



**REFERENCE INTERCONNECT OFFER (“OFFER”) FOR CARRIAGE ON DIGITAL ADDRESSABLE CABLE SYSTEMS (“DAS”)**

**FROM INTERMEDIA CABLE COMMUNICATION PVT. LTD  
TO  
BROADCASTERS/AGGREGATORS/AUTHORIZED DISTRIBUTORS OF TV  
CHANNELS  
FOR PROVIDING ACCESS TO ITS CABLE NETWORK**

This Agreement is made at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between:

**INTERMEDIA CABLE COMMUNICATION PRIVATE LIMITED**, a company incorporated under the Companies Act, 1956 and having its registered office at “ICC Centre”, 1018, New Nana Peth, Pudamjee Path, Pune – 411 002 hereinafter referred to as “**ICCPL**”, (which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its associates, nominees, legal heirs and assigns) and being represented by Mr. \_\_\_\_\_, Director/Authorised Signatory, being the party of the FIRST PART;

**AND**

\_\_\_\_\_, a company incorporated under the Companies Act 1956, having its registered office at \_\_\_\_\_, \_\_\_\_\_ represented by its authorized signatory, Mr. \_\_\_\_\_ (hereinafter referred to as “**Broadcaster**”, which expression, unless repugnant to the context or otherwise, shall mean and include its successors in interest and permitted assigns), being the party of the SECOND PART.

**WHEREAS:**

A. ICCPL is a Multi System Operator (MSO) engaged in the retransmission of signals of Channels in Digital Addressable Mode, to its viewers in the city of Pune (hereinafter referred to as ICCPL’s Network).

B. The Broadcaster is the legal entity who owns/operates/distributes various satellite television channels in India. It is also the sole legal entity authorised by the respective Channel(s) to execute Carriage Agreements in India.

C. The Broadcaster has approached ICCPL for re-transmission and re-distribution of the Channel(s) in ICCPL’s Network.

D. ICCPL has agreed to carry the Channel(s) on ICCPL's Networks and the Broadcaster/Authorized Distributor has agreed to such carriage, re-transmission and re-distribution of the Channel(s) by ICCPL in the Areas, subject to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual agreements and covenants contained in this Agreement, each of the Parties hereby agrees as follows:

Definitions:

**Channel(s)** means Channels as have been specified in Annexure A to this Agreement.

**Network** means Cable Television Network of ICCPL in the areas specified in Annexure B to this Agreement.

## **1. CARRIAGE, ACCESS AND TRANSMISSION OF CHANNELS:**

1.1 The Broadcaster shall provide signals of its channels to ICCPL on non-discriminatory basis.

1.2 The Broadcaster recognises ICCPL's investment in setting up and maintaining DAS and in providing services to the subscribers at the right price, which entails large capital expenditures and operating costs. And in view of ICCPL's commitment to provide better service to the subscribers, the Broadcaster is offering to pay the Carriage Fee to access the cable television network of ICCPL.

1.3 During the Term, the Broadcaster shall pay the Carriage Fees to ICCPL at such regular intervals and in the manner as is set forth in this Agreement.

1.4 ICCPL agrees to transmit/re-transmit the Broadcaster's Channel(s) on ICCPL's Network, at all times and without any modifications, alterations, editing, deletions, disruption and interruption, except as maybe required to comply with the Electronic Program Guide ("EPG").

1.5 ICCPL agrees to carry the signals of Channels on the following terms and conditions set out herein:

- a) The Broadcaster has specified the genre of each Channel in **Annexure A**. ICCPL shall carry the Channels as per the *genre* of the channels.
- b) It shall be the duty and responsibility of Broadcasters to inform ICCPL if the Channel(s) belonging to the Broadcaster are 'free to air channels' or 'pay channels'. Provided if a

'free to air' channel is made a paid channel or vice versa, the Broadcaster undertakes to inform ICCPL, in writing, within 15 days of the said change.

- c) ICCPL shall, at its own discretion, allocate bandwidth not below 1.5 MB but not exceeding 4MB for Standard Definition Channels.
- d) ICCPL shall be free to form and offer to its customers, different bouquets of channels, as per the location and demographics of a particular area.
- e) ICCPL shall start transmitting the Channels of the Broadcaster, within 15 days of the signing the Agreement with the Broadcaster. This Clause is subject to the Broadcaster providing all the requisite assistance including necessary technical data, information and hardware as may be required by ICCPL.

1.6 Parties agree that any dispute with regard to quality of signals and/or their carriage under the present Agreement, shall be raised by the Broadcaster, in writing, within fifteen days of the occurrence of the dispute. Provided where the broadcaster fails to raise any dispute within the time limit as specified above, it shall be deemed that the Broadcaster has waived the issue and the Broadcaster shall be liable to pay the entire amount of Carriage Fee for the said period of dispute as well.

