

REFERENCE INTERCONNECT OFFER FOR CARRIAGE OF CHANNELS

(This Reference Interconnect Offer is without prejudice to the rights and contentions of DEN Rajkot City Communication Private Limited and subject to the Final Adjudication of Writ Petition (Civil) 2879 of 2020 filed before Hon'ble High Court of Kerala at Ernakulum.)

This Agreement is made at -----on this day of____, 20__, by and between:

DEN RAJKOT CITY COMMUNICATION PRIVATE LIMITED, a company incorporated under the Companies Act, 1956, having its registered office at 3RD FLOOR, RAMESHWAR APPARTMENT 4-MANHAR PLOT, MANGALA ROAD RAJKOT GJ 360001 represented by its authorized signatory, Mr. Puneet Agrawal (hereinafter referred to as “DEN”, which expression, unless repugnant to the context or otherwise, shall mean and include its successors in interest and permitted assigns);

AND

_____, a company incorporated under the Companies Act 1956/2013, having its registered office at_____, represented by its authorized signatory, Mr. authorised through board resolution dated_____(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).

DEN and Broadcaster may hereinafter individually and collectively be referred to as “Party” and “Parties”, respectively.

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WHEREAS:

A. This Agreement is offered as per clause 8 of the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 and this agreement is without prejudice to the rights of DEN and subject to any order passed in Civil Appeal No. 007326-007327 of 2018 pending before Hon'ble Supreme Court of India.

B. DEN is engaged, *inter alia*, in the business of providing Cable Services in DAS Areas and DEN owns and operates Cable Television Networks in DAS Areas for providing such Cable Services.

C. The Broadcaster owns and operates satellite television channels, including the Channel(s) (*as defined below*).

D. The Broadcaster has requested DEN for carriage of the Channel(s)/Bouquet(s), as the case maybe, on DEN's Cable Television Networks vide its Letter No. _____ dated _____ along with an application in the prescribed format for requesting access to DEN's platform for re-transmission and re-distribution of the Channel(s)/ Bouquet(s), as the case maybe, in the Areas.

E. Subject to the availability of channel carrying capacity on DEN's Cable Television Networks, DEN has agreed vide its Letter No. _____ dated _____ to re-transmit and re-distribute the Channel(s)/ Bouquet(s), as the case maybe, in the Areas and the Broadcaster has agreed to such carriage, re-transmission and re-distribution of the Channel(s)/ Bouquet(s), as the case maybe, by DEN in the Areas in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, constituting good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

(1) DEFINITIONS

In this Agreement, unless the context requires otherwise:

- (a) **“Act”** means the Telecom Regulatory Authority of India Act, 1997 (24 of 1997);
- (b) **“Active subscriber”**, means a subscriber who has been authorized to receive signals of television channels as per the subscriber management system and whose set top box has not been denied signals;
- (c) **“Addressable system”** means an electronic device (which includes hardware and its associated software) or more than one electronic device put in an integrated system through which transmission of programmes including re-transmission of signals of television channels can be done in encrypted form, which can be decoded by the device or devices at the premises of the subscriber within the limits of the authorization made, on the choice and request of such subscriber, by the distributor of television channels;
- (d) **“Agreement”** means this Reference Interconnect Offer for Carriage of Channels/ Bouquet(s), as the case maybe, together with recitals and the Annexes, and includes any modifications thereof;
- (e) **“Areas”** means such areas within the DAS Areas that are identified in **Annexure A** annexed to this Agreement;
- (f) **“Authority”** means the Telecom Regulatory Authority of India established under sub-section (1) of section 3 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997);

(g) **“Average active subscriber base”** means the number arrived by averaging the active subscriber base count in the manner specified in Schedule VII of the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 including any amendments thereof;

(h) **“a-la-carte”** or **“a-la-carte channel”** with reference to offering of a television channel means offering the channel individually on a standalone basis;

