Disclosing Party" means the Party which discloses its Proprietary Information.

"Distribution Pipeline" means, at any given point in time, all CAMs that have been (i) ordered, completed and are ready for shipment, or (ii) dispatched by Contractor to DIRECTV or the Authorized Manufacturers but not yet authorized by the CAMC.

"ECM" means an electronic countermeasure designed by Contractor (i) to switch off an identified group of Pirate devices causing a Security Breach or (ii) to alter, rewrite, reconfigure, patch or change the software in the CAMs that has been used or with reasonable certainty may be used by Pirates to cause a Security Breach, so that the Pirate devices or the applicable software can no longer be used to effect a Security Failure.

"Effective Date" shall have the meaning ascribed to it in Section 18.1.

"Equity Interests" means, with respect to any Person, shares of capital stock of (or other ownership or profit interests in) such Person, warrants, options or other rights for the purchase or other acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, options or other rights for the purchase or other acquisition from such Person of such shares (or such other interests), and other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are authorized or otherwise existing on any date of determination.

"Expert" means any independent third-party technology firm or consultant retained by DIRECTV pursuant to this Agreement to perform the evaluations, testings and other work contemplated by this Agreement.

"Expiration Date" means the fourth (4th) anniversary of the Effective Date or any other date on which an Expiration Date is deemed to have occurred pursuant to this Agreement.

"Force Majeure" means any event which is beyond the reasonable control of the Party who is under an obligation to perform (the "Non-Performing Party") including acts or failures to act of the other Party or third parties which acts or failures to act are beyond the reasonable control of the Non-Performing Party and does not involve the fault or negligence of the Non-Performing Party, and also including failure of one or more DIRECTV Satellites, failure of non-Year 2000 compliant equipment or software that is not included in the Licensed Technology, strikes, work slowdowns or other labor disputes, riots, civil disturbances, actions or inactions of

any Governmental Body, epidemics, war, embargoes, severe weather, fire, flood, earthquakes, quarantine restrictions, acts of God, nuclear accidents or disasters, or default of a common carrier.

"Governmental Authorization" means any approval, consent, license, permit, waiver, or other authorization issued, granted, given, or otherwise made available by or under the authority of any Governmental Body or pursuant to any Law.

"Governmental Body" means any nation, state, county, city, town, village, district, or other jurisdiction of any nature; federal state, local, municipal, foreign, or other government; governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official, or entity and any court or other tribunal); multi-national organization or body; or body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature.

"Growth Incentive Fee" shall have the meaning ascribed to it in Section 9.1.

"Improve" or **"Improvement"** is included in the term "Update and Improve" or "Update and Improvement."

"Intellectual Property Rights" means all of the following worldwide legal rights: (i) patents, patent applications, and patent rights; (ii) rights associated with works of authorship (including textual, mask and audio/visual works), including copyrights, copyright applications, and copyright registrations; (iii) rights relating to the protection of trade secrets, know-how, and proprietary and confidential information; (iv) Moral Rights; (v) design rights; (vi) any rights analogous to those set forth in the preceding clauses; and (vii) divisions, continuations, renewals, reissues, and extensions of the foregoing (as applicable), whether existing on the Effective Date or thereafter filed, issued, or acquired.

"Introduce" or **"Introduction"** means commencing delivery of a new version or new generation of CAMs (i) to the Authorized Manufacturers for sale with new IRDs or as replacements for CAMs in inventory, or (ii) to a portion or all of the Subscribers as a replacement for existing CAMs.

"IPPV Technology" means U.S. Patent Nos: 4,104,486; 4,163,254; 4,225,884; 4,528,589; 4,484,217 and 4,600,942, and any patent derived from such patents including any continuations, continuation-in-part, divisionals, reissues, reexaminations, and all corresponding patents world-wide, patent applications world-wide and utility models world-wide.

"IRD" means integrated receiver/decoder circuitry for use with the DIRECTV Service which is manufactured by an Authorized Manufacturer.

"Joint Working Group" has the meaning ascribed to it in Section 4.5.1.

"**Law**" means any federal, state, local, municipal, foreign, international, multinational, or other administrative order, constitution, law, ordinance, principle of common law, regulation, statute, rule, code, directive, or treaty.

"**Licensed Technology**" means all technology including Proprietary Information and related plans, drawings, methods, know-how, algorithms, inventions, Contractor Documentation, software, interface documents and/or specifications, and all other tangible and non-tangible assets which have been created, developed or licensed by Contractor and (a) are utilized by Contractor, or included or incorporated, in those elements of DIRECTV's Conditional Access Segment supplied by Contractor including the Verifier, CAMs, software used in the CAMC, ROM mask used in the CAMs, third-party hardware and software procured or licensed by NDS or DIRECTV upon Contractor's recommendation, technology which is or was utilized or supplied by Contractor under any predecessor of this Agreement and any technology licensed by Contractor to the Authorized Manufacturers, or (b) which are otherwise necessary or useful (i) for Contractor to perform its obligations under this Agreement; (ii) when a Successor Contractor is appointed, but not before then, for DIRECTV or another Successor Contractor to perform all of the services and obligations of Contractor required hereunder including the Conditional Access Services, obtaining CAMs that interface with the Verifier as necessary, and operating the portion of the Conditional Access Segment supplied by Contractor in place of Contractor in the event this Agreement expires or is terminated; (iii) when a Parallel Vendor is appointed, but not before then, for DIRECTV or another Parallel Vendor to provide conditional access services for the DIRECTV Service in addition to Contractor for the purposes identified in Section 7.1 hereof, and (iv) for CAM development and design, Change Order Work and Updates and Improvements.

"**Moral Rights**" means any right of paternity or integrity, any right to claim authorship, to object to or prevent any distortion, mutilation or modification of, or other derogatory action in relation to the subject work whether or not such would be prejudicial to the author's honor or reputation, to withdraw from circulation or control the publication or distribution of the subject work, and any similar right, existing under any Law of any country in the world, or under any treaty, regardless of whether or not such right is denominated or generally referred to as a "moral right."

"**Object Code**" means the compiled program language code that implements the design specification of the application and executes on the target machine's CPU in conjunction with the machine's operating system.

"**Parallel Vendor**" has the meaning ascribed to it in Section 7.1.

"**Parallel Vendor Licensed Technology**" means the technology licensed to a Parallel Vendor by Contractor pursuant to *Exhibit 7.2.2*.

"*Person*" means an individual, partnership, corporation, limited liability company, joint stock company, trust, unincorporated association, joint venture or other entity, or a government or any political subdivision or agency thereof.

"*Pirate*," when used as a noun, means any Person believed to be (i) creating or dealing in illegal or unauthorized devices used to receive viewing entitlements in the DIRECTV Service that are not authorized by the DIRECTV CAMC or (ii) engaging in or facilitating the creation, distribution or sale of such devices; when used as an adjective, means relating to or resulting from any of the foregoing activities.

"*Predecessor-in-Interest*" has the meaning ascribed to it in Section 23.2.3.

"*Proprietary Information*" means information of any nature in any form and medium of expression, including all oral expressions, writings, memoranda, copies, reports, papers, surveys, analyses, drawings, letters, computer printouts, software, specifications, data, graphs, charts, sound recordings and pictorial reproductions, which a Party considers to be its confidential or proprietary material, subject to the exclusions set forth in Section 17.

"*Receiving Party*" means the Party which receives the Proprietary Information of the other Party.

"*RFP*" means a request for proposals.

"*Rolling Introduction Plan*" has the meaning ascribed to it in Section 4.2.

"*Same Device*" means a Pirate device ("Device") which shall be deemed the "Same Device" as an originally demonstrated Pirate device if after the implementation of a Proposed Cure in respect of each device, the Device uses the identical software code sequence to cause a Security Failure as the originally demonstrated Pirate device.

"*Security Breach*" means the delivery and demonstration to Contractor of one (1) or more samples of any Pirate device as reasonably required by Contractor which:

- (a) cause a Security Failure;
- (b) are available (including where Pirate devices can be readily obtained in kit or complete form on a retail basis by visiting a retail outlet or can be obtained via mail or electronic order within a commercially reasonable time);
- (c) are capable of being purchased for less than \$2,000 each, which price does not include the cost of any personal computer to which the device may have to be attached in order to become operative;

- (d) do not utilize any breach of the DES encryption algorithm; and
- (e) are not based upon a device or software designed or developed by DIRECTV, or by its employees, Experts, Affiliates or technical or engineering contractors, in each case at DIRECTV's direction.

"Security Breach Date" means the date on which DIRECTV provides Contractor a sample Pirate device, or such earlier date on which Contractor obtains such a device, which device is subsequently demonstrated to cause a Security Breach as defined herein.

"Security Failure" means in relation to a CAM supplied by or (pursuant to Section 19.4) under license from Contractor either of the following:

- (a) the ability to decrypt audio and/or visual portions of a currently broadcast service consisting of at least one full pay-per-view program per day or one continuous day of encrypted programming without using or being connected to a CAM currently authorized by the CAMC to decrypt such particular service or program; or
- (b) the ability to modify pay-per-view purchase history data and/or other CAM report back data in a manner which will not cause the CAMC to obtain knowledge of such modification when the callback is accepted by the CAMC.

"Security Life" means, with respect to a particular generation of CAM, the period from Introduction until the next period CAM is ready for Introduction unless such next period CAM Introduction is delayed for reasons beyond Contractor's reasonable control, in which case the Security Life, with respect to P3 shall be thirty (30) months from Introduction and with respect to subsequent generation CAMs shall be the period agreed in the specification, but not less than thirty (30) months.

"Service Fees" means the fees to be paid by DIRECTV to Contractor for its provision of the Conditional Access Services and the performance of certain of its other obligations under this Agreement, as more particularly described in Section 9.1.

"Source Code" means high level and assembly language code ("Code") along with associated documents and programs which require access to the Code in order to be understood, used or modified as the case may be.

"Specifications" means the technical, functional and other specifications for the portion of the Conditional Access Segment supplied or to be supplied by Contractor as set forth in Appendix A attached to the Statement of Work, as amended from time to time by the Parties in accordance with the terms of this Agreement.

"Statement of Work" means the description of the goods and services to be provided by Contractor to DIRECTV as set forth in *Exhibit 2.2*, as amended from time to time by the Parties in accordance with the terms of this Agreement.

"Subscriber" means any authorized subscriber of the DIRECTV Service.

"Successor Contractor" means (i) one or more contractors with whom DIRECTV contracts to provide the Conditional Access Services to DIRECTV, or (ii) DIRECTV when it chooses to perform such services, in each case as a replacement, in whole or in part, of Contractor upon termination or expiration of this Agreement.

"Successor Contractor Licensed Technology" means the technology licensed by Contractor to a Successor Contractor pursuant to Exhibit 19.

"Term" means the period commencing on the Effective Date and ending on the Expiration Date, unless this Agreement is earlier terminated as provided herein in which case such period shall end on the date of early termination.

"Territory" means the United States of America (including its territories and possessions) and, when DIRECTV or an Affiliate of DIRECTV is legally permitted to provide direct-to-home services in such countries, Canada and Mexico (it being acknowledged by the Parties that such expansion of services shall not in any way be interpreted to have the effect of terminating or nullifying any contract Contractor may have with Galaxy Latin America, an Affiliate of DIRECTV).

"Transition Period" has the meaning ascribed to it in Section 19.1.

"Transition Services" has the meaning ascribed to it in Section 19.1.

"Update and Improve" or **"Update and Improvement"** means, with respect to any specific hardware or software, the provision of any new releases or versions of such hardware or software, including bug fixes, improvements, enhancements and all other changes thereto.

"Verifier" means the software module supplied or licensed by Contractor to the Authorized Manufacturers resident in an IRD which allows the CAMs supplied by or under license from Contractor to interface with the IRD software and with data being processed by such IRD and which also provides certain conditional access functions.

"Voting Interests" means shares of capital stock issued by a corporation, or any other Equity Interest in or issued by any other Person, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or individuals performing similar functions) of such Person, even if the right so to vote has been suspended by the happening of such a contingency.

"Year 2000 Compliant" means that neither performance nor functionality of a system, product, good or service is or will be affected by dates prior to, during and after the Year 2000, and in particular that: (a) no value for the current date will cause any interruption in operation; (b) date-based functionality will behave consistently for dates prior to, during and after the Year 2000; (c) in all interfaces and data storage, the century in any date shall be specified either explicitly or by unambiguous algorithms or inferencing rules; and (d) Year 2000 shall be recognized as a leap year.

2. Conditional Access Services.

2.1 Designation of Conditional Access Services Provider.

2.1.1 Designation. Pursuant to the terms and subject to the conditions of this Agreement, DIRECTV hereby designates Contractor as a non-exclusive supplier of Conditional Access Services, and Contractor shall provide Conditional Access Services in relation to all new Subscribers unless DIRECTV in its discretion directs otherwise (such limitation of Contractor's services hereunder shall not require any compensation therefor by DIRECTV), except that, subject to Articles 4 and 19 and during the Term, Contractor shall be the sole and exclusive supplier of the Conditional Access Services for the portion of the Conditional Access Segment and IRDs that use the Verifier.

2.1.2 Work Beyond Scope. To the extent commercially reasonable as determined in good faith by DIRECTV, Contractor shall be allowed to timely submit a proposal for all conditional access work to be procured by DIRECTV that is outside the scope of this Agreement and is of the type that Contractor provides to its existing customers or licensees, except for work that by design is intended for a Parallel Vendor other than Contractor, provided that regardless of the submission of a proposal by Contractor, DIRECTV retains the right to select in its sole discretion any vendor for any procured service.

2.1.3 Minimum Order.

2.1.3.1 During the Term, DIRECTV shall order a minimum of two-million (2,000,000) P3 CAMs per Contract Year until the Contract Year of Introduction of the P4 CAM, and shall order a minimum of ten million (10,000,000) P4 CAMs during the Term, except that such minimum requirement may be reduced pursuant to Section 2.1.3.2, (i) in any Contract Year in which Contractor is unable to supply the version or generation of CAM planned for Introduction during that Contract Year, including an inability to supply because of any delay in CAM readiness caused by or attributable to Contractor that prevents delivery during such year, or (ii) for so long as such CAM does not comply in all material respects with all agreed Specifications and requirements for such CAMs.

2.1.3.2 If during any Contract Year Contractor fails to supply the version or generation of CAM planned for Introduction for more than six (6) months after the scheduled date of Introduction, the minimum quantity referred to in Section 2.1.3.1 above shall be reduced proportionately by the length of such delay during such Contract Year.

2.2 Provision of Conditional Access Services.

2.2.1 Statement of Work. During the Term, Contractor shall provide DIRECTV the Conditional Access Services described in the Statement of Work attached hereto as *Exhibit 2.2*.

2.2.2 Contractor's Efforts. Services provided by Contractor hereunder shall be provided to DIRECTV with a priority such that DIRECTV will not be disadvantaged in relation to Contractor's other customers and licensees whose work may be competing for Contractor's resources. Contractor shall perform all of its obligations under this Agreement with the same high degree of expertise and care observed by firms performing the same or similar work. Contractor warrants that all work and services performed hereunder will (i) represent at least commercially reasonable efforts, (ii) be of the highest relevant industry standards and quality, and (iii) be performed by appropriately qualified personnel consistent with good industry practice in the state of art involved. Contractor acknowledges that it stands in a position of trust and confidence to DIRECTV as the provider of conditional access services that are critical to the DIRECTV Service.

2.2.3 Compensation. Contractor shall receive compensation as set forth in Article 9 for its performance of the Conditional Access Services and its other obligations under this Agreement.

2.3 Conditional Access Segment Performance. Contractor shall design, manufacture (or cause to be designed or manufactured), or acquire (or as to third party hardware or software give DIRECTV the option to acquire), install, and test all conditional access hardware and software required in connection with Contractor's provision of the Conditional Access Services. Contractor warrants that the portion of the Conditional Access Segment supplied by Contractor will perform the functions, and comply in all material respects with the Specifications.

2.4 Access to the CAMC. DIRECTV shall provide Contractor with reasonable access to and maintain the physical facilities of the CAMC(s) and other DIRECTV facilities necessary for Contractor to provide the Conditional Access Services.

2.5 Change Orders.

2.5.1 Written Request. DIRECTV may from time to time propose modifications to the Conditional Access Segment or to the Conditional Access Services by making a written request to Contractor (a "Change Request"). Contractor agrees to use commercially reasonable

efforts promptly to accommodate DIRECTV's Change Requests in accordance with this Article 2 and the Statement of Work. A Change Request so accommodated by Contractor shall be deemed a "Change Order." Once so created, Change Order Work shall become part of the Licensed Technology regardless of ownership of such work.

2.5.2 Fulfillment and Costs.

2.5.2.1 If Contractor reasonably determines that such Change Request can be fulfilled using existing technology and with minimal labor or material cost impacts, then Contractor shall fulfill such Change Request at no cost to DIRECTV in accordance with the process set forth in the Statement of Work.

2.5.2.2 If Section 2.5.2.1 does not apply to any Change Request, then DIRECTV and Contractor agree to negotiate in good faith concerning the fulfillment of such Change Request following the procedures of Section 4.1 of the Statement of Work and, upon reaching agreement on the price to be paid for the Change Request in accordance with Section 2.5.2.3 technical specifications, feasibility, manner and timing for implementation, DIRECTV shall issue a confirming Change Order to Contractor. Contractor shall then proceed to fulfill the Change Order.

2.5.2.3 Except as provided in Section 2.5.2.1, Contractor shall price any Change Order Work based upon Contractor's then current rates for such work as notified to DIRECTV taking into account the scope of work required in fulfilling such Change Order. Prices for equipment, third party hardware, software and material used in the Change Order work shall be at Contractor's cost plus fifteen percent (15 %) unless DIRECTV determines to procure such third party hardware, software or material directly, in which case Contractor shall specifically identify the appropriate third party hardware, software and materials.

2.5.3 Updating Statement of Work and Specification. Upon Contractor's written agreement to fulfill a Change Request or the issuance of any written confirmation of a Change Request by DIRECTV, the Statement of Work and Specifications shall be automatically amended, without any further action by any Party, to incorporate the resulting Change Order.

2.5.4 Change Orders of Affiliates.

2.5.4.1 To the extent that any Affiliate of DIRECTV has (A) paid for any work performed by Contractor which can be used in fulfilling any Change Order submitted by DIRECTV or (B) been provided with any Updates or Improvements by Contractor and subject to the written consent of such Affiliate, Contractor shall make available to DIRECTV and DIRECTV shall be entitled to enjoy the benefits of such work or Updates or Improvements, and Contractor may not make any additional charge to DIRECTV for such work or Updates or Improvements except to the extent that such work or Updates or Improvements must be adapted to a different platform or additional license fees or costs or expenses are incurred by Contractor

to third parties as a result. Any proposal provided by Contractor regarding any Change Order shall specifically identify such previous work or Updates or Improvements for DIRECTV's Affiliate and its application to the proposed work.