## **2. TERM:**

The term of the Agreement shall be for a period of one year and may be extended on mutually agreeable terms. Provided where the term of the Agreement has expired and ICCPL continues to place the Channel(s) of the Broadcaster such transmission of signals shall be governed by the terms of the present Agreement unless the Broadcaster by a written notice to ICCPL and a Public Notice requests for discontinuation of re-transmission of the Channel(s) in which event the Broadcaster shall be liable to pay proportionate Carriage Charges till the date such notice shall become effective in law.

## **3. CARRIAGE FEES**

3.1 The Carriage fees charged by ICCPL will be for the access to the network. This fee calculation will be based on the Network Subscriber Report (NSR) and shall be payable by the tenth of every month.

3.2 ICCPL shall charge Rs. 2.50/- (Two Rupees and fifty paisa only) plus service tax and any other taxes, levies, etc as applicable as per law on each Set Top Box ("STB") installed as per NSR, per month as "Carriage Fees" per channel of the Broadcaster to be carried on their network as per the list mentioned in "Annexure A" annexed hereto.

*The above mentioned Carriage Fees rate are per channel per STB per month and is negotiable in the event any Broadcaster/Aggregator has multiple channels and or bouquet of channels to be carried on the network of ICCPL.*

3.3 For the purpose of calculation of any supplementary carriage fees, the number of Set top boxes shall be the average of set top boxes as per NSR, as active in the beginning of the quarter and at the end of the quarter. If the average of STBs is in excess of the number of STBs otherwise paid for, the supplementary carriage fee shall become payable by the Broadcaster, to ICCPL. The supplementary carriage fees shall be calculated on a quarterly basis at the above rates and terms.

3.4 In addition to the above mentioned Carriage fees, the Broadcaster hereby undertakes to pay, an onetime upfront activation fee of Rs.5,00,000/- (Rupees Five lacs only) per Channel to ICCPL.

3.5 In the event of any disconnection of the transmission of the Broadcaster's Channel(s) due to the fault of the Broadcaster, it is hereby agreed between the parties that the Broadcaster shall be liable to pay ICCPL, a reactivation fee of Rs.1,00,000/- (Rupees One Lac only) per Channel.

The rationale of Carriage fee is provided in “**Annexure C**”.

3.6 The Parties have agreed that the liability of ICCPL to pay Subscription Charges to the Broadcaster, under any other agreement executed between the parties or between other entities on their behalf, and the liability of the Broadcaster to pay ICCPL Carriage Fees are reciprocal promises. ICCPL has a right to set off, any amount due as Subscription Charges to the Broadcaster against amounts due as Carriage Fee by the Broadcaster to ICCPL under the present Agreement.

#### **4. TERMS OF PAYMENT**

4.1 The Carriage Fee shall become payable by the tenth of every month.

4.2 ICCPL shall raise an invoice, every month, clearly specifying the current payment dues, arrears, and interest if any, along with the due date for payment. Provided non-receipt of invoice is not a ground for refusal to pay Carriage Fee to ICCPL. ICCPL may also raise supplementary invoices as and when required.

4.3 Supplementary Carriage Fee for the increased number of set top boxes as per NSR shall be paid by the Broadcaster within 15 days from the date of the issue of the invoice for the same.

4.4 In the event of the Broadcaster failing to pay Carriage Fee within the applicable due date of payment, the Broadcaster shall be liable to pay ICCPL, interest at the rate of 18% p.a., for the period of delay in payment. This is in addition to the other rights of ICCPL including termination of the present Agreement on account of non-payment.

4.5 In case there is any dispute regarding the subscriber number, the Broadcaster must, within seven working days of receipt of invoice from ICCPL, notify ICCPL in writing about the same. Provided where the Broadcaster fails to inform ICCPL within the said period, it shall be deemed that the invoice raised by ICCPL is correct and payable.

4.6 The Broadcaster shall be liable to pay all applicable taxes, cesses, etc, including service tax, as may be applicable on the Carriage Fee, payable under the present Agreement. The payment of Carriage Fee shall be subject to TDS at applicable rates for which necessary TDS certificates shall be issued by the Broadcaster, within 30 days from the close of each quarter for which TDS has been deducted by the Broadcaster from Carriage Fee.

#### **5. THIRD PARTY ACQUISITION:**

In the event the distribution of the Channel(s) is taken up by a third party, the obligations of Broadcaster shall continue and the obligations of Broadcaster under this Agreement shall not be diluted till the validity of the Agreement.