(i) **“bouquet”** or **“bouquet of channels”** means an assortment of distinct channels offered together as a group or as a bundle by the Broadcaster and all its grammatical variations and cognate expressions shall be construed accordingly;

(j) **“Broadcaster”** means a person or a group of persons, or body corporate, or any organization or body who, after having obtained, in its name, downlinking permission for its channels, from the Central Government, is providing programming services;

(k) **“Cable service”** or **“Cable TV service”** means the transmission of programmes including retransmission of signals of television channels through cables;

(l) **“Cable television network”** or **“Cable TV network”** means any system consisting of a set of closed transmission paths and associated signal generation, control and distribution equipment, designed to provide cable service for reception by multiple subscribers;

(m) **“Carriage fee”** means any fee payable by a broadcaster to DEN only for the purpose of carrying its channels/ bouquet(s), as the case maybe, through the DEN’s Cable Television Networks, without, specifying the placement of such channels onto a specific position in the electronic programme guide or, seeking assignment of a particular number to such channels and calculated in accordance with Schedule I of the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 as issued by the Authority, including any amendments thereof.;

For the purpose of calculation of “Carriage Fee”, the number of channels in a bouquet(s) as offered by the Broadcaster shall be treated as 1 (One) on individual basis and accordingly carriage fee shall be calculated.

(n) “**Channel(s)**” means the standard definition (SD) channel(s)/ high definition (HD) channels, as the case maybe and more specifically listed out by the Broadcaster, along with their Nature, Maximum Retail Price (if any) and respective genre, in **Annexure B** annexed to this Agreement that are owned/operated by the Broadcaster (including its subsidiary company or holding company or subsidiary of the holding company) ;

(o) “**Confidential Information**” means any confidential and proprietary information disclosed by either Party to the other Party while performing under this Agreement;

(p) “**DAS Areas**” means the areas where in terms of notifications issued by the Central Government under sub-section (1) of section 4A of the Cable Television Networks (Regulation) Act, 1995 (7 of 1995), it is obligatory for every cable operator to transmit or retransmit programs of any channel in an encrypted form through a digital Addressable System;

(q) “**Effective Date**” means the date of execution of this Agreement first written above;

(r) “**Free-to-air channel**” or “**Free-to-air television channel**” means a channel which is declared as such by the Broadcaster and for which no fee is to be paid by the distributor of television channels to the Broadcaster for signals of such channel;

(s) “**Holding Company**”, “**Subsidiary Company**” and “**Subsidiary of the holding company**” shall have the same meaning as defined under the Companies Act, 2013 including any amendments thereof;

(t) “**Pay channel**” means a channel which is declared as such by the Broadcaster and for which a share of maximum retail price is to be paid to the Broadcaster by the distributor of television channels and for which due authorization needs to be obtained from the Broadcaster for distribution of such channel to subscribers;

(u) “**Subscriber**”, means a person who receives Broadcasting services, from a distributor of television channels, at a place indicated by such person without further transmitting it to any other person and who does not cause the signals of television channels to be heard or seen by any person for a specific sum of money to be paid by such person, and each set top box located at such place, for receiving the subscribed Broadcasting services, shall constitute one subscriber;

(v) “**Term**” means the period of 1 (One) year of validity of this Agreement, commencing from the Effective Date, unless this Agreement is terminated earlier in accordance with the provisions of this Agreement;

(2) GRANT OF RIGHT OF ACCESS FOR THE CHANNELS/ BOUQUET(S), AS THE CASE MAY BE TO DEN’S CABLE TELEVISION NETWORKS

(a) By and under this reference interconnect offer, the Broadcaster has approached DEN to carry the Channel(s) and pursuant to the said request, the DEN has agreed to carry the Channels of the Broadcaster on 24x7 on “as is received” basis for the sole purpose of re-transmitting and re-distributing the Channel/s in the Areas through DEN’s Cable Television Networks on its addressable system.

(b) DEN hereby agrees to carry the Channel(s) of the Broadcaster on its Cable Television Networks subject to, inter alia, technical and commercial parameters set out herein after in **Annexures C and D** respectively of this Agreement.