2.5.4.2 To the extent that DIRECTV has paid for any work or Updates or Improvements performed or produced by Contractor which can be used in fulfilling any change order submitted to Contractor by any Affiliate of DIRECTV, Contractor shall make available to such Affiliate of DIRECTV and such Affiliate of DIRECTV shall be entitled to enjoy the benefits of such work or Updates or Improvements and Contractor may not make any additional charge to such Affiliate of DIRECTV for such work or Updates or Improvements except to the extent that such work or Updates or Improvements must be adapted to a different platform or additional license fees or costs or expenses are incurred by Contractor to third parties as a result, provided that Contractor has been retained by such Affiliate to support and maintain its conditional access system.

3. Technology Licenses.

3.1 License Grants.

3.1.1 License to DIRECTV.

3.1.1.1 Contractor hereby grants to DIRECTV a royalty-free, irrevocable, perpetual, non-exclusive and non-transferable right and license under Contractor's IPR to test and use the Licensed Technology (excluding Source Code unless Source Code is specifically licensed pursuant to Section 3.1.1.2) and including the other license terms set out in this Agreement for (a) the support and provision of the DIRECTV Service, (b) any development work performed by or under contract with DIRECTV or any of its Affiliates in connection with the provision of the DIRECTV Service including design and development of the P4 CAM pursuant to Article 4, and (c) the training and technical support of the employees, independent contractors, suppliers, service providers and customers of DIRECTV and any of its Affiliates in connection with the provision of the DIRECTV Service. DIRECTV shall treat and maintain the Licensed Technology as Proprietary Information of Contractor pursuant to Article 17 hereof.

3.1.1.2 If DIRECTV, any Experts or another Successor Contractor is allowed to access Source Code related to the Licensed Technology pursuant to Sections 3.6.5.1 or 3.7.5, or to Article 4, then the license granted hereunder to DIRECTV shall be expanded to include the right to reproduce, copy, modify, and create Derivative Works of, the Licensed Technology including Source Code for the purposes identified in this Article 3 and in Article 4.

3.1.2 Sub-License Rights. Contractor grants to DIRECTV the right to sub-license under Contractor's IPR to the Licensed Technology to the full extent of the rights granted to DIRECTV pursuant to this Agreement subject to all other obligations and license terms set out in this Agreement (a) to any Affiliate, but only to allow such Affiliate to use the Licensed

Technology for the benefit of DIRECTV in the Territory in connection with the provision of the DIRECTV Service and in accordance with this Agreement, (b) subject to DIRECTV complying with Sections 3.6.2 and 3.6.5.2, to any Expert for the purpose of testing the Conditional Access Segment or any portion thereof and the design, development or testing of P4 CAMs for the benefit of DIRECTV, provided that (i) Contractor is informed of the identity of such sub-licensee and the license terms granted and any Licensed Technology provided to the sub-licensee, and on request Contractor is permitted to be a third-party beneficiary under the sub-license for enforcement purposes and (ii) such sub-licensee is not a Competing Person of Contractor, and (c) to any Authorized Manufacturer to use, offer for sale and sell CAMs provided by DIRECTV as permitted hereunder for use with the Verifier.

3.1.3 License to Others and Expansion of DIRECTV's License. Contractor shall grant licenses under the Contractor's IPR relating to the Licensed Technology (a) to any Successor Contractor designated by DIRECTV upon the initiation of a Transition Period as provided in Section 19.3, and (b) to any Parallel Vendor(s) for the purpose of implementing parallel conditional access system(s) that interface with the portion of the Conditional Access Segment supplied by Contractor as provided in Section 7.1 hereof. In the event any license granted to any Successor Contractor or Parallel Vendor expires or is otherwise terminated for any reason during the Term of this Agreement, Contractor shall promptly grant a license under substantially the same terms to any replacement Successor Contractor or Parallel Vendor, as the case may be, upon their designation by DIRECTV. Contractor acknowledges that DIRECTV may be a Parallel Vendor or a Successor Contractor, or both, and that upon written notice to Contractor that DIRECTV has appointed itself Parallel Vendor or Successor Contractor according to the terms of this Agreement, the license granted to DIRECTV under this Agreement shall further include the license rights to be granted to a Successor Contractor or Parallel Vendor as described above.

3.1.4 Ownership. Other than as licensed herein, Contractor shall retain all of its right, title and interest in and to the Contractor's IPR in or relating to all Licensed Technology, the Intellectual Property Rights to be licensed pursuant to Section 3.1.3 and its rights in or relating to any Derivative Works of the Licensed Technology which Contractor may develop, or cause to be developed, provided, however, that DIRECTV shall retain all of its right, title and interest in and to the Intellectual Property Rights associated with all of the DIRECTV Technology and its rights in or relating to any Derivative Work thereof which DIRECTV may develop or cause to be developed. DIRECTV hereby acknowledges for itself and its Predecessors in Interest that Source Code and Object Code that has been developed by Contractor or any Predecessor-in-Interest of Contractor which is related to the portion of the Conditional Access Segment supplied by Contractor or any Predecessor-in-Interest of Contractor is not in whole or in part DIRECTV Technology.

3.1.5 Exemplary License Rights. The license granted in Section 3.1.1.1 to DIRECTV shall include the following rights:

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- (a) To load, run and otherwise use the Licensed Technology on hardware and in connection with software for the DIRECTV Service;
- (b) To use the Licensed Technology for the purpose of operating the Conditional Access Segment, including to the extent necessary for the purpose of enabling and disabling CAMs supplied by or (pursuant to Section 19.4) under license from Contractor in the Territory as authorized by DIRECTV's subscriber management system and the Conditional Access Segment;
- (c) To the extent necessary, to distribute and sub-license CAMs supplied by or (pursuant to Section 19.4) under license from Contractor for use in connection with IRDs in the Territory to receive conditional and secure access to the DIRECTV Service;
- (d) To enable DIRECTV to interface and operate the DIRECTV Service with any third party system, the hardware and any sub-systems referred to in any of the Exhibits attached to this Agreement, including to enable the operation of the IRDs, or otherwise as part of the DIRECTV Service;
- (e) To use the Licensed Technology to provide an interface between a Parallel Vendor's technology and the Licensed Technology applicable to the head-end of the Conditional Access Segment, and to the limited extent necessary to purchase CAMs (not designed by Contractor) and to have such CAMs made by sources other than Contractor or Contractor's licensees for use in the Parallel Vendor's technology (but not for use with Contractor's Verifier) and to use and sell such CAMs for use in the Conditional Access Segment;
- (f) To operate the DIRECTV Service with multiple parallel conditional access systems as described in Section 7.1 hereof;
- (g) To the extent necessary, to test the Conditional Access Segment or any portion thereof at any time or stage of development or acceptance including any CAMs supplied by or (pursuant to Section 19.4) under license from Contractor for the benefit of DIRECTV subject to (i) agreement of Contractor, which may not be unreasonably withheld or delayed, and (ii) the other terms of this Agreement (including where relevant Section 3.6.2);

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- (h) (i) Upon the termination or expiration of this Agreement and the appointment of a Successor Contractor, or (ii) as provided in Section 19.4, to use the Licensed Technology to the extent necessary to purchase CAMs and to have CAMs of a generation not supplied by Contractor to DIRECTV made by sources other than Contractor or Contractor's licensees for use in the Conditional Access Segment (but with respect to CAMs of a generation supplied by Contractor not for use with Contractor's Verifier for so long as DIRECTV is using a generation of CAMs supplied by Contractor unless Contractor refuses or fails to supply such CAMs) and to use and sell such CAMs for use in the Conditional Access Segment; and
- (i) To use, copy, reproduce, display, distribute, alter, modify, create Derivative Works of, de-compile, reverse-engineer, disassemble or merge with any other computer software programs, the Licensed Technology (without being provided access by Contractor to any Source Code) solely for the limited purpose of (i) evaluating certain portions of the Conditional Access Segment provided by Contractor, (ii) developing potential enhancements and improvements to such portions of the Conditional Access Segment and, (iii) if further development or implementation of such improvements and enhancements is desired, suggesting as part of a requested Change Order to Contractor, if appropriate, the development or implementation of such improvements and enhancements. During the Term, DIRECTV shall not have the right to implement any such improvement or enhancement derived from the Licensed Technology in the Conditional Access Segment except by prior written agreement of Contractor unless during a Transition Period Contractor refuses or fails to undertake (after notice and a reasonable period of time) to provide such implementation.
- (j) To use, copy, reproduce, display, distribute, alter, modify, create Derivative Works of, de-compile, reverse-engineer, disassemble or merge with any other computer software programs, those portions of the Licensed Technology reasonably necessary in developing the requirements, and evaluating, reviewing and approving the specification, detailed design, implementation and testing of a P4 CAM in accordance with the provisions of Article 4.

3.2 Delivery of Licensed Technology. Contractor shall deliver to DIRECTV a complete set of the Licensed Technology in electronic and hard copy form (to the extent

practicable) and Contractor Documentation (excluding Source Code and internal design notes) promptly upon completion in accordance with the Statement of Work.

3.3 License Grant to Contractor. DIRECTV hereby grants to Contractor a royalty-free, non-exclusive and non-transferable right and license during the Term (and to the extent reasonably required thereafter to satisfy additional change orders or other requests of DIRECTV) under DIRECTV's Intellectual Property Rights to use and copy such of the DIRECTV Technology as may be reasonably necessary for the provision of the Conditional Access Services and the performance of the Contractor's obligations under or relating to this Agreement. Subject to Section 2.5.4 or except where such use would not violate DIRECTV's Intellectual Property Rights, Contractor shall not use any of the DIRECTV Technology except in the performance of its obligations under this Agreement or other agreements between the Parties related to the Conditional Access Services, and the DIRECTV Technology shall not be used on behalf or for the benefit of any Person other than DIRECTV or its Affiliates, provided that, if the DIRECTV Technology is disclosed by Contractor to an Affiliate of DIRECTV, Contractor shall clearly identify such technology as DIRECTV Technology. Contractor shall treat and maintain the DIRECTV Technology as Proprietary Information of DIRECTV pursuant to Article 17 hereof.

3.4 Third Party Rights.

3.4.1 Obtaining Rights. Contractor shall be solely responsible for obtaining and shall maintain all licenses and sub-licenses and rights necessary for the Parties to use the Licensed Technology under this Agreement, and shall be solely responsible for payment of all royalties and other charges with respect to any such licenses, and (subject to the remainder of this Section 3.4.1) DIRECTV shall have no obligation to pay or account for such royalties or other charges or to procure any such rights. Notwithstanding the foregoing, Contractor shall offer DIRECTV the option to acquire, and if DIRECTV declines, Contractor shall undertake commercially reasonable efforts to acquire, for the benefit of DIRECTV and other permitted licensees hereunder, and at DIRECTV's cost and expense, all necessary rights and licenses and sub-licenses to use third party software and hardware including that identified in *Exhibit 3.4.2A* on such terms and conditions that shall ensure that DIRECTV, any Successor Contractor and any Parallel Vendor may operate appropriate portions of the Conditional Access Segment and use the Licensed Technology and any Updates and Improvements thereto as required for the DIRECTV Service and as required for DIRECTV, any Successor Contractor and any Parallel Vendor to exercise its rights hereunder and to achieve the purposes of this Agreement. If Contractor procures third party software or hardware, DIRECTV shall reimburse Contractor for the actual cost of such hardware and software plus fifteen percent (15%) of such cost. To the extent that Contractor is unable to obtain such rights, it shall cooperate and consult with DIRECTV in endeavoring to resolve the matter. DIRECTV's option and its exercise of that option to acquire third party hardware and software described in this Section 3.4.1 shall not affect any of Contractor's obligations including to identify and recommend the use of such third party hardware or software for use with the portion of the Conditional Access Segment supplied by Contractor and for Contractor to provide testing and installation, as appropriate, of such hardware

or software and to provide the warranties specified herein. All such third party hardware and software acquired by DIRECTV with Contractor's recommendation shall be treated with respect to Contractor warranties and Conditional Access Services as though such hardware and software were procured by Contractor.

3.4.2 No Violation. Contractor hereby represents and warrants that (except for third party patent claims of which it has no knowledge):

- (a) it possesses or has otherwise obtained all the licenses and sub-licenses and rights necessary for it to grant all the licenses and sub-licenses pursuant to this Agreement without violation of the Intellectual Property Rights of any Person,
- (b) As of the Effective Date, (i) *Exhibit 3.4.2A* contains a complete and accurate list of all the material software programs licensed to Contractor and used or to be used by Contractor in providing the Conditional Access Services, (ii) Contractor has the right to assign or sub-license to DIRECTV or any designee of DIRECTV for the Term or so long as DIRECTV or a Successor Contractor or Parallel Vendor is using a portion of the Licensed Technology such software programs without violation of any Intellectual Property Rights of any Person, and (iii) upon expiration or termination of this Agreement, Contractor shall assign or sub-license to DIRECTV or any designee of DIRECTV all such software programs, subject in each case to Sections 3.4.2 (c) and (d),
- (c) As of the Effective Date, except for the software programs identified as non-transferable on *Exhibit 3.4.2B*, all licenses and sub-licenses granted by Contractor pursuant to this Agreement are fully assignable to or sub-licensable by DIRECTV in accordance with this Agreement, and
- (d) As of the Effective Date, except for the software programs identified as non-transferable on *Exhibit 3.4.2B*, the assignment or sub-licensing by DIRECTV in accordance with this Agreement to any third Person of any license or sub-license granted by Contractor pursuant to this Agreement will not violate any Intellectual Property Rights of any Person.

Contractor shall update *Exhibits 3.4.2A* and *B* as reasonably necessary to make the foregoing true and accurate throughout the Term.

3.4.3 Further Obligations. To the extent it hereafter becomes necessary to obtain any license, sub-license, or other rights from any third Person in order for the representations and warranties of Contractor made in this Section 3.4 to remain true and accurate at all times as though made at all times throughout the Term, and so long as DIRECTV is paying to Contractor any fees required by this Agreement, Contractor shall, at its sole expense, promptly obtain such license, sub-license or right from such third Person, provided, however, that such warranty shall not be effective for those portions of the Conditional Access Segment modified by DIRECTV, a Parallel Vendor or a Successor Contractor without Contractor's prior approval.

3.4.4 Third Party Source Code. Nothing in this Agreement shall require Contractor to put documentation (including any Source Code) relating to third party software into escrow or otherwise furnish third party software Source Code under this Agreement, where the licensor of such software will not provide the documentation to Contractor or consent to the release of the documentation by Contractor, so long as Contractor has used commercially reasonable efforts to procure the release of the documentation pursuant to the terms of this Agreement. Contractor shall notify DIRECTV prior to or at the time of deposit whether it is prohibited from placing in escrow any such materials which are relevant to any specific escrow deposit under Section 3.7.

3.5 Restrictions on Use of the Licensed Rights.

3.5.1 Restrictions on DIRECTV. Without the written authorization of Contractor and for as long as DIRECTV or its permitted sublicensees or permitted assigns continue to use the Licensed Technology in whole or part, DIRECTV and its sublicensees and assigns shall not:

- (a) intentionally or knowingly distribute CAMs supplied by Contractor outside the Territory or service region for which they are intended except for the purpose of testing the CAMs or supplying CAMs to an Authorized Manufacturer;
- (b) alter, obscure, remove, interfere with or add to any notice of Contractor's proprietary or confidential rights which is affixed to or contained in any of the Licensed Technology, the Conditional Access Segment or the Contractor Documentation; or
- (c) use, copy, reproduce, display, distribute, alter, modify, create Derivative Works of, de-compile, reverse-engineer, disassemble or merge with any other computer software programs, any part of the Licensed Technology supplied by Contractor and covered under Contractor's IPR, or otherwise make use of, disclose or sub-license any part of the Licensed Technology supplied by Contractor and

covered under Contractor's IPR, except to the extent expressly permitted by this Agreement or by applicable Law.

3.5.2 Restrictions on Contractor.

Without the written authorization of DIRECTV and for as long as Contractor or its permitted assigns continue to use the DIRECTV Technology in whole or in part for purposes of supplying the Conditional Access Services, Contractor and its permitted assigns shall not alter, obscure, remove, interfere with or add to any notice of DIRECTV's proprietary or confidential rights which is affixed to or contained in any of the DIRECTV Technology or any documentation of the DIRECTV Technology.

3.6 Conditional Access Segment Development, Testing, Evaluation and Modification.

3.6.1 Scope.

3.6.1.1 DIRECTV in consultation with the Joint Working Group shall have the right to determine the requirements of a P4 CAM generation and to lead the design and development efforts for the P4 CAM including the rights to evaluate, review and approve Contractor's design, development, implementation and testing of such CAM pursuant to Article 4 and the Statement of Work. DIRECTV and the Joint Working Group shall also have the right to evaluate, review and test the Conditional Access Segment or any portion thereof provided by Contractor including CAMs at any stage of development, introduction or use (i.e. P3, P4 and future generations and versions within a generation) in any respect or manner to understand and assess for its own information any failures or problems, and to confirm compliance with all applicable specifications and requirements in this Agreement including all warranty obligations. DIRECTV shall have the right to retain Experts to assist in providing P4 or future CAM development and evaluation, review and testing.

3.6.1.2 Contractor shall cooperate with DIRECTV, its Experts and the Joint Working Group to accomplish the activities described in Section 3.6.1.1 by timely providing sample CAMs (including CAM technology still in development), Contractor Documentation or other components of the Licensed Technology (excluding Source Code unless provided pursuant to Section 3.6.5) to DIRECTV (or, with the approval of DIRECTV, such Experts and members of the Joint Working Group) as reasonably requested by DIRECTV within seven (7) days of receiving a written request from DIRECTV.

3.6.1.3 In connection with the foregoing, DIRECTV by itself or through various members of the Joint Working Group or other Experts shall have the right, solely for the purpose of developing future generations of CAMS and evaluating, reviewing and testing the Conditional Access Segment, to use, copy, reproduce, alter, modify, create Derivative Works of, de-compile, reverse-engineer, disassemble or merge any CAM or any other component of the Conditional Access Segment supplied by Contractor or the Licensed Technology, so long as the

results of such development, review, evaluation and testing are reported to Contractor in reasonable detail.

3.6.2 Non-disclosure. Notwithstanding the foregoing, DIRECTV shall cause its Experts and each member of the Joint Working Group to execute a non-disclosure agreement substantially in the form of *Exhibit 3.6* or *Exhibit 3.6.5.2*, as applicable, prior to providing it with any of Contractor's Proprietary Information.

3.6.3 Testing Results. The Parties and the Joint Working Group shall cooperate to develop, review, evaluate and apply test results for the overall improvement of the portion of the Conditional Access Segment supplied by Contractor. Any test results that demonstrate a deviation from the agreed Specifications or requirements in any material respect shall be provided by the Party performing the test in writing to the other Party. The Parties shall discuss whether such deviation shall be waived or corrected. If testing reveals that the Conditional Access Segment could be improved in the future, then the Parties shall cooperate to develop, review, evaluate and implement the potential improvements as authorized by DIRECTV as soon as commercially practicable.