#### **6. SIGNAL QUALITY:**

Broadcaster shall ensure the service signals delivered is of quality comparable to other television signals being received and retransmitted by ICCPL. In event of Broadcaster failing to arrange for a service signal of minimum quality, ICCPL shall be absolved of its obligation to retransmit Broadcaster's signals.

#### **7. COMPLIANCE WITH LOCAL LAWS:**

Broadcaster has undertaken to comply with all applicable National, State and Local laws, rules and regulations, all as amended from time to time, with respect to the said Channel(s) and in particular conform to the Cable Television Network (Regulations) Act, 1995, The Cinematograph Act, 1952, The Indecent Representation of Women (Prohibition) Act, 1986, The Copyright Act, 1957 and rules framed there under as may be amended from time to time. The Broadcaster, hereby indemnifies ICCPL against any loss, damages, costs and expenses (including legal expenses) or otherwise, in case, any action is brought against ICCPL, concerning any programme, advertisement or any other material broadcast through the said Channel(s), by any third party.

#### **8. OBLIGATION OF THE BROADCASTER:**

8.1 The Broadcaster is responsible for the content of the Channel(s), even if the Broadcaster is not the creator of the material comprised in such content.

8.2 The Broadcaster is responsible for all necessary consents, approval, permission, registration, authorization from the relevant authorities, persons, entities, etc. and must observe and comply with all the applicable laws for the time being in force in India.

8.3 The Broadcaster shall ensure that the service signals delivered are of quality as stipulated in relevant TRAI regulations/applicable standard and are comparable to other television signals being received and retransmitted by ICCPL. In event of Broadcaster failing to arrange for signals of stipulated quality/standard, ICCPL shall be absolved of its obligation to retransmit Broadcaster's signals.

8.4 Broadcaster shall not have any right of messaging advertisements including issuing public notices through their IRD/Decoders or any other system which blocks the view of the Channel(s) programme to the subscribers.

8.5 In case the Broadcaster decides to discontinue the Channel(s) from the areas covered by the Network of ICCPL, it shall give at least 60 days prior notice of the same to ICCPL failing which it shall indemnify ICCPL for any cost, penalty, award ICCPL may suffer due to the abrupt discontinuation of the Channel(s).

8.7 The Broadcaster shall adhere to all extant TRAI Regulations including the Quality Of Service guidelines.

8.8 The Broadcaster shall provide professional grade IRD with ASI/IP interface and other requisite equipments to ICCPL for receiving the Channel(s).

8.9 The Broadcaster shall provide its programming schedule at least 15 days in advance for the purpose of inserting the same in Electronic Programming Guide (EPG.)

## **9. REPRESENTATIONS AND WARRANTIES:**

Broadcaster represents, warrants, declares, undertakes and agrees that:

- a. Broadcaster is the sole, absolute, exclusive and unencumbered legal owner of the channel which it is exhibiting, transmitting and broadcasting through the services of ICCPL.
- b. Broadcaster is not prevented under any law, contract or otherwise to enter into the present Agreement.
- c. Broadcaster hereby covenants that the exercise of rights accruing through the Channel(s) which the Broadcaster is exhibiting and/or transmitting in the network of ICCPL, shall not in any way constitute any infringement of the intellectual property rights, copyright, trademark, moral right or other proprietary right or interest or any other rights of any third party nor shall it be defamatory, contempt or breach of any provision of the statute, or hurt sentiments of any religious groups or the declared policy of any nation or state.
- d. The Broadcaster shall indemnify ICCPL in case of any breach of this Agreement, any loss, harm, injury, damage that may/shall be caused to ICCPL due to any act, omission, commission by Broadcaster arising out of breach of the breach of its obligations and representation under the present Agreement. This Clause shall survive the termination of the Agreement.

## **10. LIMITATION OF LIABILITY:**

Notwithstanding anything contained in this Agreement, the total liability of ICCPL for all claims arising out of this Agreement to the Broadcaster or to any third party shall not exceed the lowest Carriage Fee for any 1 (one) month that has till such date been received by ICCPL from the Broadcaster.

## **11. TERMINATION:**

- 11.1 This Agreement may be terminated by either party, by giving 60 (Sixty days) days notice in writing to the other party.
- 11.2 This Agreement shall stand terminated in the event of:
- a. Bankruptcy, insolvency, appointment of liquidator, winding up of either Party.
  - b. Order of competent Tribunal/Court declaring the Agreement to be invalid/unenforceable.
- 11.3 In the event of the Broadcaster, failing to pay amounts due to ICCPL under the present Agreement, by the due date, ICCPL shall have the right to terminate the present Agreement by giving three weeks notice to the Broadcaster without prejudice to its rights to claim such due in accordance with law.