(c) The Carriage Fee amount, for each month or part thereof, during the term of this Agreement shall be calculated as per the sub-regulation (1) of the regulation 8 of The Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 (“Regulation”), in accordance with Schedule I read with Schedule VII set out therein and provided in Annexure D hereto.

(d) As required under the Regulation, the conditions relating to, including but not limited to, target market, rate of carriage fee per month, average active subscriber base of standard definition set top boxes and high definition set top boxes at the time of publication of this RIO, discounts, if any, offered on the rate of carriage fee, manner of calculation of Carriage Fee payable to DEN and other necessary conditions shall form part of this Agreement.

(4) CARRIAGE FEE, INVOICING AND PAYMENT TERMS

(a) During the Term, in lieu of DEN carrying, re-transmitting and re-distributing the Channel(s)/ Bouquets(s), as the case maybe, in the Areas through DEN's Cable Television Networks, the Broadcaster shall pay DEN such monthly amount plus all applicable taxes, towards carriage fee, as shall be computed basis the quantum of carriage fee charged per Channel per Subscriber per month, as is set forth in **Annexure D** attached to this Agreement subject to maximum of Rs. 4 Lakhs per month per channel.

(b) Each month during the Term, DEN shall raise an invoice (detailing the number of Subscribers) on the Broadcaster for the applicable Carriage Fee for such month, and the Broadcaster shall pay the invoiced amount of the Carriage Fee for such month to DEN, vide cheque/demand draft issued in favour of "DEN RAJKOT CITY COMMUNICATION PRIVATE LIMITED" on or before the due date i.e. within (15) fifteen days from receipt of invoice. In the event of the Broadcaster fails to pay the invoiced amount of the Carriage Fee for a month to DEN within (15) Fifteen days from receipt of invoice, DEN shall be entitled to charge interest at the rate of 24% (twenty four percent) per annum for the period of delay in payment and late payment charges of Rs.10,000/- per day, in addition to DEN retaining the right of terminating the Agreement in terms of the applicable provisions of this Agreement. No cash payments shall be made by the Broadcaster towards any monthly Carriage Fee or any dues thereof. In the event a cheque issued by the Broadcaster is dishonored or not approved or returned due to any reason whatsoever, without prejudice to the rights available to DEN under applicable laws, the Broadcaster shall be liable to pay DEN an amount of Rs. 10,000/- (Rupees Ten Thousand Only) for each such dishonored, disapproved or rejected cheque without prejudice to DEN's right to initiate legal action solely at the cost of Broadcaster.

(c) At the time of making payment of any Carriage Fee, if any withholding tax/TDS is to be deducted by the Broadcaster in terms of the provisions of Indian Income Tax Act, 1961 (as amended from time to time), the Broadcaster shall make such deductions and provide tax withholding certificates to DEN within such period as has been specified in the Income Tax Act/Rules/Notifications/ Circulars issued there under.

(5) TERM, TERMINATION AND EFFECTS OF TERMINATION

(a) This Agreement shall be valid for the Term. If the Parties agree to extend the Term, a new agreement shall be executed upon mutually agreeable terms and conditions.

(b) This Agreement will stand automatically terminated in the event of:

- (i) either Party's insolvency, bankruptcy, liquidation, dissolution, winding up, assignment to the benefit of its creditors, appointment of a receiver; and
- (ii) suspension, cancellation or revocation of the requisite approvals, licenses, authorizations and permits of either Party from the concerned governmental or regulatory bodies, that are necessary for the purposes of this Agreement.
- (iii) if the monthly subscription for that channel is less than threshold limit as per schedule VIII of the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) (Second Amendment) Regulations, 2020.

(c) DEN shall have the right to terminate this Agreement if the monthly subscription for channel is less than the threshold limit as per schedule VIII of the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) (Second Amendment) Regulations, 2020.