3.6.4 Access to Information. Contractor shall provide DIRECTV and the Joint Working Group with access to all information (whether or not related to testing) concerning the portion of the Conditional Access Segment supplied by Contractor and Licensed Technology that is in Contractor's possession or control within the scope of the licenses granted hereunder, but subject to the non-disclosure obligations described herein. Such information shall include the efforts, evaluations and recommendations performed by Contractor or its consultants concerning the design, operation and manufacture of any generation of CAM or any component thereof, any of the security systems implemented in the CAMs and otherwise in the Conditional Access Segment (but excluding Source Code, which may only be accessed pursuant to Sections 3.6.5 and 19.4), any of the hardware or software included in the Conditional Access Segment, any capacity or growth studies, the Verifier and the interface and inter-operability between the Verifier and any IRD, specification compliance analysis, the design or manufacturing of any portion of the Conditional Access Segment supplied by Contractor and specifically including any reports, analyses or data compiled by TNO.

3.6.5 Access to Source Code.

3.6.5.1 Contractor shall provide access to DIRECTV and any Expert and to any Person specifically identified below in subclause (d) to the Source Code embodied in the Licensed Technology and covered under Contractor's IPR as follows:

- (a) During any review, evaluation or testing by DIRECTV or its Experts of any design work done by Contractor pursuant to this Agreement or to a Change Order, to the extent that DIRECTV raises any issue of concern with a particular aspect of the design or its implementation, then subject to Sections 3.6.5.2 and 3.6.5.3, DIRECTV and any Experts may access, review and receive information from Contractor including the portions of the Source Code and related information including internal design notes relevant to the particular issues raised;
- (b) During CAM development and upon completion of any design work on any portion of the Conditional Access Segment done by Contractor and Contractor's successful testing of such design, if in subsequent review, evaluation or testing by DIRECTV or by any Experts including the development, review and testing of any CAMs, or analysis of any Pirate devices or Proposed Cures (as defined in Section 6.2), a material defect, weakness or actual or potential Security Failure is identified in DIRECTV's or the Expert's reasonable judgement, with respect to design or implementation, then subject to Sections 3.6.5.2 and 3.6.5.3 Contractor shall allow DIRECTV and the Experts to access, review and receive from Contractor the Source Code and related information including internal design notes relevant to the particular defect, weakness or Security Failure so identified;
- (c) During any Transition Period (as described in Section 19.2) and upon termination or expiration of this Agreement, then subject to Section 3.6.5.2, DIRECTV and any Experts may have access to the Source Code and related information including internal design notes related to the Licensed Technology pursuant to Section 3.1.1.2 for the purpose of (i) managing or providing the conditional access and security services necessary to support the DIRECTV Service and (ii) developing future generations and versions of CAMs to support the DIRECTV Service;
- (d) During any Transition Period (as described in Section 19.2) and at any time after termination or expiration of this Agreement when a Successor Contractor other than DIRECTV has been appointed, DIRECTV may request Contractor to modify or change the portions of the Conditional Access Segment provided by Contractor to the extent that such changes may involve or reasonably require access to or modification of Contractor's Source

Code. If in DIRECTV's reasonable discretion Contractor is not responding to such requests to meet the legitimate business need of DIRECTV despite having been given a reasonable amount of time to respond, then Contractor shall provide the relevant portions of its Source Code and related information including relevant internal design notes to Successor Contractor for use by it to design and implement the modification or change in question;

- (e) As described in Section 19.4; or
- (f) During the design and development of a P4 or of a later generation of CAM pursuant to Article 4, Contractor shall make available to DIRECTV and its Experts such Source Code concerning the portion of the Conditional Access Segment supplied or to be supplied by Contractor as is reasonably necessary to accomplish such design and development work including determining the P4 requirements and reviewing, evaluation and testing Contractor's specifications and design work, in a reasonably efficient and timely manner.

3.6.5.2 Only Experts approved by Contractor shall be permitted to have access to Contractor's Source Code under Sections 3.6.5.1(a), (b), (c) or (f), or 3.7.4 on the following basis. DIRECTV may from time to time propose any Expert which DIRECTV considers suitable for review and use of Contractor's Source Code for development, evaluation or testing of P4 or future CAMs and CAM designs pursuant to Articles 3 and 4 and the review, evaluation and testing of other portions of the Conditional Access Segment. Provided such Expert is not a Competing Person of Contractor and is willing to enter into a non-disclosure agreement substantially in the form of *Exhibit 3.6.5.2*, within 30 days of being informed of the name, address and such other information about the Expert in DIRECTV's possession relevant to the purposes of this Section as DIRECTV is reasonably able to provide, Contractor shall approve such Expert unless Contractor has reasonable Substantive Grounds (as defined below) for refusing such approval, details of which shall be provided to DIRECTV in writing. If Contractor does not respond to DIRECTV's proposal for an Expert within thirty (30) days of being informed of the Expert, the Expert shall be deemed approved. If Contractor refuses to approve any Expert proposed by DIRECTV, Contractor shall promptly provide to DIRECTV the name and address of Experts with at least the same or similar experience as the non-approved Expert, which Expert Contractor will approve. As of the Effective Date, TNO, Cryptography Research, Inc. and Infogard, Inc. are deemed Experts approved by Contractor. "Substantive Grounds" shall comprise substantive bona-fide concerns that the disclosure of Source Code to the Expert may pose a material security risk to the Conditional Access Segment. Such concerns may include evidence bearing negatively on the Expert's relevant expertise in and knowledge of the field, honesty of the Expert and its relevant personnel based on prior experience, the security procedures of the Expert, the Expert's affiliation or contractual relations with Competing Persons of Contractor or

Pirates, and the Expert's reputation amongst providers of such services. If Contractor objects to any proposed Expert, Contractor shall provide DIRECTV with written notice of the grounds for its objection.

3.6.5.3 Access by DIRECTV and by any Expert or to Contractor's Source Code under Section 3.6.5.1(a) or (b) shall be provided at one of Contractor's facilities to be chosen by DIRECTV or at such other place as may be mutually agreeable. Such access to Source Code shall be provided at least during normal business hours, and Contractor shall cooperate with DIRECTV and with any Expert to provide reasonable resources and support to facilitate such access. Unless Contractor otherwise agrees in its discretion, no such Source Code may be copied or removed from the Contractor's facility or other place of access, and Contractor may take reasonable steps to prevent the foregoing including searching any Person involved in accessing the Source Code upon entry to and exit from the facility.

3.6.5.4 Access to Source Code under Sections 3.6.5.1 (c), (d), (e) or (f) shall be provided at DIRECTV's facilities or at such other place as may be agreeable to the Parties.

3.7 Technology Escrow.

3.7.1 Establishing Account. Simultaneously with the execution and delivery of this Agreement, the Parties shall mutually cause an escrow account to be established with Data Securities International, Inc., and shall execute the Escrow Agreement substantially in the form of *Exhibit 3.7.1(A)*. Within sixty (60) days from the date of execution and delivery of this Agreement, Contractor shall place a copy of Contractor Documentation in such escrow account which shall be located in California. The materials deposited in such escrow account by Contractor shall include at least the items identified in *Exhibit 3.7.1(B)*. All materials deposited in such escrow account shall be deemed Proprietary Information pursuant to Article 17. DIRECTV shall be responsible for payment of all fees charged by Data Securities International, Inc. to establish and maintain the account.

3.7.2 Sufficiency of Documentation. Contractor hereby represents and warrants to DIRECTV that, to the best of its knowledge formed after diligent review, Contractor Documentation deposited in the escrow account established pursuant to this Section 3.7 shall be complete and contain as much information as reasonably possible in human-readable form and on suitable media to enable reasonably skilled programmers or analysts to understand, maintain and support that portion of the Conditional Access Segment supplied by Contractor including the Licensed Technology under this Agreement. To the extent there is any deficiency in such Contractor Documentation, Contractor shall be solely responsible for the creation of, and shall promptly create after the execution of this Agreement, any additional Contractor Documentation necessary to eliminate such deficiency, all at its own expense.

3.7.3 Ongoing Deposits. Contractor shall update materials in the escrow account on an annual basis or upon notice from DIRECTV as soon as reasonably practicable and in any event within forty-five (45) days of the notice so that the then current state of the Licensed Technology is accurately described therein. Additionally, Contractor shall update materials in the escrow account for such purpose as soon as reasonably practicable and in any event within sixty (60) days following acceptance by DIRECTV of any material Update and Improvement, material Change Order Work or new CAM Introduction, and as to any work in progress upon a termination or expiration of this Agreement. Any failure to comply with this Section 3.7.3 shall be grounds for injunctive relief and specific performance to remedy such failure.

3.7.4 Inspection. DIRECTV shall have the right at Data Securities, Inc.'s premises to inspect the Contractor Documentation deposited in the escrow account for accuracy and completeness no more than twice in any Contract Year, or to appoint any Expert pursuant to Section 3.6.5.2 to perform such inspection. Contractor shall be present during the inspection to cooperate with and assist DIRECTV in this effort at no additional cost to DIRECTV. The right to inspect granted herein shall not include any right to substantively review or evaluate the Contractor Documentation.

3.7.5 Access to Escrow. DIRECTV and the persons specifically referenced below shall only have the right to access the Contractor Documentation deposited in the escrow account for its full use in accordance with this Agreement upon the occurrence of any of the following events (the "Escrow Events") and to the extent provided below:

- (a) If Contractor fails or refuses to permit access to or otherwise provide Source Code as required under Section 3.6.5 after having been given thirty (30) days notice by DIRECTV to provide such material, such materials shall be released to DIRECTV from the escrow account;
- (b) In the event Contractor fails to supply any material(s) it is obliged to supply pursuant to the license granted to the Parallel Vendor pursuant to this Agreement (the "Parallel Vendor License") after having been given thirty (30) days' notice by DIRECTV to provide such materials citing this Section of this Agreement; such material shall be released to DIRECTV or, at its discretion, to the Parallel Vendor from the escrow account, and the Parallel Vendor Licensed Technology shall be deemed to include the relevant Contractor Documentation released from the escrow account established pursuant to this Agreement and the Parallel Vendor License shall be deemed to include the right to use such Contractor Documentation to perform the services by the Parallel Vendor as contemplated in Section 7.1;

- (c) In the event Contractor fails to supply any material(s) it is obliged to supply pursuant to the license granted to Successor Contractor pursuant to this Agreement (the "Successor Contractor License") after having been given thirty (30) days' notice by DIRECTV to provide such materials citing this Section of this Agreement; such material shall be released to DIRECTV or, at its discretion, to the Successor Contractor from the escrow account, and the Successor Contractor Licensed Technology shall be deemed to include the relevant Contractor Documentation released from the escrow account established pursuant to this Agreement and the Successor Contractor License shall be deemed to include the right to use such Contractor Documentation to perform the services by the Successor Contractor as contemplated in Section 19.3;
- (d) In the event Contractor fails to supply any material(s) it is obliged to supply pursuant to the license granted to DIRECTV pursuant to this Agreement after having been given thirty (30) days' notice by DIRECTV to provide such materials citing this Section of this Agreement; such material shall be released to DIRECTV from the escrow account, and the Licensed Technology shall be deemed to include the relevant Contractor Documentation released from the escrow account established pursuant to this Agreement and the license herein shall be deemed to include the right to use such Contractor Documentation for the DIRECTV Service; or
- (e) In the event that Contractor is in Breach and DIRECTV terminates this Agreement pursuant to Section 11.3.

3.8. Freedom of Action. So long as such activities do not infringe the Intellectual Property Rights of the other Party and otherwise do not violate any terms and conditions hereof, nothing in this Agreement shall be construed to limit either Party's right to obtain services or software programs from other sources, to prohibit either Party from acquiring or marketing competitive materials, to restrict either Party from making, having made, using, marketing, leasing, licensing, selling or otherwise disposing of any products or services whatsoever, or to limit either Party's right to deal with any other vendors, suppliers, contractors or customers, except to the extent that such activities would violate the terms and conditions hereof.

3.9. Release of Contractor's Proprietary Information. This Agreement provides that DIRECTV may in certain cases provide certain of Contractor's Proprietary Information to Experts, members of the Joint Working Group, Parallel Vendors and Successor Contractors. Notwithstanding anything to the contrary, no such disclosure shall be made (nor, where Contractor is obliged to do so, shall Contractor be obliged to provide any of its Proprietary Information to such Persons) unless the relevant parties have executed the form of Non-

Disclosure Agreement specified herein or the relevant Parallel Vendor or Successor Contractor License, as the case may be.

4. CAM Development and Introduction.

4.1 In General.

4.1.1 Continuing Obligations. During the Term of this Agreement, Contractor and DIRECTV with the assistance of its Experts shall participate, assist and cooperate fully in the modeling, drafting of requirements, specification, design, and testing of the P4 CAMS (as used herein, the term "generation" shall be synonymous with "period"), as requested by DIRECTV, to maintain the integrity of the portion of the Conditional Access Segment supplied by Contractor at all times in accordance with this Agreement. Contractor shall be the supplier of complete P3 and P4 CAMs.

4.1.2 Determination of Generations.

4.1.2.1 DIRECTV shall have the sole right to determine the difference between CAM generations and CAM versions. Each succeeding CAM generation, for example, P4 CAMs succeeding P3 CAMs, shall have specifications materially different from those of its preceding CAM generation, and may differ in such areas as chip manufacture, chip features, physical security, major software changes and changes in fundamental design or operating approach. New CAM versions resulting from minor changes or enhancements effected after release or completion of the major design and test effort shall maintain the basic designation of the current CAM generation but will be designated with sub-numerals such as "P3.0," "P3.1" or "P3.1.M." These sub-numerals may be used to distinguish CAMs for the purpose of separating inventories for specialized applications or features. In addition, these sub-numerals may be used to distinguish the on-going design, test, and release of hardware, application or operating system software as the design matures.

4.1.2.2 The Parties agree and acknowledge that (i) after Introduction of a new generation of CAMs, certain software changes may be necessary or desirable during the life-span of such CAM generation to correct a defect, (ii) to the extent commercially practical, the manufacture of subsequent CAMs of such CAM generation will contain such correction (the CAMs so corrected, the "Improved CAMs"), and (iii) such Improved CAMs shall not be considered a new generation of CAMs for purposes of this Agreement.

4.2 Rolling Introduction. Contractor shall commence the manufacture of P4 CAMs (including acquisition of component parts thereof) and introduce the P4 CAMs only upon written authorization by DIRECTV. Contractor shall use commercially reasonable efforts to create a commercially practicable plan in which at least three generations of authorized CAMs are used in the portion of the Conditional Access Segment supplied by Contractor at the same time on a continuous basis with up to four different, simultaneous encryption schemes (such a plan, the

"Rolling Introduction Plan") as a necessity to (i) have the portion of the Conditional Access Segment supplied by Contractor operate with three (3) generations of CAMs in the field simultaneously, (ii) reduce the expense and business interruption of CAM change-outs across the entire DIRECTV Subscriber base at one time, and (iii) further secure the Conditional Access Segment by limiting the number of Subscribers using any particular generation of CAMs, if reasonably practicable. Contractor agrees to (A) research, develop and propose to DIRECTV a plan whereby the Rolling Introduction Plan may be effectively implemented at or before the scheduled Introduction of a P4 CAM, and (B) when authorized by DIRECTV, implement the Rolling Introduction Plan at the time of P4 CAM Introduction. Contractor shall deliver to DIRECTV the plan described in clause (A) of the preceding sentence within such days after the execution of this Agreement as follows:

60 days	A written outline
120 days	A preliminary plan
180 days	A final version with all the comments of DIRECTV incorporated therein

The Parties agree that the obligation to comply with the foregoing is a material term.

4.3 CAM Developmental Milestone Fees. The development of the P4 generation of CAM and the conception and implementation of the Rolling Introduction Plan by Contractor are of critical importance to DIRECTV and constitutes the consideration for the CAM Developmental Fees as set forth in Section 9.1.5 and *Exhibit 9.1*.

4.4 P3 CAM Development.

4.4.1 Certification and Warranty. This Agreement governs the P3 CAMs (whether ordered or delivered before, on or after the Effective Date) in all respects. As of the date of their Introduction, Contractor warrants (a) that all P3 CAMs sold to DIRECTV or Introduced pursuant to prior agreements and this Agreement meet in all material respects all specifications and performance requirements for the P3 CAM as set forth in the Exhibit to *Exhibit 2.2*, (b) that from and after Introduction, P3 CAMs are ready to be used in the Conditional Access Segment with all models of IRDs currently in use or already developed and to replace the P2 CAMs used therein, and (c) that Contractor has designed the P3 CAM to correct all material flaws and deficiencies of the P2 CAMs known to Contractor so far as possible, has implemented all recommendations of TNO as may be reasonably practicable, and has designed the P3 CAM to reflect at least the state of the art for such devices as used in the pay television industry.

4.4.2 Introduction of P3 CAMs and Replacement of P2 CAMS. Subject to Article 5, DIRECTV shall issue additional purchase orders to Contractor for a desired number of P3 CAMs based on DIRECTV's business requirements from time to time following the execution

and delivery of this Agreement. The Introduction of P3 CAMs for the DIRECTV Service shall also be accomplished pursuant to the Fulfillment Vendor Agreement. Simultaneously with execution of this Agreement, DIRECTV hereby issues a purchase order to Contractor for P3 CAMs pursuant to *Exhibit 9.2.1.A.(iii)*. The Parties agree that the P3 CAM was first Introduced on February 26, 1999.

4.5 P4 CAM Development.

4.5.1 Joint Working Group. Promptly after execution hereof, the Parties shall establish a "Joint Working Group" to commence development of the P4 CAM. Such Joint Working Group, at DIRECTV's reasonable discretion, shall include Contractor and DIRECTV and such Experts retained by DIRECTV. In addition to the foregoing, silicon chip manufacturers and other CAM component suppliers may be consulted from time to time by DIRECTV to assist the Joint Working Group in P4 CAM design and development. DIRECTV shall lead the Joint Working Group. The Joint working Group shall not include any Competing Person of Contractor.

4.5.2 CAM Requirements.

4.5.2.1 Contractor shall assist and fully cooperate with DIRECTV, its Experts and other members of the Joint Working Group to develop the requirements for the P4 CAMS. Contractor acknowledges and agrees that DIRECTV has the ultimate authority in consultation with the Joint Working Group for deciding on and determining the final CAM requirements, specifications and design of the P4 CAM. The requirements for the P4 CAM shall be described in a "CAM Requirements Document" which may include selection of component manufacturers, operating system, functions and such other requirements as are described in the Statement of Work and as determined in DIRECTV's discretion.

4.5.2.2 No later than six (6) months after Introduction of P4, DIRECTV shall use commercially reasonable efforts to provide Contractor with the CAM Requirements Document for the next generation of CAMs, if desired. Upon receipt of such specifications, Contractor shall (i) commence review of such requirements, and (ii) commence preliminary developmental work on the new CAM specifications in accordance with such requirements.