## **12. CONFIDENTIALITY:**

Other than reasonable disclosure, no terms or conditions hereof, nor any matters relating to the course of arrangement between Broadcaster and ICCPL shall be disclosed by Broadcaster and ICCPL to any third party, except to auditors as a part of normal reporting procedure, attorneys, investors or lenders or potential investors or lenders and as may be required by government Agency, Court, Judicial or Quasi – Judicial Authority.

## **13. DISPUTE RESOLUTION:**

Any dispute(s) arising in connection with and in relation to this Agreement, its performance and the rights and obligations of the parties hereto, shall be referred to Telecom Regulatory Authority of India (TRAI) and Telecom Dispute Settlement Tribunal (TDSAT). For matters which fall outside the jurisdiction of TDSAT, the courts of Pune will have jurisdiction.

## **14. REGULATORY INTERVENTION:**

In the event that there is any change to any applicable statutes, enactment, acts of Legislation or parliament, laws, ordinances, rules by laws or regulations of any Government or statutory authority in India including but not limited to Ministry of Information and Broadcasting and the Telecom Regulatory Authority or any final unappealable Order of any competent Court or Tribunal which would have a material adverse effect on either of the parties, then the Parties may consult as soon as reasonably practicable with a view to negotiating in good faith an amendment to the existing Agreement, such amendment to take place from the date of such change. In the event the parties are unable to agree on the amendment within forty-five days from the date of meeting, then either party may approach TDSAT for resolving the dispute.

## **15. NON-ASSIGNABILITY:**

Neither Party shall assign any of its rights or obligations under this Agreement to any other/third party without the prior written consent of the other Party. However, such consent, when required, shall not be unreasonably withheld by the other Party.

**16. NOTICE:**

All notices given hereunder shall be given in writing, by personal delivery, or registered post A.D. or speed post or courier, at the address of the Parties set forth in the Agreement, unless either Party, at any time or times, designates another address for itself by notifying the other Party thereof by Courier. Speed post only, in which case all notices to such Party shall thereafter be given at its most recent address. Notice given by registered post A.D. or speed post or courier shall be deemed delivered on the 3rd (third) day from the date of dispatch of such registered post A.D.

**17. SAVING CLAUSE:**

If any provision of this Agreement becomes invalid or unenforceable, in whole or in part, the validity of the remainder of this Agreement shall not be affected thereby; and the Parties shall agree to a valid substitute provision which corresponds in its economic effect as closely as legally possible to the invalid or unenforceable provision which it replaces.

**18. ENTIRE AGREEMENT AND MODIFICATIONS:**

This Agreement along with its Annexures contains the entire understanding between the Parties with respect to the subject matter covered herein. It supersedes all prior understandings between the Parties with respect to the subject matter hereof.

**19. COUNTERPART:**

This Agreement may be signed in any number of counterparts, all of which taken together, shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the Parties hereto have set and subscribed their respective hands to this writing on the day and year first above written.

**For Intermedia Cable Communication Pvt. Ltd.**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Authorized Signatory

**For \_\_\_\_\_ (Broadcaster)**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Authorized Signatory

**ANNEXURE A**

<b>S.NO.</b>	<b>NAME OF CHANNEL</b>	<b>GENRE</b>	<b>PERIOD OF CARRIAGE</b>

## **ANNEXURE B**

Areas Covered:

1. DAS Phase – II city of Pune

## ANNEXURE C

### Rationale for Carriage Fees:

#### Key components considered for determining Carriage Fees:

- To maintain and operate the entire digital infrastructure, operating costs and maintenance cost of the networks.
- Installing the required digital head end which includes various components like encoders, multiplexers, UPS, fire prevention systems and other components.
- Increasing the capability of head end for managing statutorily required channels.
- Setting up of Subscriber Management System.
- Payment of royalties for:
  - a) Encryption system
  - b) Subscriber management system
  - c) Conditional access system
  - d) Programming guide and other valued added services.
- Setting up of call centre outsourcing with all software and hardware requirements.
- Activation and deactivation support, hardware and software requirements for STBs.
- Subsidy for STBs and import duties based on foreign exchange fluctuations.
- Infrastructure requirements of premises, branch offices, Head ends and dishes with all requirements like air conditioners, fire safety, Insurance, warehousing, etc.
- Interest on funds for digital deployment including Head ends and STBs.
  
- Market based retail pricing for channels/packages for customers which needs huge discounting from the wholesale prices charged by Broadcasters/Aggregators.