(d) DEN shall have the right to terminate this Agreement if the Broadcaster fails to make timely payment of any Carriage Fee and such non-payment continues even after expiry of Due date of payment as mentioned in the invoice.

(e) In the event of termination of the Agreement by DEN, DEN shall stop carrying the Channel(s) on DEN's Cable Television Networks and also seize the integrated receiver decoders/professional integrated receiver decoders, CAM Modules, viewing cards/smart cards and remotes of the Channel(s) ("**Equipment**") of the Channel(s) until such time as due payment is made by Broadcaster along with late payment.

(6) REPRESENTATIONS & WARRANTIES

(a) The Parties hereby represent, warrant and undertake to each other that:

(i) They are respectively competent in law and have full right and absolute authority to enter into this Agreement and to fully perform their rights and obligations and that there is no legal or other impediment in their doing so.

(ii) This Agreement duly executed and delivered by the Parties constitutes a valid and binding obligation of the respective Parties enforceable against each respective Party in accordance with its terms.

(iii) They shall at all times during the Term, and also otherwise, comply with all the laws applicable to them respectively.

(b) Broadcaster hereby represent, warrant and undertakes to DEN that:

(i) The Broadcaster has valid permits from the Ministry of Information and Broadcasting for downlinking the Channel(s) in India, true certified copies of which shall be provided by the Broadcaster to DEN at the time execution of the Agreement;

(ii) There is no present or prospective claim, proceeding or litigation in respect of the programme content of the Channel(s), or the title thereof, or the ownership of copyright in the programme content of the Channel(s) which may in any manner infringe upon any third party's rights.

(iii) The Broadcaster shall ensure that the Channel(s) shall comply with the Programming Code and the Advertisement Code issued by the Central Government;

(iv) The programme content for each of the Channel(s) shall correspond and represent the appropriate genre indicated by the Broadcaster, including the language of the Channel(s).

(v) The Broadcaster shall provide its programming schedule atleast 30 days advance for the purpose of insertion in Electronic Programming Guide (EPG).

(vi) The Broadcaster agrees and undertakes that the bandwidth utilization of its channel will be between 2 to 4 mbps only.

(vii) The Broadcaster shall provide including but not limited to Professional IRD boxes of CISCO/Harmonic/Tandberg, Cam Module, Smart Card, Remote and all other equipment which are proprietary in nature and related with reception of digital signals at installation premises indicated by DEN;

(viii) DEN shall not be liable to the Broadcaster or any other party for any infringement of copyrights of any third party or any other illegality in respect of the programme content of the Channel(s). The Broadcaster shall be solely responsible for ensuring that the intellectual property rights of the Channel(s)/Broadcaster remain protected in the Area and DEN shall not be held liable for violation of such intellectual property rights in any manner; and

(ix) The Broadcaster shall not claim adversely to or challenge the intellectual property of DEN, or its authorized agents. The Broadcaster shall not use any material containing any of the intellectual property of DEN nor authorize or permit others to make use of the intellectual property of DEN.

(7) INDEMNIFICATION

Each Party shall, at its own expense, forever keep and hold the other Party and such other Party's directors, officers, employees, agents, subcontractors, affiliates and subsidiaries fully indemnified and harmless against all liabilities, claims, costs, damages and expenses (including, without limitation, reasonable attorney's fees) resulting due to the defaulting Party's acts, omissions, misstatements, and representations and warranties or any of its obligations pursuant to the Agreement.

(8) LIMITATION OF LIABILITY:

Notwithstanding anything contained in this Agreement, including the Indemnification provisions, the entire liability of DEN for any and 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 DEN from the Broadcaster . Liability in excess of such paid Carriage Fee, if any, shall be borne by the Broadcaster.

(9) TAXES

Each Party shall individually be responsible for payment of any statutory/government taxes, revenues, duties, levies etc. which are or may become payable pursuant to this Agreement by such Party.