4.5.3 P4 CAM Design and Development. Upon receipt of the final P4 CAM Requirements Document from DIRECTV, Contractor shall perform its design and development obligations for the P4 CAM in accordance with the Statement of Work and the development milestones described in *Exhibit 9.1.G*. DIRECTV in conjunction with the Joint Working Group shall evaluate, review and accept all specification, design, testing and implementation submittals, and DIRECTV shall have final authority on all such design and development decisions.

4.5.4 Elements of a P4 CAM Generation.

4.5.4.1 Contractor shall participate and cooperate with DIRECTV and others members of the Joint Working Group to develop, design, implement and test the P4 CAM, and to use commercially reasonable efforts to complete development and testing of the P4 CAM within the CAM Development Period. Following acceptance by DIRECTV of the final specifications of the P4 CAM, Contractor shall promptly commence its design and development work thereon as directed by DIRECTV.

4.5.4.2 Contractor shall provide its proprietary elements of development and Licensed Technology, and DIRECTV, with input from the Joint Working Group, shall evaluate, review and accept the P4 CAM elements designed and developed by Contractor.

4.5.4.3 Contractor shall be informed and knowledgeable about, for the P4 generation of CAMs, those technological developments and innovations introduced into the smart-card industry since development of the last CAM generation that will increase functionality, security and CAM life expectancy, including increased ROM memory, new security developments and new manufacturing technologies that lead to a more robust CAM design. Contractor shall consult with DIRECTV to determine the developments and innovations that are commercially practical to be included in the P4 generation of CAMs. In furtherance of the foregoing, Contractor shall regularly consult during the relevant CAM Development Period with silicon chip manufacturers and other key component suppliers to take advantage of such developments. For each new version of the P4 generation of CAMs, by the end of the CAM Development Period and prior to the start of any mass production, Contractor shall certify in writing to DIRECTV that such new version of the P4 generation of CAM meets in all material respects all agreed Specifications and requirements and all recommendations of the Joint Working Group as approved in writing by DIRECTV pursuant to Section 4.5.2.1, and complies with the provisions of this Agreement.

4.5.4.4 Contractor warrants that:

- (i) all CAMs supplied or to be supplied by Contractor will be manufactured in all material respects to the technical, functional and cosmetic specifications and requirements agreed upon by the Parties, and although the cosmetic appearance of CAMs may vary owing to multiple manufacturing sources used by Contractor, each CAM will meet or exceed the agreed Specifications and requirements for such CAM;
- (ii) all CAMs supplied or to be supplied by Contractor function with all IRDs (including those already in the market and those developed and proposed to be Introduced into the market) which meet the applicable specifications for the interface between the

CAM and the IRD, or with IRDs which are otherwise recommended for approval by Contractor;

- (iii) Contractor shall (A) test all such IRDs provided by the Authorized Manufacturers to Contractor to determine whether they meet in all material respects all specifications applicable to the Verifier pursuant to an agreed upon test plan and (B) report all deficiencies to the Authorized Manufacturers and to DIRECTV;
- (iv) All CAMs supplied by Contractor properly communicate with and function in connection with the CAMC, in accordance with the agreed Specifications and requirements; and
- (v) Contractor shall in relation to CAMs supplied by Contractor consult and work with the Authorized Manufacturers to (A) obtain current information on authorized changes to the functionality of the IRDs that may necessitate changes to the functionality of the CAMs; (B) ensure that the CAMs will accommodate such functional changes; and (C) ensure that all new generations of CAMs function in all material aspects with all IRDs with no less capability in functionality or performance than as specified for the prior generations of CAMs.

Contractor shall notify DIRECTV promptly upon discovery of any IRD that does not meet its applicable specifications.

4.5.5 CAM Development Period. Contractor shall complete its development and testing, and have ready for Introduction, a new CAM generation within twenty-four (24) months or such shorter period as may be commercially practicable (the "CAM Development Period") after receiving the requirements for such CAM generation. Contractor shall provide DIRECTV with written notice of completion of software development and commencement of testing prior to the end of such CAM Development Period. In addition, Contractor shall keep DIRECTV informed of the progress of Contractor's design work, and shall present its design for evaluation, review and testing by such members of the Joint Working Group in accordance with the Statement of Work and the milestones identified therein and in *Exhibit 9.1.G*.

4.5.6 Testing.

4.5.6.1 Promptly after completion of the P4 development, Contractor, shall (i) arrange and pay at DIRECTV's cost and expense for the testing of the new CAM generation by such independent test firms as may be designated by DIRECTV, (ii) arrange for testing of the new CAM generation by the Authorized Manufacturers, and (iii) provide all

reasonable support to complete all such testing during the last six (6) months (the "CAM Testing Period") of the CAM Development Period.

4.5.6.2 Contractor shall keep DIRECTV fully informed of all test progress and promptly inform DIRECTV of the results of such tests and share all design and test information, evaluations, recommendations and data (except Source Code which may be accessed subject to Section 3.6.5.1) with DIRECTV concerning such new CAM generation. Periodically during such testing or at the request of DIRECTV, Contractor shall consult with DIRECTV regarding necessary or recommended changes to the new CAM generation as a result of defects or potential improvements identified during such testing. Contractor shall be obligated promptly to correct any defects identified that will impair or limit functionality or security in any material respect as determined by DIRECTV in its reasonable judgment. DIRECTV shall have the right to require Contractor to implement identified improvements, subject to mutual agreement with respect to introduction delays and the cost of such improvements.

4.5.7 Deferral of Milestone Fees. Further to *Exhibit 9.1.G*, in the event Contractor fails materially to complete a CAM Developmental Milestone as scheduled, and such delay is not caused by DIRECTV (or any agent of DIRECTV, including any independent testing facility designated by DIRECTV) or a material change to the applicable specifications or requirements or work load requested by DIRECTV that impacts the critical path of the work, DIRECTV shall be entitled to defer payment to Contractor of all outstanding CAM Developmental Milestone Fees until such time as Contractor has completed the applicable milestone.

4.6 Project Manager. Each Party shall designate as its project manager, who shall participate in the Joint Working Group, that person who is most knowledgeable about and will be the most directly involved in the tasks to be undertaken by the Joint Working Group. Such project manager shall (i) be involved substantively in and responsible for the coordination of the development efforts, (ii) be the primary liaison to the other Party for such project and (iii) have the authority to respond directly to questions and concerns of the other Party related to such project. Contractor's project manager so assigned shall be capable and authorized by Contractor to participate in and contribute to the technical and security design and development of the P4 CAM. DIRECTV shall have the right reasonably to approve Contractor's project managers for purposes of the P4 CAM development effort. In addition, each Party shall make other development and managerial personnel available as reasonable and appropriate for meetings with representatives of the other Party on a quarterly basis, or as may be mutually agreeable, to discuss specific issues related to the development effort.

4.7 New CAM Introduction.

4.7.1 Plan of Introduction. DIRECTV at its sole discretion shall determine the timing of the Introduction of any new CAM generation into the Conditional Access Segment for

use in support of the DIRECTV Service. Contractor shall use commercially reasonable efforts to implement any Introduction in the time period requested by DIRECTV.

4.7.2 New Fulfillment Vendor Agreement. The Parties shall negotiate in good faith to execute a new CAM Fulfillment Vendor Agreement to govern the details concerning the handling and distribution of P4 or such later versions or generations as may be requested by DIRECTV. If the Parties, after good faith negotiations over a period of three (3) months, are unable to reach mutually agreeable terms for the new CAM Fulfillment Vendor Agreement, then DIRECTV may retain another vendor to meet its requirements with no resulting liability to Contractor. Contractor shall reasonably cooperate with such new vendor and with DIRECTV pursuant to a Change Order so that such new vendor may meet the requirements of its obligations.

4.7.3 Solicitation of Bids. For the P4 CAM generation and any subsequent CAM generation that DIRECTV may request, DIRECTV shall determine and lead the process of soliciting and accepting bids from potential suppliers for and manufacturers of new CAMs with the full cooperation and participation of Contractor. Bids from at least two (or such other number as may be practicable and reasonably agreed upon by DIRECTV) reputable and capable manufacturers and suppliers for each major component of the CAM shall be solicited to ensure that the selection of a supplier or manufacturer is based on a competitive pricing submission. When reasonably practicable, Contractor shall combine the solicitation of bids related to its other customers with bids related to the performance of this Agreement as appropriate to benefit DIRECTV and, in sharing information concerning such combined solicitation with DIRECTV, Contractor may remove or redact information related to its other customers.

5. CAM Supply.

5.1 Supply of CAMs.

5.1.1 Purchase Orders. Contractor shall supply P3 and P4 CAMs pursuant to purchase orders issued by DIRECTV from time to time in accordance with this Article 5. The price and payment terms for additional P3 CAMs shall be in accordance with Section 9.2 and *Exhibit 9.2.1*. Contractor agrees and acknowledges (i) that DIRECTV shall assume the responsibility for purchasing CAMs for the Authorized Manufacturers and providing the monthly forecasts to Contractor and (ii) that as contemplated in Recital M and subject to its existing agreements with Authorized Manufacturers and Section 5.9, Contractor shall have no right or obligation to supply any such CAM directly to any Person other than as directed by DIRECTV.

5.1.2 Export Licenses. Contractor shall obtain the requisite export licenses and consents for this purpose. To this end, DIRECTV agrees to assist Contractor in the application for the requisite export licenses and consents including providing Contractor with any end user undertakings which are required by the Department of Trade and Industry of the United Kingdom or any applicable U.S. import or export regulations.

5.1.3 Storage and Shipment. The CAMs shall be delivered by Contractor to Contractor's facility in Lake Forest, California or such other location in the United States as may be agreeable to DIRECTV, and the CAMs shall be stored by Contractor in accordance with its normal and reasonable security and storage procedures. DIRECTV shall have the right to review and reasonably approve the security and storage procedures in place at the location(s) where Contractor stores the CAMs ordered by DIRECTV. Contractor shall ship CAMs from such location(s) to locations in the Territory as directed by DIRECTV including any location of DIRECTV, any Authorized Manufacturer and any dealer. Shipments to Subscribers and to customer service centers are described in the Fulfillment Vendor Agreement.

5.1.4 Expenses. CAMs are priced f.o.b. Lake Forest, California or such other of Contractor's facilities in the United States as may be agreeable to DIRECTV. All freight charges, insurance, taxes and duties on the CAMs shipped from Lake Forest, California to DIRECTV, any Authorized Manufacturer or any dealer, shall be payable by DIRECTV. Contractor shall ship CAMs in lots of five hundred (500) CAMs or multiples thereof, or as otherwise agreed by DIRECTV.

5.2 Lead Time and Forecasts. Contractor shall supply CAMs to meet DIRECTV's needs pursuant to purchase orders submitted by DIRECTV each month in accordance with the allowed variance in DIRECTV's forecasts as provided in *Exhibit 5.2*. DIRECTV will use its commercially reasonable efforts to provide a twelve-month (12-month) rolling forecast of its requirements for CAMs. The first forecast will be provided within forty-five (45) days after the execution and delivery of this Agreement by the Parties. Forecast updates will be provided by DIRECTV by the twenty-eighth (28th) day of each calendar month. The variance and purchase commitment levels for such rolling forecasts are set forth in *Exhibit 5.2*.

5.3 Risk of Loss and Title. Risk of loss shall pass to DIRECTV upon delivery to the shipping point designated pursuant to Section 5.1.3 excluding loss due to Contractor's negligence which loss shall be borne by Contractor. Until such point, Contractor bears the risk of all loss and damage to CAMs. Title to CAMs shall pass from Contractor to DIRECTV upon final payment by DIRECTV to Contractor for such CAMs, provided that no title to any Intellectual Property Right related to such CAMs is transferred by Contractor.

5.4 Minimum CAM Purchase. During the Term of this Agreement, DIRECTV shall purchase a minimum number of CAMs pursuant to Section 2.1.3 and *Exhibit 9.2.4*.

5.5 Defective CAM Replacement. Within thirty (30) days after DIRECTV notifies Contractor of a potentially defective CAM, Contractor shall investigate such circumstances, review the situation and shall replace any damaged or defective CAM including any CAM authorized for service or in the Distribution Pipeline determined not to meet the applicable specifications and requirements in any material respect at no charge to DIRECTV or to any Authorized Manufacturer or to any Subscriber (shipping of such CAM to be accomplished

according to the Fulfillment Vendor Agreement) at any time within thirty-six (36) months after the date of authorization of such CAM by DIRECTV or by the CAMC in a Subscriber's IRD, provided that such damage or defects are not due to misuse or mishandling by any Person other than Contractor or Contractor's shippers, if applicable.

5.6 CAM Manufacturing Capabilities.

5.6.1 Maintenance of Capabilities. Contractor shall maintain, or cause to be maintained, CAM manufacturing capabilities sufficient to meet DIRECTV's forecasted requirements.

5.6.2 Continuous Availability.

5.6.2.1 Contractor shall ensure adequate supply of CAMs of each generation to meet purchase orders by DIRECTV and shall not take any action to discontinue the manufacture of CAMs of any particular generation or destroy or otherwise prevent (or render commercially impracticable) further manufacture of CAMs of any particular generation without the prior written approval of DIRECTV.

5.6.2.2 Without limiting the generality of the foregoing, Contractor shall have an absolute, unconditional obligation to continue providing each generation of CAMs to DIRECTV until DIRECTV has formally Introduced the subsequent generation of CAMs.

5.6.2.3 Notwithstanding the foregoing, Contractor shall be relieved of its obligations under Sections 5.6.2.1 and 5.6.2.2 with respect to a particular generation of CAM if the manufacturer(s) of the semiconductors used in such CAM generation ceases to maintain an assembly line for such semiconductor, provided that Contractor (i) notifies DIRECTV of the manufacturer's plans within seven (7) days of being notified of such plans by the manufacturer and (ii) cooperates with DIRECTV to forecast, plan and purchase a final quantity of such semiconductors from the manufacturer. To the extent such final purchase results in an amount of semiconductors in excess of the actual final requirements of DIRECTV for CAMs, such excess shall be the shared responsibility of Contractor and DIRECTV on a 50:50 basis and DIRECTV shall have no further obligation to pay for such semiconductors or otherwise accept delivery or store such items. To the extent such final purchase results in an amount of semiconductors that is insufficient to meet the actual final requirements of DIRECTV for CAMs, Contractor shall have no liability therefor. In the event of either a shortfall or excess in semiconductors due to a final order as described herein, the Parties shall cooperate with each other to reasonably mitigate the effect on the responsible Party.

5.7 Buffer Stock. Contractor shall maintain excess semiconductor stock for the manufacture of CAMs for the Conditional Access Segment at least in the amount of three hundred thousand (300,000) at all times such that Contractor shall be able to accomplish the manufacture of CAMs from such buffer stock within sixty (60) days. Upon request from

DIRECTV, Contractor shall use commercially reasonable efforts to accomplish such manufacture within forty-five (45) days. Prior to any contemplated discontinuation of any CAM generation, the Parties shall cooperate with each other in determining the appropriate level of excess semiconductor stock concerning such CAM generation.

5.8 Authorized Manufacturers.

5.8.1 Verifier License. Contractor shall grant each Authorized Manufacturer already known to Contractor as of the Effective Date, and shall grant each future Authorized Manufacturer as soon as such Person is identified to Contractor as an Authorized Manufacturer, a non-exclusive, and non-transferable right and license under Contractor's IPR in relation to the Verifier substantially on commercially reasonable terms as negotiated between Contractor and such Authorized Manufacturer, including uncapped indemnification for intellectual property claims, except for any Authorized Manufacturers that have a pre-existing license under such rights and which elect not to enter into new license until the end of the term thereof, in which case the prior licenses shall remain in place for the duration of their term. The sole consideration for such grant shall be a royalty paid by the Authorized Manufacturer to Contractor in an amount not to exceed two dollars and fifty cents (\$2.50) per IRD manufactured by such Authorized Manufacturer (or \$1.50 per IRD in respect of Thomson) or such other consideration as may be agreeable by the Authorized Manufacturer and Contractor. NDS agrees promptly to keep DIRECTV informed of the progress of such negotiations, copy DIRECTV on all pertinent correspondence related thereto, and not to revoke any such license during a renegotiation thereof.

6. Security Technical Operations.

6.1 Ongoing Efforts. As part of the Conditional Access Services during the Term, Contractor shall undertake all commercially reasonable efforts to maintain the security of the portion of the Conditional Access Segment that it has provided or provides to DIRECTV. In general, such services shall at a minimum include each of the following:

- (a) Monitoring public sources (e.g., trade publications, public computer networks, public computer bulletin boards and public trade shows) for any Pirate activity and providing ongoing and timely assessments of Pirate activities to DIRECTV;
- (b) Coordination with DIRECTV and relevant law enforcement agencies regarding the planning and implementation of measures designed to prevent Pirate activities;
- (c) Obtaining sample Pirate devices and reporting to DIRECTV on the technical viability of such devices;

- (d) Providing analysis and summary technical reports on Pirate devices describing their characteristics and capabilities for threat assessment and for technical and legal planning by both Contractor and/or DIRECTV; and
- (e) Other services as may be agreed upon between the Parties from time to time.

The obligations described in this Section 6.1 above shall be ongoing and undertaken with all commercially reasonable efforts and, with respect to any particular Pirate activity, obligations (c) and (d) shall be undertaken promptly and on a high priority basis.

6.2 Proposed Cure. Promptly on learning of the existence of a Security Breach ("Security Breach Notice Date"), Contractor will use commercially reasonable efforts to obtain a related Pirate device responsible for or of a class related to the Security Breach in question either from DIRECTV or through other sources. As soon as reasonably practicable, but not more than thirty (30) days from Contractor's receipt of such Pirate device, Contractor shall conduct an analysis of the Pirate device and prepare a Proposed Cure (the "Proposed Cure") which may include an ECM. During the preparation of such Cure, Contractor shall submit an outline of the proposed Cure to DIRECTV for comment. Contractor shall notify DIRECTV in writing promptly upon a Security Breach Notice Date and again upon receipt of a Pirate Device. Subject to Section 11.2, the occurrence of any particular Security Breach or Security Failure, without more, shall not in and of itself amount to a Breach of this Agreement (as defined in Section 11.1).

6.3 Review of Proposed Cure.

6.3.1 Expert Review. The Parties acknowledge that any Pirate device and Proposed Cure including any ECM designed by Contractor may be subject to testing and review by Experts designated by DIRECTV at its sole discretion. Contractor shall share with DIRECTV and its Experts, or otherwise permit access by DIRECTV and its Experts to, all the test results of any Proposed Cure including any ECM.

6.3.2 Contractor Expert During Implementation of Proposed Cure. Prior to the initiation of, and during the implementation of, a Proposed Cure including an ECM, Contractor shall provide a security technical operations expert to be available at DIRECTV's Broadcast Center in Los Angeles, California, in Castle Rock, Colorado, at DIRECTV headquarters in Los Angeles, California or at such other place as DIRECTV may designate. DIRECTV may change the required location with one-month's notice. Such expert shall remain until the next CAM period security algorithms are in use and the breached algorithms have been discontinued on all broadcast services. Such expert shall coordinate technical anti-piracy operations including changing algorithms over the air, ECM plans and execution and introduction of next period security servers and algorithms.

6.4 Development of Proposed Cure.

6.4.1 Criteria. Contractor shall prepare its Proposed Cure including any ECM to effect a Cure with respect to each and any Security Breach, and further to ensure that the proposed ECM or other Proposed Cure will not, or be reasonably expected not to, (i) cause any component of the Conditional Access Segment to fail in any material respect to meet applicable portions of the specifications referred to in the Statement of Work or otherwise agreed by the Parties from time to time; (ii) damage, disable, or otherwise cause to malfunction authorized CAMs or IRDs used by the Subscribers in any material respect, or (iii) otherwise have a material impact on the business, reputation or goodwill of DIRECTV.

6.4.2 Submission to DIRECTV. As part of the preparation of any Proposed Cure including any ECM, Contractor shall:

- (a) Prepare and submit to DIRECTV for its review and comment a written plan for the design and implementation of any Proposed Cure including any ECM including a description of the nature of the Proposed Cure. DIRECTV will respond to Contractor with its comments, if any, within a mutually agreed response time, or notify Contractor that it has no comments;
- (b) On receipt of comments (or notification by DIRECTV that it has no comments) on the Contractor's plan, Contractor shall complete preparation of the Proposed Cure taking into account all such comments. On completion of the preparation of the Proposed Cure by Contractor, the Proposed Cure will undergo tests to determine in relation to CAMs supplied by Contractor (i) the likely effect of the Proposed Cure and its proposed implementation method (e.g., in the case of ECMs, a gradual release to pre-determined groups) on the entire population of unauthorized CAMs and IRDs, (ii) the likely effect of the Proposed Cure on the software contained in all known activated CAMs which the Pirates are utilizing to develop Pirate devices, and (iii) the likely effect of the Proposed Cure on the Pirate devices which the Proposed Cure is designed to disable; and
- (c) Prepare an Impact Assessment & Test Report which, when completed, will be signed by senior representatives of Contractor. Such report shall be submitted to DIRECTV for its review and comment. Such report shall contain a description of Contractor's best assessment of the impact of any Proposed Cure and the results of all testing done to support Contractor's assessment. All tests shall be designed to be conducted and, only when authorized in writing by DIRECTV, shall actually be conducted, on the following:

- (i) An emulation of the uplink, satellite and IRDs reasonably representative of those aspects of DIRECTV's signal test distribution network relevant to the Proposed Cure testing; and
- (ii) Where relevant, the actual DIRECTV signal distribution network or components thereof by providing test service channels which are uplinked and broadcast via the DIRECTV Satellites and received via a production IRD.

6.5 Implementation of Proposed Cure.

6.5.1 Commencement. Contractor shall have the right to commence implementation of a Proposed Cure only after (i) Contractor (A) has demonstrated to the reasonable satisfaction of DIRECTV that such Proposed Cure meets the criteria of Section 6.4.1 and (B) has provided to DIRECTV the information required in Section 6.4.2, and (ii) DIRECTV has authorized such Proposed Cure in writing.

6.5.2 Manner of Implementation and Effect. The Proposed Cure shall be effected only in a manner and at a time to be determined by the mutual agreement of Contractor and DIRECTV taking into account DIRECTV's business considerations, programming schedule and other operational or technical restraints. Contractor shall provide DIRECTV with an analysis, prepared by its expert designated pursuant to Section 6.3.2 or by other experienced consultants, of the actual impact of the Proposed Cure on authorized CAMs and IRDs within fourteen (14) days after the activation of such Proposed Cure.

6.5.3 Evaluation of Implemented Cure. Following the implementation of a Proposed Cure, the Parties shall then discuss and agree on any further actions necessary or desirable to address the Security Breach.

6.5.4 Damages. Notwithstanding (i) anything in this Agreement to the contrary and (ii) authorization by DIRECTV of any Proposed Cure including any proposed ECM, Contractor shall be responsible for and promptly reimburse DIRECTV for any and all actual and reasonable expenses and costs (including such expenses and costs of purchasing, shipping, handling, and customer service) incurred by DIRECTV in connection with any replacement of (A) authorized CAMs (excluding Pirate devices), or (B) any other component of the Conditional Access Segment (including IRDs), which are damaged as a result of the implementation of any Proposed Cure by Contractor; provided that in each of (A) or (B) above the aggregate of such costs and expenses incurred during the active life of the affected generation of CAM exceeds the lesser of (i) the amount due to damage of ten thousand (10,000) IRDs, (ii) the amount due to damage of ten thousand (10,000) authorized CAMs or (iii) one million dollars (\$1,000,000.00).

6.5.5 Cure Implementation Date. The date upon which a Proposed Cure is effected, or deemed to be effected under Section 6.5.7, shall be referred to as the "Cure Implementation Date."

6.5.6 New Proposed Cure. If the Proposed Cure is found to be ineffective, then within thirty (30) days thereafter, Contractor may submit a new Proposed Cure, and the Parties shall follow the provisions of Sections 6.1 through 6.5 in preparing, assessing, testing, implementing and evaluating such new Proposed Cure.

6.5.7 Authorization of Proposed Cure. If DIRECTV authorizes any Proposed Cure following demonstration and other technical review, then Contractor shall have the right to commence implementation of the Proposed Cure. If DIRECTV is unable or unwilling to authorize implementation of the Proposed Cure due to business or other technical constraints not including reasonable delays or postponements up to ninety (90) days, the Proposed Cure shall be deemed to be effective as of the date it is demonstrated to DIRECTV, provided that such Proposed Cure meets the criteria of Section 6.4.1. In such event, however, Contractor shall use commercially reasonable efforts to devise an alternative Proposed Cure which meets the business and technical objectives of DIRECTV. Unless the Parties agree otherwise, Contractor may not submit any Proposed Cure that by design will permanently impair or disable authorized, non-Pirate CAMs or authorized IRD functionality.

6.6 Legal Actions Involving Security Breaches.

6.6.1 Contractor Assistance. Upon receipt by Contractor of written notice from DIRECTV that DIRECTV intends to commence legal action at its expense against a Pirate, Contractor shall make available such of its employees as DIRECTV may reasonably request to serve as consultants or witnesses in such legal action. DIRECTV shall consult with appropriate representatives of Contractor regarding the selection of such potential consultants or witnesses.

6.6.2 DIRECTV Assistance. Upon receipt by DIRECTV of written notice from Contractor that Contractor intends to commence legal action at its expense against a Pirate, DIRECTV shall make available to Contractor such of its employees as Contractor may reasonably request to serve as consultants or witnesses in such legal action. Contractor shall consult with appropriate representatives of DIRECTV regarding the selection of such potential consultants or witnesses.

6.6.3 Contractor Actions. If DIRECTV determines in its reasonable judgment that a legal action against a certain Pirate may be more effectively or more efficiently carried out by Contractor than by DIRECTV, Contractor shall in cooperation with DIRECTV promptly commence such legal action unless Contractor has reasonable material grounds for not commencing in which case Contractor shall promptly inform DIRECTV of its grounds in writing and shall endeavor to remove such grounds or otherwise cooperate to support a legal action

against such Pirates. In the event Contractor refuses to pursue a legal action requested by DIRECTV, then DIRECTV shall retain all damages recovered.

6.6.4 Protective Orders. The supply of employees of either Party as witnesses shall be contingent upon obtaining any necessary protective or similar orders with respect to the disclosure of proprietary or trade secret information.

6.6.5 Expenses. Notwithstanding either Party's continuing mutual requirement for support, each Party's reasonable expenses under this Section 6.6 shall be capped at \$150,000 per action. Thereafter, unless otherwise agreed, expenses shall be shared on an equal basis.

6.7 Certain Activities Designed to Prevent Security Failures. Contractor shall:

- (a) cause algorithms to be changed according to requirements approved by Contractor and DIRECTV; and
- (b) upon receipt of reasonable written notice from DIRECTV that DIRECTV intends to conduct activities in support of legislation which is intended to prevent potential or actual Security Breaches or is in the best interests of the DIRECTV business, as determined by DIRECTV at its sole reasonable discretion, Contractor shall make available such of its employees as DIRECTV may reasonably request to serve as consultants or witnesses in such legislative activities and support such legislative activities and goals; provided, however, that Contractor shall not be obligated to participate in any manner in any legislative activities if it determines at its sole reasonable discretion that such participation would be contrary to its best interests.

6.8 DIRECTV Request for CAM Replacement Plan. DIRECTV may at any time request Contractor to prepare a CAM Replacement Plan to meet DIRECTV's reasonable business or technical requirements.

7. Third-Party Development of Parallel Conditional Access Systems.

7.1 Scope of Development. During the Term of this Agreement, DIRECTV may, at its sole discretion, initiate the development and operation by one or more vendor (each, a "Parallel Vendor") of parallel conditional access system(s) for use in the DIRECTV Service. Such development may include the designing and implementation of a conditional access system which either (i) operates in parallel to the conditional access system designed by Contractor without the use of the Licensed Technology, or (ii) interfaces with the conditional access system designed by Contractor such that Contractor and the Parallel Vendor will share a common interface (using T20 or other interfaces agreed upon by the Parties) to the CAMC and/or related

subsystems such as customer services or billing or otherwise uses the Licensed Technology. DIRECTV or one of its Affiliates may act as a Parallel Vendor.

7.2 License. To the extent a Parallel Vendor requires use of the Licensed Technology, Contractor shall grant to Parallel Vendor a license of the Parallel Vendor Licensed Technology upon execution by Parallel Vendor and delivery to Contractor of a form of license with terms substantially the same as those expressed in *Exhibit 7.2*. The technology and associated licenses referred to in this Section 7.2. shall be utilized by a Parallel Vendor only in furtherance of the DIRECTV Service.

7.3 Commercially Reasonable Efforts. Following the selection by DIRECTV of any Parallel Vendor and the grant of the license pursuant to Section 7.2, Contractor shall at all times use commercially reasonable efforts to cooperate with DIRECTV and such Parallel Vendor in the development, implementation and operation of a parallel conditional access system, including facilitating the simulcrypting of programs of the DIRECTV Service by DIRECTV or a Parallel Vendor retained by DIRECTV. If DIRECTV desires that Contractor (i) support its use of a Parallel Vendor with services that are outside the scope of the Conditional Access Services or (ii) accommodate the interfacing to the CAMC by the Parallel Vendor in a manner that would require a change to the CAMC, then DIRECTV shall submit a Change Order to Contractor for such support and Contractor shall provide such additional services once the Parties have agreed on the costs thereof.

7.4 Engineering Support. Contractor shall provide, pursuant to a Change Order, all the engineering support as may be requested from time to time by either DIRECTV or the Parallel Vendor in connection with the development, implementation and operation of any new parallel conditional access system.

8. CAMC Agreement.

8.1 Term of Agreement. Section 13 of the CAMC Agreement is hereby canceled and replaced by the following:

"The term of this Agreement (the "Term"), unless terminated earlier as provided herein, shall commence as of February 2, 1992 and shall expire on the ninetieth (90th) day following the Effective Date unless otherwise mutually agreed."

8.2 Scope of Services. In addition to the services provided by Contractor under the CAMC Agreement, Contractor shall also provide the services described in Section 4.5 of the Statement of Work.

9. Fees and Awards.

9.1 Service Payments.

9.1.1 In General. Except as otherwise provided in this Agreement, DIRECTV shall pay to Contractor the Service Fees for Contractor's performance of the Conditional Access Services and other obligations under this Agreement. The Service Fees shall consist of the following components: Fixed Fees, CAM Developmental Fees, Quarterly Awards, Change Order Payments and Growth Incentive Fees.

9.1.2 Fixed Fees. The Fixed Fees shall be of such amounts as set forth in Section B of *Exhibit 9.1* and, unless deferred pursuant to the terms of this Agreement, shall be paid monthly in respect of the services set forth in the Statement of Work.

9.1.3 Quarterly Awards. Contractor shall be eligible to receive Quarterly Awards payable quarterly in arrears in accordance with the criteria and amounts set forth under Section C of *Exhibit 9.1*.

9.1.4 Growth Incentive Fees. For the Term of this Agreement and any Transition Period, DIRECTV shall pay to Contractor a fee (the "Growth Incentive Fee") as described in Section D of *Exhibit 9.1*.

9.1.5 CAM Developmental Fees. The CAM Developmental Fees payable by DIRECTV to Contractor shall be of such amounts as set forth in Section G of *Exhibit 9.1*.

9.1.6 Change Order Payments. DIRECTV shall purchase from Contractor a minimum of \$1,000,000 per Contract Year in work done pursuant to Change Orders. Contractor shall invoice DIRECTV at the time of completion of agreed milestones in respect of each Change Order and shall invoice DIRECTV within thirty (30) days after the end of each Contract Year for any shortfall from such minimum amount.

9.2 CAM Pricing, Audit and Replacement.

9.2.1 General Terms. Contractor shall provide P3 CAMs as ordered by DIRECTV from time to time in accordance with this Agreement at prices payable by DIRECTV to Contractor set out in *Exhibit 9.2.1*. The Parties have agreed upon a methodology that will be used to determine the price payable by DIRECTV to Contractor for any P4 CAMs sold pursuant to this Agreement. Such P4 CAM price methodology is set forth in *Exhibit 9.2.1*.

9.2.2 Extended CAM Life Incentive Payment. DIRECTV shall make certain payments to Contractor as an incentive to prolong the useful life of P3 and subsequent CAM generations in accordance with Section F of *Exhibit 9.1*.

9.2.3 [Intentionally Omitted]

9.2.4 [Intentionally Omitted]

9.2.5 Price Basis. All CAMs supplied by Contractor to DIRECTV are priced f.o.b. Lake Forest, California pursuant to Section 5.1.4.

9.2.6 Import and Export. Contractor shall be responsible for the amount of any duty assessments or any other tax levied in respect of the importation of the CAMs into the Territory.

9.2.7 Credits. DIRECTV shall become the supplier of P3 and P4 CAMs to Authorized Manufacturers consistent with Recital M. Contractor shall use all commercially reasonable efforts to facilitate DIRECTV assuming that role from Contractor as soon as commercially practicable. Toward that end, Contractor shall provide DIRECTV with a credit of nine dollars and nineteen cents (\$9.19) per CAM for each and every CAM shipped by Contractor to each of the Authorized Manufacturers pursuant to Contractor's existing agreements with such Authorized Manufacturers from and after July 1, 1999 until the earlier of (i) the effective date of a CAM supply contract between DIRECTV and such Authorized Manufacturers for DIRECTV to supply CAMs thereto and (ii) ninety (90) days from the Effective Date (such earlier date hereinafter referred to as the "DIRECTV CAM Supply Date"). The quantity of CAMs for which Contractor provides to DIRECTV a credit of \$9.19 per CAM shall be deducted from DIRECTV's stock of CAMs described in Exhibit 9.2.1A(i). As at the DIRECTV CAM Supply Date, any unfilled CAM orders from Authorized Manufacturers on Contractor's books of account shall, with the approval of the Authorized Manufacturers, be transferred to DIRECTV and shall be treated by Contractor as if such orders had been placed through DIRECTV and shall be fulfilled out of DIRECTV's stock of CAMs, except that firm orders as of such date (which Contractor estimates to be from approximately three (3) months out) shall be paid for by DIRECTV upon delivery and not pursuant to the terms of *Exhibit 9.2.1*. DIRECTV may accept orders for CAMs directly from the Authorized Manufacturers, and it is the Parties' intention that DIRECTV (and not Contractor), shall be the sole source of CAM supply to the Authorized Manufacturers, and DIRECTV shall be solely responsible for all forecasting and purchase of CAMs from Contractor. NDS agrees that it shall not take any action or omit to take any action that would have the effect of thwarting the intent of this section or preventing DIRECTV from deriving the benefits thereof.

9.3 Transition and Post Transition Payments.

9.3.1 Successor Contractor.

9.3.1.1 DIRECTV as Successor Contractor. If DIRECTV appoints itself to act as a Successor Contractor, in consideration for the expanded license rights granted to DIRECTV under Article 3, then upon termination or expiration of this Agreement, DIRECTV shall pay to Contractor the sum of three million dollars (\$3,000,000.00) per year for a period of five (5) years (a "Successor Contractor License Fee"), provided that if DIRECTV discontinues its active use of the Licensed Technology to less than one thousand authorized and active CAMs before the end of such five (5) year period, then the foregoing payments to Contractor shall cease coincident with such discontinuation of use of the Licensed Technology. DIRECTV shall make the payments described above to Contractor quarterly in arrears.

9.3.1.2 Third Party as Successor Contractor. If DIRECTV selects one or more third parties as Successor Contractor, in consideration for the rights granted to DIRECTV and the Successive Contractor under Article 3 and Section 19.3, then upon termination or expiration of this Agreement, DIRECTV shall pay to Contractor the sum of five million dollars (\$5,000,000.00) per year for a period of five (5) years (a "Successor Contractor License Fee"), provided that if the Successor Contractor discontinues its active use of the Successor Contractor Licensed Technology with less than one thousand authorized and active CAMs before the end of such five (5) year period, then the foregoing payments to Contractor shall cease coincident with such discontinuation of use of the Successor Contractor Licensed Technology (as defined above). DIRECTV shall make the payments described above to Contractor quarterly in arrears.

9.3.2 Transition Support Payments. If any Transition Period occurs within the Term, then for the remaining duration of the Term, DIRECTV shall pay Contractor all of the fees and CAM prices set forth in Sections 9.1, 9.2.1, 9.2.2 and 9.5 as applicable and due during the Term. If any Transition Period commences upon early termination or expiration of this Agreement, then DIRECTV shall pay Contractor only (i) either of the Successor Contractor License Fees under Section 9.3.1.1 or 9.3.1.2 as applicable, (ii) any Parallel Vendor License Fees, if applicable, under Section 9.5, and (iii) any fees in relation to outstanding CAM orders and Change Orders under Sections 9.1.6 and 9.2 respectively. During any Transition Period, DIRECTV may in its discretion submit a Change Order to Contractor for services in support of the transition from Contractor to Successor Contractor and Parallel Vendor, and shall pay Contractor for such transition support pursuant to the Change Order on a monthly basis.

9.4 Payment Terms/Reimbursements. Unless otherwise agreed in writing by the Parties, all payments made between the Parties and all calculations of fees owed by DIRECTV to Contractor shall be made in United States Dollars. Payments shall be made by either Party to the other for any sums due and any reimbursements due and payable under this Agreement within thirty (30) days of receipt of invoice.