(10) FORCE MAJEURE

Neither Party shall be liable for any delay/inability to carry out any of the obligations under the Agreement resulting or caused by any reason due to any hardware breakdown, acts of God, riots, strikes, lock-out, war, enactments, statutes, ordinance, legislation, court orders, directions of any local or civic body or statutory authorities, or any catastrophes, such as fire, earthquakes, floods or famine or incidents beyond the control of either Party. In the event any force majeure prevails for continuous for 7 (seven) days, the affected Party shall forthwith send a notice to the other Party and upon receipt of the said notice, the Parties shall promptly consult and decide how to respond to such force majeure condition, including, without limitation whether to terminate this Agreement or waive such performance, based on the degree to which the force majeure condition shall have influenced the performance of this Agreement.

(11) DISCLAIMER OF AGENCY

Neither Party shall be or hold itself as the agent of the other under this Agreement. This Agreement between DEN and the Broadcaster is on principal to principal basis and is terminable in nature.

(12) CONFIDENTIAL AND PROPRIETARY INFORMATION

Either Party shall keep in strict confidence any Confidential Information received from the other Party and shall not disclose the same to any person, not being a party to this Agreement. Each Party shall also bind its employees, officers, advisors, associates, contractors, agents and other similar persons, to whom the Confidential Information may be disclosed, to the obligations of such confidentiality. Disclosure of Confidential Information by any Party to any of its employees, officers, advisors, associates, contractors, agents and other similar persons shall be strictly on a need to know basis. Confidential Information shall, at all times, remain the exclusive property of the disclosing Party and the other Party shall not acquire any rights in such Confidential Information. Confidential Information shall not be treated as Confidential Information when:

- (a) is already in the public domain or deemed to be available to the public;
- (b) hereafter becomes publicly known through no wrongful act, fault or negligence of the receiving Party;
- (c) was in the receiving Party's possession prior to receipt from the disclosing Party;
- (d) is received without obligation of secrecy from a third Party free to disclose such information;
- (e) is subsequently independently developed by the receiving Party without use of any of the disclosing Party's proprietary Information;
- (f) is approved for release or use by written authorization from the disclosing Party;
- (g) is required to be disclosed by any of the Parties at the request of or at the express direction of any Government or Judicial Agency; or
- (h) is independently developed by employees of the receiving Party who have not had, either directly or indirectly, access to, or knowledge of such Confidential Information.

(13) 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 be withheld by the other Party.

(14) 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.

(15) WAIVER

The failure of either Party to resist, in any one or more instance, upon performance of any of the provisions of this Agreement or to enforce any such provisions or the relinquishment of any such rights, and such rights shall continue and remain in full force and effect. No single or partial exercise by either party of any right or remedy shall preclude other future exercise thereof or the exercise of any other right or remedy. Waiver by any party of any breach of any provisions of this Agreement (or the consequences of any such breach as provided for in this Agreement) must be in writing and signed by the Parties hereto and such waiver shall not constitute or be construed as a continuing waiver or as a waiver of any other breach of any other provisions of this Agreement.

(16) 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.

(17) GOVERNING LAWS

This Agreement shall be governed by and construed in accordance with the laws of India. The Telecom Disputes Settlement & Appellate Tribunal, to the exclusion of all other courts/tribunals, shall have the exclusive jurisdiction to entertain any dispute arising out of or relating to this Agreement.

(18) ENTIRE AGREEMENT AND MODIFICATIONS

This Agreement along with its Annexes 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. Subject to any new regulations/orders stipulated by the TRAI/MIB or any order of a court/tribunal of appropriate jurisdiction, any modification, variation, alteration and amendment of the provisions of the Agreement shall be mutually agreed in writing and executed by and on behalf of the Parties.

(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 DEN RAJKOT CITY COMMUNICATION PRIVATE LIMITED	For _____
Signature:- _____	Signature:-
Name :- Puneet Aggarwal	Name:-
Designation:- Authorised Signatory	Designation:-

Annexure - A
Target Market

1. _____

2. _____

3. _____

4. _____

5. _____