9.5 Parallel Vendor Payments. If DIRECTV retains one or more Parallel Vendors or if DIRECTV acts as a Parallel Vendor to implement additional conditional access systems for use in the DIRECTV Service and such additional systems use the Licensed Technology pursuant to Section 7, then DIRECTV shall pay to Contractor a Parallel Vendor Fee of five hundred thousand dollars (\$500,000.00) within thirty (30) days of the authorization of the first CAM supplied by Parallel Vendor under the Parallel Vendor License (the "PV CAM Date"). Thereafter, DIRECTV shall pay Contractor five cents (\$0.05) per month per authorized CAM of the Parallel Vendor up to a maximum amount of five hundred thousand dollars (\$500,000.00) per year (paid quarterly) during the second through fifth years following the PV CAM Date; provided that if DIRECTV or other Parallel Vendor discontinue their active use of the Licensed Technology to less than one thousand authorized and active CAMs before the end of such five (5) year period, then the foregoing payments to Contractor shall cease coincident with such discontinuation of use of the Licensed Technology. (The payments described in this Section 9.5 in respect of a Parallel Vendor License shall be referred to as a "Parallel Vendor License Fee".) If (i) a Parallel Vendor requires only access to and use of the documentation set forth for Parallel Vendor RFP ("PV RFP") in the Conditional Access Segment Documentation List in *Exhibit 17.4A* as may be amended from time to time by agreement of the Parties, and (ii) the Parallel Vendor does not interface with any portion of the Conditional Access Segment supplied by Contractor and covered under any Contractor IPR, then no Parallel Vendor License Fee shall be due to Contractor. As an example, if a Parallel Vendor does not provide data to be processed in, the portion of the Conditional Access Segment supplied by Contractor and such Parallel Vendor interfaces its own conditional access system with the DIRECTV billing subsystem using only the T-20 interface specification but using no other Contractor Documentation, then no Parallel Vendor Fee shall be due to Contractor.

10. Representations and Warranties.

10.1 Mutual Representations and Warranties. DIRECTV and Contractor each, except as expressly indicated elsewhere in this Agreement, represents and warrants to the other that:

10.1.1 Authority; No Breach. It has the right, power and authority to enter into, and perform its obligations under, this Agreement. The execution, delivery and performance of this Agreement will not result in the breach or non-performance of any agreements it has with any third party. It has complied, in all material respects, with all existing Laws applicable to, and as of the Effective Date has no knowledge of any Law which would be violated by, the performance of its obligations under this Agreement or the transactions contemplated to be performed by it hereby.

10.1.2 Corporate Action. It has taken all requisite corporate action to approve the execution, delivery and performance of this Agreement, and this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with its terms, except to the extent limited by bankruptcy, insolvency, moratorium and other laws of general application relating to general equitable principles.

10.1.3 No Broker. It does not know of any broker, finder or intermediary involved in connection with the negotiations and discussions incident to the execution of this Agreement, or of any broker, finder or intermediary who might be entitled to a fee or commission upon the consummation of the transactions contemplated by this Agreement.

10.1.4 Litigation. To the best of its knowledge as of the Effective Date, there is no outstanding or threatened judgement, or threatened or pending litigation or proceeding, involving or affecting the transactions provided for in, or contemplated by, this Agreement in any material respect or which is reasonably likely to adversely affect in any material respect its ability to perform its obligations hereunder, which has not been previously disclosed to the other Party.

10.1.5 Governmental Regulations. Each Party has or shall use commercially reasonable efforts to obtain and maintain, in all material respects, all Governmental Authorizations applicable to the performance of its obligations under this Agreement and to comply with all Laws regarding such performance. It is expressly understood and agreed that Contractor shall not be required to, and shall not, transmit any signals or other transmissions to and/or from any DIRECTV Satellite and that Contractor shall not, therefore, be responsible for any Governmental Authorizations in connection with any such transmissions by DIRECTV or any other Person.

10.2 Additional Representations and Warranties of DIRECTV.

10.2.1 Governmental Regulations. DIRECTV has, or shall use its commercially reasonable efforts to obtain and maintain, or cause to be obtained and maintained, in all material respects, all applicable Governmental Authorizations necessary to operate the DIRECTV Satellites presently used to distribute DIRECTV signals over such DIRECTV Satellites, and to comply, or cause compliance, in all material respects, with all Laws regarding the operation of all DIRECTV Satellites and the distribution of DIRECTV signals over such satellites.

10.2.2 Organization. DIRECTV is a corporation organized under the laws of Delaware, U.S.A.

10.3 Additional Representations and Warranties of Contractor.

10.3.1 Title Warranty. Subject to Section 5.3, all items delivered by Contractor under this Agreement (except for software and any Intellectual Property Rights of Contractor or of third parties) shall be delivered with good title, free and clear from all liens, charges, claims or encumbrances of any kind or nature. Contractor shall use commercially reasonable efforts to ensure that all third party hardware and software procured by Contractor for use in that portion of the Conditional Access Segment supplied by Contractor shall have at least the manufacturer's commercially standard warranty applicable to and enforceable by DIRECTV or by Contractor for

the benefit of DIRECTV consistent with the requirements set forth herein and if such warranties are not available, to so notify DIRECTV in writing.

10.3.2 Technology Ownership. Contractor represents and warrants that, except for third party patent claims of which Contractor has no knowledge:

- (a) Contractor is the sole and exclusive owner of or has received valid licenses or other rights to use the Licensed Technology under this Agreement, in each case free and clear of any and all liens or encumbrances that would be reasonably likely to adversely affect in any material respect Contractor's ability to perform its obligations under this Agreement or the enjoyment by DIRECTV of the rights granted hereunder;
- (b) Contractor has full and sufficient right, title and authority to grant the rights and licenses granted to DIRECTV under this Agreement and contemplated hereby to be granted under the Parallel Vendor and Successor Contractor licenses;
- (c) To the best of Contractor's knowledge formed after appropriate investigation, no Contractor Documentation which would provide a Pirate or a Competing Person of DIRECTV with material knowledge about the confidential and proprietary security aspects of the portion of the Conditional Access Segment provided by Contractor, has been disclosed by Contractor under circumstances which have caused a loss of Intellectual Property Rights therein and to the extent Contractor's CEO, CTO or General Counsel have knowledge in the future that the warranty herein is untrue, Contractor shall provide DIRECTV with notice thereof;
- (d) The Licensed Technology does not and will not contain any third party materials which Contractor is not authorized to assign or sub-license to DIRECTV pursuant to the terms of this Agreement; and
- (e) As of the Effective Date, to the best of the knowledge of Contractor's CTO, CEO and General Counsel having made appropriate inquiries of relevant Contractor personnel, the Licensed Technology does not infringe any Intellectual Property Rights of any third party and, except as previously disclosed to DIRECTV, no such claim (whether or not embodied in an action, past or present) of such infringement has been threatened or asserted, and no such claim is pending.

10.3.3 Y2K. Contractor represents and warrants that the portion of the Conditional Access Segment supplied by Contractor to DIRECTV pursuant to this Agreement, the HCG Agreements, the Fulfillment Vendor Agreement and any amendments thereof are Year 2000 Compliant. The representation and warranty provided in this Section 10.3.3 shall not extend to and Contractor shall not be liable for any breach of Section 10.3.3 to the extent arising from (i) hardware, software, firmware or data owned by DIRECTV or by any of DIRECTV's Affiliates, Parallel Vendors, Successor Contractors, Authorized Manufacturers or by other third parties, and incorporated into the Conditional Access Segment without authorization by Contractor, (ii) any changes, modifications, or Updates and Enhancements to the Conditional Access Segment that are not approved in writing by Contractor, and (iii) any interfaces to or in the Conditional Access Segment that are not provided by Contractor.

11. Breach.

11.1 General. If either Party shall fail, in any material respect, to perform any obligation required to be performed pursuant to this Agreement, other than Contractor's failure to Cure a Security Breach pursuant to Article 6 or the force majeure provisions of Article 14, then the failing Party shall, within ten (10) days of notice from the other Party providing a reasonable description of an alleged breach, submit a written plan describing how the failing Party intends to remedy its failure. If no such plan is provided within the prescribed time or if such failure shall continue unremedied for thirty (30) days following notice from the other Party, such failure to perform shall constitute a "Breach" of this Agreement. This Article 11 shall not apply in relation to P2 CAMs.

11.2 Certain Specific Breaches.

11.2.1 By Contractor. Additionally, any of the following upon their occurrence shall also constitute a Breach of this Agreement if caused by any act or omission of Contractor, provided that DIRECTV notifies Contractor of the event(s) of termination hereunder with a written statement of the grounds therefor (including legal and technical grounds):

- (a) For any generation of CAMs, any failure to Cure a Security Breach occurring within the Security Life of such CAM generation (i) within one hundred and fifty (150) days from the Security Breach Date or (ii) if three (3) successive attempts to effect a Cure for a particular Security Breach are ineffective;
- (b) Three (3) Security Breaches involving Pirate devices that are not the "Same Device" relating to a single generation of CAM, within the first eighteen (18) months following the Introduction of such generation of CAMs;

- (c) The portion of the Conditional Access Segment supplied by Contractor being inoperable to the extent that it results in (i) a substantially open system for a period of forty-eight (48) consecutive hours without conditional access, encryption or decryption, or security sufficient to prevent access by viewers to portions of the DIRECTV Service for which they have not been previously authorized by DIRECTV or the CAMC, or for which DIRECTV will not be able effectively to bill for programming accessed; or (ii) substantial inability of the Subscribers to view programming for which they have been authorized by DIRECTV or the CAMC having a material effect on DIRECTV's business. The Parties shall work together to develop mutually agreeable procedures designed to avoid the circumstances described in this paragraph (c);
- (d) The impairment of access to the DIRECTV Service by any number of previously authorized Subscribers (as authorized by the CAMC supplied by Contractor) that exceeds the number of unintended, impaired Subscribers that the Parties agree upon as part of the authorization of the ECM or Proposed Cure as a result of the implementation by Contractor of any Proposed Cure or ECM;
- (e) The failure of (i) at least five percent (5%) of the then authorized CAMs either supplied or licensed (*i.e.* licensed pursuant to Section 19.4) by Contractor to properly store or report back purchase information related to impulse pay-per-view programming viewed by Subscribers for a period of two (2) consecutive billing periods, or (ii) the CAMC to properly store or report back such information for at least five percent (5%) of the authorized CAMs either supplied or licensed (*i.e.* licensed pursuant to Section 19.4) by Contractor for a period of two (2) consecutive billing periods;
- (f) The inability of (i) the portion of the Conditional Access Segment supplied by Contractor to activate new Subscribers or to authorize pay-per-view requests from Subscribers for a period of forty-eight (48) consecutive hours, or (ii) the portion of the Conditional Access Segment supplied by Contractor for more than five percent (5%) of the then authorized CAMs to authorize pay-per-view requests for a period of six (6) consecutive hours during any forty-eight-hour (48-hour) period prior to the broadcast of a major pay-per-view event as identified by DIRECTV in writing to Contractor no later than five (5) Business Days prior to such broadcast;
- (g) As a result of any intentional action by Contractor or its employees, agents, consultants, Affiliates or subcontractors, the existence in the Licensed Technology of any time bombs, back doors, Trojan horses or other similar devices, code or routines that could be used readily as a

means to damage, impair, provide unauthorized access to or unauthorized use of the Conditional Access Segment, in any material respect, and Contractor has been unable to eliminate or disable any of the foregoing within thirty (30) days following receipt of written notice from DIRECTV;

- (h) Failure of P4 and subsequent generations of CAMs to pass the testing conducted by DIRECTV or its Experts to verify that such CAM meets the agreed Specifications and requirements in all material respects on three (3) successive attempts, after Contractor has represented in writing that such CAM is ready to be used for the DIRECTV Service, provided that DIRECTV has provided Contractor with written notice of each such failed attempt (each to be counted toward the three (3) attempts specified above in this paragraph (h)) with in each case sufficient information to identify the failed tests and such other information in the possession and control of DIRECTV as may be reasonably required by Contractor concerning the tests to assist in correcting the failure;
- (i) Any (i) general failure of Contractor to pay its debts as such debts become due, (ii) admission by Contractor in writing of its inability to pay its debts generally, (iii) general assignment by Contractor for the benefit of creditors, (iv) proceeding instituted by or against Contractor seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against Contractor (but not instituted by it), such case remaining undismissed or unstayed for a period of sixty (60) days; (v) any corporate or equivalent action taken by Contractor to authorize any of the actions set forth above in this paragraph (j).

11.2.2 By DIRECTV. Additionally, the following shall also constitute a Breach of this Agreement: Any (i) general failure of DIRECTV to pay its debts as such debts become due, (ii) admission by DIRECTV in writing of its inability to pay its debts generally, (iii) general assignment by DIRECTV for the benefit of creditors, (iv) proceeding instituted by or against DIRECTV seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against DIRECTV (but not instituted by it), such case remaining undismissed or unstayed for a

period of sixty (60) days; (v) any corporate or equivalent action taken by DIRECTV to authorize any of the actions set forth above in this Section 11.2.2.

11.3 Consequences of a Breach. In the event of a Breach of this Agreement, the non-Breaching Party may, at its sole discretion, terminate this Agreement by written notice to the other Party. In addition to termination, in the event of Breach, the non-Breaching Party shall also have the right to pursue any and all other equitable and legal rights and remedies it may have against the Breaching Party now or hereafter under any Law, subject to Article 15 hereof, including (a) the right to seek injunctive relief, if necessary, in order to prevent the other Party from willfully or intentionally failing to perform its obligations under this Agreement or to compel the other Party to perform its obligations under this Agreement; (b) the right to seek reasonable attorney and other third party fees; and (c) in the case of a Breach by Contractor, DIRECTV shall have the right to (i) declare the date of Contractor's Breach as the date on which the Transition Period commences, and (ii) invoke the rights and remedies set forth in Article 19.

12. Intentionally Omitted]

13. Indemnification.

13.1 Obligations of Contractor. Subject to Article 15, Contractor shall indemnify and hold DIRECTV, its Affiliates and their respective directors, officers, regularly engaged consultants, agents and employees (the "Indemnified DIRECTV Parties") harmless from and against any and all costs, expenses and/or any liabilities, whether under a theory of strict liability or otherwise to third parties, incurred by the Indemnified DIRECTV Parties, including (a) costs of investigation and defense, including court costs and reasonable attorney and other third party fees; and (b) to the extent permitted by any Laws, any fines, penalties and forfeitures in connection with any proceedings against an Indemnified DIRECTV Party caused by (i) any Breach by Contractor; (ii) the infringement by Contractor of rights protected under the patent, trademark, service mark, trade secret or copyright Laws of the United States or any state thereof or of any other Governmental Body outside the United States; (iii) any personal injury, property damage or physical damage or harm of any such similar type or any injury or harm resulting from such personal, physical or similar type of injury or harm to any Person resulting from such Person's acquisition, sale, use or any other application of any CAM or of Contractor's technology, services, products or otherwise as produced and/or provided hereunder; and (iv) the establishment, collection or any other impact or result of or from any license fees owed under any agreements between Contractor and any of the Authorized Manufacturers. For purposes of this Section 13.1, the scope of indemnification obligations of Contractor shall expressly include the obligation to indemnify the Indemnified DIRECTV Parties against any losses caused by any and all agents, contractors, subcontractors or other Persons (including any Experts) working for or on behalf of Contractor, to the same extent as Contractor is obligated to provide indemnification for the Indemnified DIRECTV Parties under this Section 13.1.

13.2 Obligations of DIRECTV. Subject to Article 15, DIRECTV shall indemnify and hold Contractor, its Affiliates, and their respective directors, officers, regularly engaged consultants, agents and employees (the "Indemnified Contractor Parties"), harmless from and against any and all costs and expenses, and liabilities whether under a theory of strict liability or otherwise to third parties, incurred by the Indemnified Contractor Parties including (a) costs of investigation and defense, including court costs and reasonable attorney and other third party fees; and (b) to the extent permitted by Law, any fines, penalties and forfeitures in connection with any proceedings against an Indemnified Contractor Party caused by (i) any Breach by DIRECTV; (ii) the infringement by DIRECTV or any of its Affiliates of rights protected under the patent, trademark, service mark, trade secret or copyright Laws of the Territory; (iii) any personal injury, property damage or physical damage or harm of any such similar type or any injury or harm resulting from such personal, physical or similar type of injury or harm to any Person resulting from such Person's use of any equipment and resident in a DIRECTV facility; and (iv) the establishment, collection or any other impact or result of or from any fees owed under any agreements for the supply of CAMs between DIRECTV and any of the Authorized Manufacturers. For purposes of this Section 13.2, the scope of indemnification obligations of DIRECTV shall expressly include the obligation to indemnify the Indemnified Contractor Parties against any losses caused by any and all agents, contractors, subcontractors or other Persons (including any Experts in the event of a breach by such Expert of a non-disclosure agreement executed in accordance with *Exhibits 3.6* or *3.6.5.2*) working for or on behalf of DIRECTV, to the same extent as DIRECTV is obligated to provide indemnification for the Indemnified Contractor Parties under this Section 13.2.

13.3 Control Over Defense. Promptly after receipt by an indemnified Person of notice of any claim or the commencement of any action with respect to which indemnity may be available under this Article 13, the indemnified Person shall notify the indemnifying Party in writing of such claim or the commencement of such action; provided, that the failure to notify the indemnifying Party shall not relieve it from any liability which it may have to an indemnified Person under this Article 13 except to the extent that the indemnifying Party is prejudiced thereby. If any such claim or action shall be brought against an indemnified Person, and it shall notify the indemnifying Party thereof, the indemnifying Party shall be entitled to participate therein, and, to the extent that it wishes, to assume the defense thereof with counsel reasonably satisfactory to the indemnified Person. After notice from the indemnifying Party to the indemnified Person of its election to assume the defense of such claim or action, the indemnifying Party shall not be liable to the indemnified Person under this Article 13 for any legal or other expenses subsequently incurred by the indemnified Person in connection with the defense thereof other than reasonable costs of investigation; provided, that the indemnified Person shall have the right to employ counsel to represent it if, in the opinion of counsel to the indemnified Person, there are available to them defenses not available to the indemnifying Party and in that event the reasonable fees and expenses of such separate counsel shall be paid by the indemnifying Party. In no event shall the indemnifying Party be required to indemnify an indemnified Person with respect to amounts paid in settlement of a claim unless such claim was settled with the consent of the indemnifying Party.

14. Force Majeure.

Neither Party shall be liable for failure or delay in performance of any of its obligations under this Agreement for the time and to the extent such failure or delay is caused by any Force Majeure or for such other time as may be reasonable under the circumstances. Each Party shall give prompt notice to the other Party of any Force Majeure and shall use commercially reasonable efforts to avoid or minimize the effects (including delay) of any Force Majeure. If any failure or delay by Contractor in the performance of any of Contractor's obligations under this Agreement results from a Force Majeure, that failure or delay shall not constitute a Breach of this Agreement; provided, however, that in the event such failure or delay continues for a period in excess of sixty (60) days, DIRECTV shall have the right (a) to terminate this Agreement and be entitled to exercise any or all of the rights as provided in Article 19; or (b) to exercise all of the rights under subparagraph (c) of Section 11.3 (notwithstanding the absence of a Breach context). The Parties acknowledge that a Security Breach shall not in and of itself be a Force Majeure. If, following any exercise of DIRECTV's remedies under subparagraphs (a) or (b) of this Article 14, either Party Breaches this Agreement, then the non-Breaching Party shall be entitled to any and all remedies pursuant to Section 11.3, as applicable. Notwithstanding the foregoing, Contractor shall use commercially reasonable efforts to provide appropriate back-up resources to provide for the continuation or prompt resumption of services in the event of earthquakes in California or civil unrest or war in Israel.

15. Limitation of Liability.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT:

- (a) IN NO EVENT SHALL ANY PARTY OR THEIR RESPECTIVE AFFILIATES BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, WHETHER OR NOT FORESEEABLE, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING FROM THIS AGREEMENT OR OCCASIONED BY ANY FAILURE TO PERFORM OR THE BREACH OF ANY OBLIGATION UNDER THIS AGREEMENT FOR ANY CAUSE WHATSOEVER, EXCEPT FOR THE LIABILITIES UNDER SECTION 6.5.4 OF THIS AGREEMENT;
- (b) IN NO EVENT SHALL ANY PROJECTIONS, FORECASTS, ESTIMATIONS OF SALES REVENUE, SUBSCRIBER GROWTH, MARKET SHARE OR EXPECTED PROFITS, OR OTHER ESTIMATIONS OR PROJECTIONS BY DIRECTV, REGARDING OR RELATED TO THE DIRECTV SERVICE BE BINDING AS COMMITMENTS OR, IN ANY WAY, PROMISES BY DIRECTV;

- (c) EXCEPT FOR (i) CONTRACTOR'S OBLIGATION TO INDEMNIFY DIRECTV UNDER SECTION 13.1(b)(ii) AND DIRECTV'S OBLIGATION TO INDEMNIFY CONTRACTOR UNDER SECTION 13.2(b)(ii), AND (ii) EITHER PARTY'S INTENTIONAL MISUSE, MISAPPROPRIATION OR INFRINGEMENT OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS OR THE INTELLECTUAL PROPERTY RIGHTS OF ITS AFFILIATES LICENSED HEREUNDER, EACH PARTY'S LIABILITY UNDER OR RELATING TO THIS AGREEMENT IN ANY CONTRACT YEAR IN AGGREGATE SHALL NOT EXCEED THE AGGREGATE AMOUNT OF MONEY PAID TO CONTRACTOR BY DIRECTV DURING THE PREVIOUS FIFTEEN MONTHS PURSUANT TO THIS AGREEMENT OR SIXTY MILLION DOLLARS (\$60,000,000.00) WHICHEVER IS GREATER: PROVIDED, HOWEVER, THAT LIQUIDATED AMOUNTS PROPERLY DUE AND PAYABLE BY EITHER PARTY TO THE OTHER PARTY UNDER THIS AGREEMENT SHALL NOT BE SUBJECT TO THE CAP ON LIABILITY DESCRIBED IN THIS SECTION 15(c); AND
- (d) NO PARTY HAS MADE OR MAKES ANY REPRESENTATION OR WARRANTY OTHER THAN THOSE EXPRESSLY MADE IN THIS AGREEMENT (INCLUDING THE EXHIBITS HERETO) AND NO PARTY SHALL BE LIABLE FOR ANY IMPLIED WARRANTY WHATSOEVER INCLUDING IMPLIED WARRANTIES AS TO MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

16. Rights of Transfer.

16.1 Related Persons. Each Party shall have the right, at its sole discretion, but only as a part of a corporate restructuring and in no other circumstance, to assign all (but not less than all) of its rights or obligations under this Agreement to any of its then Affiliates or to a Person in which an Affiliate has an interest of fifty percent (50%) or more (collectively, a "Related Person"); provided, however, that (i) the assignee is not a Competing Person of DIRECTV (where Contractor is the assignor) or a Competing Person of Contractor (where DIRECTV is the assignor), and (ii) prior to such assignment, the assigning Party shall have delivered to the other Party a guaranty from its parent guarantor substantially in the form of *Exhibit 16.1*. The parent guarantor is News Corp., in the case of Contractor, and is Hughes Electronics Corporation, in the case of DIRECTV.

16.2 Mergers and Acquisitions. Except as specified in Section 16.5, each Party shall have the right, at its sole discretion without the consent of the other Party or the delivery of a guaranty, to assign all of its rights and obligations under this Agreement to any purchaser of all or substantially all of its assets or in connection with a merger or the purchase of at least fifty-one percent (51%) of the stock of such Party by a single Person; provided that (i) the transferee is not a Related Person or a Competing Person of DIRECTV (where Contractor is the assignor) or a

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Competing Person of Contractor (where DIRECTV is the assignor) and (ii) such transferee agrees in writing to be bound by this Agreement to the same extent as the transferring Party.

16.3 Written Consent. Except as otherwise specified in this Article 16, neither Party shall assign any of its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

16.4 Permitted Discharge of Obligations. Notwithstanding anything herein to the contrary, Contractor shall be permitted to perform, without the consent of DIRECTV or the delivery of a guaranty, any of its obligations hereunder through employees of, or other representatives employed by, or any independent consultant or sub-contractor of, Contractor or an Affiliate of Contractor that is not a Competing Person of DIRECTV; provided that Contractor shall in any event remain fully liable for such performance and shall indemnify DIRECTV against any tax or other liability arising therefrom to the same extent as though such performance was undertaken by an employee or other representative of Contractor.

16.5 Termination Rights. If either (A) a Change in Control over Contractor results in any Competing Person of DIRECTV becoming a Controlling Person of Contractor; or (B) Contractor becomes an Affiliate of any Competing Person of DIRECTV and becomes a conditional access service provider including the provision of conditional access technology at the subscriber location to the same Competing Person of DIRECTV, whether or not as a result of any Change in Control; or (C) Contractor becomes a Competing Person of DIRECTV itself, then Contractor shall promptly, but in any event within thirty (30) days, provide DIRECTV with notice thereof. Thereafter, DIRECTV shall have the right within six (6) months or such other period as may be agreed to (1) terminate this Agreement at its sole discretion, upon one hundred twenty (120) days' prior written notice to Contractor (the "Termination Notice Period"); and (2) commence transition to itself or to another Successor Contractor pursuant to Article 19. The termination rights of this Section 16.5 shall be effective at any time the stated conditions are met including at any time a Person who did not qualify as a Competing Person of DIRECTV at the operative time in sub-parts A and B above later becomes a Competing Person of DIRECTV.

Contractor hereby represents and warrants that as of the Effective Date, Contractor is not supplying conditional access services within the Territory to any Competing Person of DIRECTV.

17. Confidentiality.

17.1 Proprietary Information. It is expected that the Parties may disclose to each other Proprietary Information which shall include (a) the Contractor Documentation; (b) information relating to Licensed Technology including Source Code; (c) information relating to DIRECTV Technology; (d) information disclosed by either Party in writing that is marked as proprietary or confidential with an appropriate legend, marking, stamp or other prominent written identification by the Disclosing Party prior to disclosure; or (e) information disclosed by either Party in any other manner, and which is identified as Proprietary Information at the time of such disclosure and is summarized and designated as Proprietary Information in a written notice identifying therein the manner, place and date of such disclosure and the names of the Receiving Party's representatives to whom such disclosure was made, such notice having been provided to the Receiving Party within thirty (30) days of such disclosure.

17.2 Minimum Requirements for Conditional Access Segment. All Proprietary Information owned by one Party and disclosed to the other Party or thereafter created by copy or reproduction pursuant to this Agreement shall remain the property of the Disclosing Party.

17.3 Obligations Concerning Proprietary Information.

17.3.1 General. Upon receiving any Proprietary Information, the Receiving Party shall keep it in strict confidence, and shall protect the Proprietary Information by using the same degree of care to prevent the unauthorized use, dissemination or publication thereof as such Party uses to protect its own Proprietary Information of a like nature, except as otherwise provided by the terms and conditions of this Agreement. The Receiving Party shall not use such Proprietary Information, except for the purposes expressly identified herein, without the prior written approval of the Disclosing Party.

17.3.2 Exclusions. Proprietary Information shall not include:

- (a) information that is in or enters the public domain, other than by a breach of this Agreement;
- (b) information that is known to the Receiving Party at the time of first receipt, or thereafter becomes known to the Receiving Party prior to or subsequent to such disclosure without similar restrictions from a source other than the Disclosing Party, as evidenced by written records;
- (c) information that is developed by the Receiving Party independently of any disclosure thereof as evidenced by written records;
- (d) information that is disclosed to a third party by the Party owning the information without a duty of confidentiality on the third party;

- (e) information that is disclosed under operation of law; or
- (f) information that is disclosed with the prior written approval of the Party owning such information.

17.3.3 Internal Access. The Receiving Party will make Proprietary Information of the Disclosing Party available only to (a) those of its employees, agents and representatives having a need to know in order to carry out their functions in connection with the purpose of this Agreement; (b) necessary Persons in connection with any sale of equity or assets, or issuance of indebtedness or other capital-raising transaction by such Party, including to legal and financial advisors and potential investors, provided that such Persons have agreed in writing with the Receiving Party to keep such information confidential and not to use it except in considering the proposed transaction; and (c) Experts which have executed the appropriate non-disclosure agreement pursuant Section 3.6. The Receiving Party shall not copy or otherwise reproduce Proprietary Information except for internal evaluation or otherwise in connection with the purpose of this Agreement. Each of such copies or reproductions shall contain the same proprietary marking as the original.

17.3.4 DIRECTV Technology. Contractor shall treat DIRECTV Technology as Proprietary Information of DIRECTV and Contractor warrants that it shall not (i) incorporate any of the DIRECTV Technology into technologies used by Contractor in providing services to customers other than DIRECTV or its Affiliates (the "Non-DIRECTV Services") in a manner that would violate DIRECTV'S Intellectual Property Rights or (ii) fail to block access to the DIRECTV Technology by personnel of Contractor engaging in the Non-DIRECTV Services who have no need-to-know to carry out their responsibilities with respect to DIRECTV.

17.3.5 No License. The disclosure of Proprietary Information hereunder shall not be construed as granting either a license under any patent, patent application, or copyright, or any right of ownership in said Proprietary Information, nor shall such disclosure constitute any representation, warranty, assurance, guarantee or inducement by the Disclosing Party with respect to infringement of patents or other rights of others.

17.3.6 Disclosure Pursuant to Law.

- (a) Subject to the conditions set forth below, the Receiving Party may disclose Proprietary Information received from the Disclosing Party as may be required to comply with any Law (including the disclosure requirements under the securities laws and regulations of the United States).
- (b) Should the Receiving Party be required to disclose Proprietary Information received from the Disclosing Party by subpoena or

order of a governmental agency, legislative body, or court of competent jurisdiction, the Receiving Party shall promptly notify the Disclosing Party thereof, and, upon the request of the latter shall fully cooperate with the Disclosing Party in contesting such disclosure. If after such contest disclosure is still required, then the Receiving Party shall seek confidential treatment of such information from such governmental agency, body, or court, if such treatment is available. Except in connection with failure to discharge responsibilities set forth in the preceding sentence, neither Party shall be liable in damages for any disclosures pursuant to such governmental, legislative, or judicial order. The Disclosing Party, however, shall not so contest disclosure of such Proprietary Information if it is relevant to the defense of a claim or allegation brought against the Receiving Party and for which the Receiving Party is not indemnified by the Disclosing Party.

- (c) In the event that any disclosure of Proprietary Information is required of the Receiving Party in order to comply with the disclosure requirements under any Law including securities laws and regulations, the Receiving Party shall prior to any such disclosure consult with and provide to the Disclosing Party the proposed form of disclosure (including any disclosure of a redacted version of this Agreement) and seek approval in advance by the Disclosing Party, which approval shall not be unreasonably withheld or delayed, and in any event the Receiving Party if requested by the Disclosing Party, shall seek confidential treatment of Proprietary Information to the reasonable maximum extent permitted without violating the applicable disclosure requirements. The Receiving Party shall provide the Disclosing Party with as much notice of such disclosure as may be reasonably practicable and the Disclosing Party shall respond with its approval or suggested redactions as soon as reasonably practicable, but in any event within two (2) Business Days of its receipt of such notice. If the Disclosing Party fails to respond within such period, its approval shall be deemed given. If the Receiving Party and Disclosing Party are unable to agree on the scope of the required disclosure, then within three (3) Business Days of such failure to agree, the Parties shall present the dispute to a third party who shall arbitrate the dispute and issue a binding decision thereon within five (5) Business Days. The Parties agree that a partner at the law firm of Weil, Gotshal & Manges, who shall be chosen by the Executive Partner (or equivalent) of such firm, shall be the arbitrator.

17.3.7 Return or Destruction. Except for Proprietary Information to which any Party has a right to access by license, by operation of law or by a specific provision hereof, all Proprietary Information and any and all copies and reproduction thereof shall within thirty (30) days of written request by the Disclosing Party, be either promptly returned to the Disclosing Party or destroyed at the Disclosing Party's direction. In the event of such requested destruction, the Receiving Party shall provide to the Disclosing Party written certification of compliance therewith within forty (40) days of such written request.

17.3.8 Release To Affiliates. Provided that the receiving Person agrees in advance in writing that the information is Proprietary Information pursuant to this Agreement, DIRECTV and Contractor (with written notice to the other Party) may release (and Contractor shall release upon DIRECTV's request), the following information at a minimum to the following DIRECTV Affiliates: Galaxy Latin America, DIRECTV Japan, Spaceway, Hughes Network Systems and Hughes Electronics, and upon written consent by Contractor which consent shall not be unreasonably withheld or delayed, any other company or entity wholly or partially owned by Hughes Electronics which utilizes Contractor's conditional access or security services:

- (a) this Agreement; and
- (b) Contractor Documentation, DIRECTV's requirements and Specifications, in printed or machine-readable form, excluding Source Code and software and Contractor's internal design notes, now existing or hereafter created.

Any Party may release any Proprietary Information received from the other Party to any of its parents, provided that such parent agrees to be bound by the terms and conditions of this Article 17.

17.4 Parallel Vendor and Successor Contractor Information. DIRECTV may release the documents identified in *Exhibit 17.4A*, as may be reasonably amended from time to time by agreement of the Parties to accomplish the scope of the licenses contemplated for the Successor Contractor and the Parallel Vendor (and subject to Sections 19.3 and 19.4, no other Proprietary Information of Contractor) to prospective or actual Parallel Vendors or Successor Contractors as specified in *Exhibit 17.4A*, solely for the purposes indicated. Prior to receiving such information, the prospective or actual Parallel Vendors or prospective Successor Contractors, as the case may be, shall execute a confidentiality and non-disclosure agreement that is substantially similar in all material respects to the form set forth in *Exhibit 17.4B*.

17.5 Press Release. Neither Party may issue any press release with respect to the Parties' general business relationship under this Agreement without the prior written approval of the other Party.

17.6 This Article Controls. The provisions of this Article 17 shall control in lieu of and notwithstanding any proprietary or restrictive legends or statements inconsistent with this Article 17 which may be associated with any particular information disclosed hereunder. The Parties shall assert ownership rights and other Intellectual Property Rights in documentation and technology relating to the subject of this Agreement as each Party in good faith determines to be appropriate, and may mark such documents or things embodying such technology as described in the Statement of Work or otherwise as appropriate. Notwithstanding either Party's assertion of rights or marking, the other Party hereby reserves all of its rights to contest such assertion of rights and such marking.

17.7 Survival. The provisions of this Article 17 shall continue to govern the exchange of Proprietary Information between the Parties for five (5) years after this Agreement expires or is terminated. The obligations hereunder to preserve the confidentiality of Proprietary Information shall continue in perpetuity.

18. Term of Agreement and Request for Proposals.

18.1 Effective Date. This Agreement shall be effective as of the date of execution hereof (the "Effective Date").

18.2 Term. The term of this Agreement (the "Term") shall commence upon the Effective Date and shall expire on the fourth (4th) anniversary thereof unless terminated earlier or extended pursuant to the provisions of this Agreement, including those set forth below in this Article 18 (such date of expiration or earlier termination, the "Expiration Date"). DIRECTV may, at its sole discretion, extend the Term for an additional one (1) year period at the prices existing in the fourth (4th) Contract Year if it provides Contractor a written notice to such effect at time prior to six (6) months preceding the then-scheduled Expiration Date.

18.3 Request For Proposals. At any time following the third (3rd) anniversary of the Effective Date or the occurrence of any event which results in DIRECTV having a right to terminate this Agreement, whichever occurs first, but not before, DIRECTV may at its sole discretion issue RFPs to prospective Successor Contractors for the provision of conditional access services to DIRECTV following the Expiration Date. Contractor shall be provided with an RFP for such work, and, shall be allowed to submit a proposal and shall have its proposal considered in good faith by DIRECTV. DIRECTV may solicit proposals from prospective Parallel Vendors at any time.

18.4 Notice of Successor Contractor. Notwithstanding the foregoing, at any time following the second anniversary of the Effective Date, DIRECTV may appoint itself as Successor Contractor by providing a notice thereof to Contractor, provided, however, that there shall be no public announcement with respect to such appointment and DIRECTV shall disclose such appointment only to those Persons as is necessary or appropriate in order to operate its business and assume Contractor's functions. DIRECTV shall consider in good faith any *bona*

vide proposal by Contractor with respect to renewal of Contractor as supplier of Conditional Access Services to DIRECTV.

19. Transition Obligations.

19.1 Scope of Services. If DIRECTV determines that it or any other Successor Contractor will perform services in replacement of Contractor following either the expiration or early termination of this Agreement (regardless of the cause of the termination), then DIRECTV may initiate a transition period during which the Contractor shall provide to DIRECTV such services (the "Transition Services") as are defined in *Exhibit 19.1* and any other services that may be requested by DIRECTV pursuant to Change Order, to facilitate an orderly and complete transition from Contractor to either DIRECTV or one or more other Successor Contractors (such period is referred to herein as the "Transition Period"). The Transition Period shall commence not more than two (2) years prior to the Expiration Date but no later than the Expiration Date, extending until terminated (upon sixty (60) days notice by DIRECTV to Contractor) or until the last day of the twenty-fourth (24th) month following the Expiration Date, whichever occurs first. Notwithstanding anything in the foregoing to the contrary, and (i) in the event of expiration of this Agreement, the Transition Period shall commence upon four (4) months notice by DIRECTV to Contractor but such notice shall not be provided earlier than the twentieth (20th) month following the Effective Date, and (ii) in the event of termination of this Agreement, the Transition Period shall commence upon termination, and in any event the maximum Transition Period shall be no longer than twenty-four (24) months in duration.

19.2 Information Disclosure. Within thirty (30) days after the commencement of the Transition Period, Contractor shall promptly provide (i) DIRECTV (whether or not it chooses to be a Successor Contractor) with the Contractor Documentation (including Source Code and related information including relevant internal design notes pursuant to Section 3.6.5.1(c) and (e)) regarding the Licensed Technology as it is incorporated into the Conditional Access Segment as of such date (excluding any CAM technology still under development pursuant to this Agreement), provided that no Source Code shall be provided if DIRECTV is a Competing Person of Contractor and further including all information necessary to utilize the Fiat-Shamir Identification algorithm for authentication of CAMs and the Fiat Shamir signature algorithm for authentication of software downloads to the IRD including all such algorithms, alternative algorithms (*e.g.* permuted kernels), keys (whether public, secret, global or alternative), details of the creation of card-associated secret keys resident in the CAM, details of the signature procedure for software downloads, details of the procedures for generating alternative algorithms, and keys, and details of manufacturer-specific keys and procedures applicable to generation and use thereof, (ii) a Successor Contractor (other than DIRECTV) with the same scope of information described in sub-section (i) above, but as to the Successor Contractor (other than DIRECTV) excluding Source Code and internal design notes which shall only be provided pursuant to Section 3.6.5.1(d) and (e); provided that any Successor Contractor (other than DIRECTV) and any third party vendors necessary for this purpose have executed a Successor Contractor License in the form of *Exhibit 19.3* prior to receiving any of Contractor's Proprietary Information. If

DIRECTV desires that Contractor support its use of a Successor Contractor beyond the services described in *Exhibit 19.1*, then DIRECTV shall submit a Change Order to Contractor for such support.

19.3 Successor Contractor License. Upon execution and delivery to Contractor by Successor Contractor (other than DIRECTV) of a Successor Contractor License in the form of *Exhibit 19.3* following commencement of the Transition Period, Contractor shall grant a license to any Successor Contractors under some or all of Contractor's IPR permitting it to use the Licensed Technology to perform conditional access services for DIRECTV of the same or lesser scope of services (at DIRECTV's sole discretion) as the scope of services provided to DIRECTV hereunder by Contractor at the start of and during any Transition Period as more particularly described in the form Successor Contractor License which is *Exhibit 19.3*. The technology and associated licenses referred to in this Section 19.3 shall be utilized by a Successor Contractor only in furtherance of the DIRECTV Service. If DIRECTV is the Successor Contractor, then upon the start of any Transition Period or such later time that DIRECTV becomes a Successor Contractor, the license granted to DIRECTV under Article 3 shall further include all of the rights that would be granted to another Successor Contractor as described above in this Section 19.3.

19.4 CAM Procurement. At any time during a Transition Period or thereafter, DIRECTV may order additional CAMs from Contractor at the same prices specified in *Exhibit 9.2.1*. Contractor shall be obligated to provide such CAMs in response to such orders upon the same terms and conditions as required during the Term. If Contractor is unwilling or unable or fails to provide such CAMs in accordance with the terms and conditions applicable to their supply, then DIRECTV or another Successor Contractor (subject to the terms of the Successor Contractor License) may use the Licensed Technology, including Source Code, related information including relevant internal design notes and all information necessary to order and purchase from Contractor's suppliers such CAMs including the same parts and sub-parts ordered and purchased by Contractor or to obtain additional CAMs from sources other than Contractor or its suppliers.

20. Survival of Provisions.

20.1 General. The rights and obligations of DIRECTV and Contractor pursuant to Sections 3.1, 3.3, 3.4.3, 3.5.1(a), (b) and (c), 3.5.2, 3.6.5.1(c) and (d), 9.3, 9.4, 9.5, 19.4, 23.1, 23.2, 23.3, 23.6 and 23.10 and Articles 13, 15, 17, 19, 20, 21 and 22 shall survive any expiration or termination of this Agreement and shall remain in full force and effect (a) with respect to Section 23.6 relating to taxes, until the expiration of the applicable statutes of limitations with respect to such matters or after any applicable periods for appeal; (b) with respect to any such Article or Section of this Agreement which specifies a survival period, until the end of such period; and (c) with respect to any such provisions other than those referred to in (a) or (b) above, until six (6) years from the expiration or termination of this Agreement. Notwithstanding the foregoing, in the event of any termination of this Agreement pursuant to Section 11.3 or Article 14, DIRECTV shall cooperate with Contractor and take such actions as Contractor shall

reasonably request to permit Contractor to perform the provisions of Article 6 as contemplated by Section 11.3 or Article 14, as the case may be, including the performance by DIRECTV of the provisions of Article 2 applicable to it and the granting of access by DIRECTV to Contractor to the CAMC. All other rights and obligations of DIRECTV and Contractor under this Agreement shall cease upon termination or expiration; provided that the termination of this Agreement shall be without prejudice to any obligations or rights of either Party which have accrued prior to termination or expiration. Anything to the contrary in this Article 20 notwithstanding, to the extent that the Party from which indemnity is sought and was appropriately notified that a specific claim for indemnity is being made hereunder prior to the applicable dates of termination thereof, such obligations to indemnify shall survive until the final disposition, including any appeals, of such claim.

20.2 Warranties. Notwithstanding anything in this Agreement or any predecessor of this Agreement to the contrary,

- (a) Any warranty provision in any predecessor of this Agreement (including the Conditional Access Security Services Agreement dated as of February 2, 1992 and its April 1, 1998 amendment) with respect to any product or service provided by Contractor prior to the Effective Date shall survive any termination or expiration of such predecessor agreement or of this Agreement until the third anniversary of the provision of such product or service;
- (b) Any warranty with respect to any product (including CAMs) or service to be provided by Contractor under this Agreement or to which this Agreement expressly applies shall continue until the third anniversary of the provision of such product or service notwithstanding any termination or expiration of this Agreement; and
- (c) Notwithstanding the foregoing, any warranty of Contractor with respect to Contractor IPR shall continue from the Effective Date until the end of the sixth (6th) year following termination or expiration of this Agreement; provided that notwithstanding anything to the contrary herein, to the extent DIRECTV or any employee, agent or subcontractor of DIRECTV has modified any portion or element of the Licensed Technology, any warranty or indemnity of Contractor as to such portion or element shall no longer apply but only to the extent that such modification creates any liability.

21. Inspection Rights.

21.1 Inspection. DIRECTV and its agents or consultants shall have the right, on a non-interference basis and upon reasonable notice to Contractor, to visit the facilities used by Contractor to develop and to provide the Conditional Access Services and to inspect Contractor's development and provision of the Conditional Access Services; provided, however, that Contractor shall have the right to impose restrictions upon such inspections as are, in Contractor's reasonable discretion, necessary in order to maintain the integrity of the Conditional Access Services provided by Contractor pursuant to this Agreement.

21.2 Audit.

21.2.1 Audit by DIRECTV. DIRECTV shall have the right to have the CAM cost summaries for the P4 CAM audited by an independent auditor and by no more than two senior personnel of DIRECTV who shall be approved by Contractor (such approval not to be unreasonably withheld or delayed). The audit shall be conducted upon reasonable notice by DIRECTV to Contractor. Contractor shall make available to such auditor all of the relevant contracts, agreements, summaries, books, records, accounts, invoices and other information and documentation reasonably requested by the auditor to (i) arrive at an accurate cost accounting of the relevant CAMs and (ii) confirm compliance by all involved with the terms of such contracts, agreements and invoices. Contractor shall also make available to the auditor its personnel for interviews concerning the relevant CAM costs, and will cooperate with DIRECTV in seeking and facilitating access by DIRECTV to Contractor's relevant suppliers and manufacturers. Contractor shall certify that all cost savings have been disclosed to the auditor including all discounts, rebates, incentives, and spot and volume pricing reductions, whether solely in respect of DIRECTV's CAMs or in respect of conditional access modules supplied to Contractor for its other customers (including any Affiliates of DIRECTV). Contractor shall retain information to support an audit of the CAM costs for the remaining Term of this Agreement or for a period of three (3) years, whichever is longer. If any audit indicates that Contractor is overcharging DIRECTV for any element of cost of P4 CAM generation provided hereunder, then the applicable P4 CAM price shall be reduced accordingly.

21.2.2 Audit by Contractor. Contractor shall have the right to have the Growth Incentive Fee payments and Parallel Vendor Payments under Section 9.5 due to Contractor by DIRECTV under this Agreement audited by an independent auditor and by no more than two senior personnel of Contractor who shall be approved by DIRECTV (such approval not to be unreasonably withheld or delayed). The audit shall be conducted upon reasonable notice by Contractor to DIRECTV. DIRECTV shall make available to such auditor all of the relevant contracts, agreements, summaries, books, records, accounts, invoices and other information and documentation reasonably requested by the auditor for such audit. Contractor shall also make available to the auditor its personnel for interviews concerning such audit. With respect to any particular Growth Incentive Fee payment, DIRECTV shall retain information to support an audit of such payments for a period of two (2) years following such payment. If any audit indicates

that DIRECTV is underpaying Contractor, then DIRECTV shall promptly pay the amount of such underpayment to Contractor following receipt of notice.

22. Disputes.

22.1 Dispute Resolution. Any dispute or disagreement between Contractor and DIRECTV arising out of this Agreement shall be resolved according to the following procedure: First, such dispute shall be addressed to each Party's appropriate vice president (or equivalent) for discussion and attempted resolution. If any such dispute cannot be resolved by such persons within five (5) Business Days from the date that either Party gives notice that such dispute or disagreement exists, then such dispute shall be immediately referred to the appropriate, respective senior vice presidents (or greater level person) of each Party for discussion and attempted resolution. Notwithstanding the above, the Parties shall have the right to seek temporary or preliminary injunctive relief pursuant to and in the circumstances as provided in Section 11.3 in any federal or state court of competent jurisdiction in the County of Los Angeles, California as further provided in Section 22.2.

22.2 Litigation. If a dispute cannot be resolved to the mutual satisfaction of the Parties pursuant to Section 22.1, then at the election of either Party any such claim, controversy, or dispute between the Parties, their Affiliates, their approved assignees, agents, employees, officers, or directors to enforce the provisions of this Agreement, to recover damages or other relief for breach or default under this Agreement, or otherwise arising under or by reason of this Agreement (a "Dispute") shall be resolved by a judge, sitting without a jury, in the Federal or state courts located within Los Angeles County in the State of California. EACH PARTY DOES HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVE ANY RIGHT IT MAY HAVE TO A JURY TRIAL IN EVERY JURISDICTION IN ANY DISPUTE (INCLUDING WITHOUT LIMITATION IN ANY ACTION TO RESCIND OR CANCEL THIS AGREEMENT AND IN ANY CLAIMS THAT THIS AGREEMENT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). The prevailing party in any Dispute, as determined by the judge, shall be entitled to an award of reasonable attorneys' fees and costs.

23. Miscellaneous.

23.1 Governing Law and Jurisdiction. The existence, validity, construction, operation and effect of this Agreement, and the Exhibits hereto, shall be determined in accordance with, and be governed by the Laws of the State of California, U.S.A. (without regards to conflicts of laws). Each Party agrees that it is and shall remain subject to the *in personam*, *in rem* and subject matter jurisdiction of and that venue is proper in the state and federal courts in the State of California for all purposes pertaining to this Agreement and all documents and instruments executed in connection with or in any way pertaining to this Agreement. Contractor hereby designates the following person in California as its agent for the purpose of service of process, whose name and address are as follows: Greg Gelfan, Executive Vice President, Fox Filmed Entertainment, 10201 West Pico Boulevard, Los Angeles, CA 90035

23.2 Entire Agreement.

23.2.1 Agreement. This Agreement (including the Statement of Work and the other Exhibits hereto), together with the Fulfillment Vendor Agreement and the CAMC Agreement, constitutes the entire agreement between the Parties, and supersedes and terminates all previous understandings, commitments or representations concerning the subject matter hereof as more particularly described in Recital L, except for payments due and owing to Contractor for services and goods provided under such agreements as itemized in *Exhibit 23.2.1* which shall be paid by DIRECTV pursuant to the terms and conditions of such agreements applicable thereto.

23.2.2 Surviving Representations and Warranties. Each Party acknowledges that the other Party has not made any representations or warranties other than those which are specifically set forth herein, those which are made as part of the CAMC Agreement or the Fulfillment Vendor Agreement, or those which by their terms or by the terms of this Agreement survive any cancellation or termination of the agreements in which they are stated.

23.2.3 Parties. The Parties acknowledge and agree that each Party is deemed to be either a party or a successor-in-interest to a party to the HCG Agreements, the DBS Services Agreement, the Fulfillment Vendor Agreement and their amendments as described in more detail in the Recitals of this Agreement and, notwithstanding any discrepancy between such Party's name as used herein and the name of its predecessor-in-interest or other Affiliate who is a contracting party under such agreements and amendments ("Predecessor-in-Interest"), is bound by all the obligations and entitled to all the rights of its Predecessor-in-Interest thereunder.

23.3 Modification. This Agreement may not be amended or modified in any way, and none of its provisions may be waived, except by a writing signed by an authorized officer of the Party against whom the amendment, modification or waiver is sought to be enforced.

23.4 Notices. All notices and other communications from either Party to the other hereunder shall be in writing and shall be deemed received upon actual receipt when personally delivered, upon acknowledgment of receipt if sent by facsimile, or upon the expiration of the seventh Business Day after being deposited with DHL or other generally recognized international courier (as appropriate), addressed to the other Party as follows:

To DIRECTV:

If by mail or personal delivery:

DIRECTV Operations, Inc.
Attention: Senior Vice President, Engineering
2230 East Imperial Highway

EXECUTION COPY

El Segundo, California, U.S.A.
cc: General Counsel

If by FAX:

310-535-5224
Attention: Senior Vice President, Engineering
DIRECTV Operations, Inc.
cc: General Counsel

To Contractor:

If by mail or personal delivery:

NDS Limited
1 Heathrow Boulevard
286 Bath Road, West Drayton
Middlesex. UB7 ODQ United Kingdom
Attention: Chief Executive Officer
cc: Legal Counsel

If by Fax:

44 181 476 8100
Attention: Chief Executive Officer cc: Legal Counsel

All payments to be made under this Agreement, if made by mail, shall be deemed to have been made on the date of receipt thereof. The Parties hereto may change their addresses by giving notice thereof in conformity with this Section 23.4.

23.5 Severability. In the event any one or more of the provisions of this Agreement shall, for any reason, be held to be invalid or unenforceable, the remaining provisions of this Agreement shall be unimpaired and any invalid or unenforceable provisions shall be altered, if possible, to the least extent possible in order to render the provision valid and enforceable.

23.6 Taxes. If any property, sales, or other similar taxes are asserted against Contractor by any local, state, national or international, public or quasi-public governmental entity, after, or as a result of its provision of the Conditional Access Services, such taxes shall be solely the responsibility of Contractor. Each Party shall be responsible for the payment of its own U.S. or international income or similar taxes.

23.7 Assignment. Any purported assignment by either Party not in compliance with the provisions of this Agreement shall be null and void and of no force and effect. This

Agreement shall be binding on and shall inure to the benefit of any and all permitted successors and permitted assigns of the Parties.

23.8 Headings. The descriptive headings of the several articles, sections and paragraphs of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

23.9 Preeminence over Exhibits. In the event that any inconsistency exists between the provisions of this Agreement and any Exhibits, the provisions of this Agreement shall supersede the inconsistent provisions of any such Exhibits.

23.10 Survival of Representations and Warranties. All representations and warranties contained herein or made by the Parties, and each of them, in connection herewith shall, subject to Article 20 survive any independent investigation made by either Party, shall be enforceable despite any knowledge by either Party, and unless stated to be as of the Effective Date or otherwise stated herein, such warranties shall be true and correct as of the Effective Date and throughout the Term.

23.11 No Third Party Beneficiary. The Parties specifically disavow any desire or intention to create third-party beneficiary contract and specifically declare that no Person, except for the Parties and their permitted successors and permitted assigns, shall have any rights hereunder nor any right of enforcement hereof.

23.12 Non-Waiver of Breach. Each Party hereto may specifically waive any breach of this Agreement by the other Party, provided that no such waiver shall be binding or effective unless in writing and no such waiver shall constitute a continuing waiver of similar or other breaches. A waiving Party, at any time, and upon notice given in writing to the breaching Party, may direct future compliance with the waived term or terms of this Agreement, in which event the breaching Party shall comply as directed from such time forward.

23.13 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute but one and the same instrument. The Parties also agree that this Agreement shall be binding upon the faxing by each Party of a signed signature page thereof to the other Party. If such a faxing occurs, the Parties agree that they will each also immediately transmit by DHL or other generally recognized international courier (as appropriate), a fully executed original counterpart of the Agreement to the other Party.

23.14 Further Assurances. Each Party agrees to execute and, if necessary, to file with the appropriate governmental entities, such documents, and cooperate with the other Party to take such further action, as the other Party shall reasonably request in order to carry out the purposes of this Agreement. If DIRECTV and those other Affiliates of DIRECTV (including Galaxy Latin America and DIRECTV Japan) that procure conditional access and security services from

Contractor desire to consolidate the separate contracts with Contractor regarding the provision of such services into one contract between Contractor and DIRECTV (or one of its Affiliates), Contractor agrees to consider and negotiate such consolidation in good faith upon request by DIRECTV or its Affiliates. The parties shall have fulfilled their obligations hereunder if they negotiate in good faith for no more than ninety (90) days (unless the Parties agree otherwise) regardless of whether an agreement is reached.

23.15 No Agents. Except as otherwise expressly provided in this Agreement, no Party hereto shall act as an agent of the other Party hereto, or take any action or do anything that would create an obligation or liability of the other Party hereto or cause any third Party to believe that such Party is an agent of the other Party hereto or that such Party is authorized to act on behalf of the other Party hereto.

23.16 Authorship. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring either Party by virtue of the authorship of any of the provisions of this Agreement.

23.17 Certain Interpretations. Unless the context in this Agreement otherwise requires, as used in this Agreement: (a) a term has the meaning ascribed to it; (b) "or" is not exclusive; (c) "including," "include" or "includes" means "including, without limitation"; (d) words in the singular include the plural; (e) words in the plural include the singular; (f) words applicable to one gender shall be construed to apply to each gender; (g) the terms "hereof," "hereby," "hereto" and derivative or similar words refer to this entire Agreement, which shall include all the Exhibits attached to this Agreement; (h) the terms "Article," "Section" or "Exhibit", shall refer to the specified Article, Section, or Exhibit of this Agreement, and (i) the word "generation," when used in this Agreement to describe CAMs, is interchangeable with the word "period."

23.18 Performance of Obligations. In the event Contractor fails to perform its obligations under this Agreement in a timely manner, and in addition to DIRECTV's other rights and remedies, Contractor shall use commercially reasonable efforts to mitigate any slippage in any time schedules by assigning the necessary additional resources.

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EXECUTION COPY

[SIGNATURE PAGE OF
CONDITIONAL ACCESS LICENSE AND SERVICES AGREEMENT]

IN WITNESS WHEREOF, each of the Parties hereto has duly executed and delivered this Agreement on the date indicated below.

DIRECTV OPERATIONS, INC. NDS LIMITED

By: <u>David A Baylor</u>	By: <u>[Signature]</u>
Name: <u>David A. Baylor</u>	Name: <u>ABRAHAM PELED</u>
Title: <u>Executive Vice President</u>	Title: <u>CEO</u>
Date: <u>August 13, 1999</u>	Date: <u>August 13, 1999</u>