

“Freeview” CHANNEL OPERATOR TRADE MARK LICENCE

THIS LICENCE is made BETWEEN:

_____ whose
a company incorporated under the laws of principal office is at:
with company registration no. _____

_____ (the “Licensee”); and

DTV Services Limited

a company incorporated under the laws of England with company registration no. 04435179 whose principal office is at: 27-29 Cursitor Street, London EC4A 1LT, United Kingdom (“the Licensor”)

IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS HEREIN IT IS AGREED AS FOLLOWS

1 Definitions

In this Licence the following terms shall have the meanings set out below:

“Amendment” - any amendment to the Brand Guidelines or Channel Operator Guidelines, or to the form of a Trade Mark.

“Brand Guidelines” - the brand guidelines attached hereto in Schedule 5 as amended from time to time by the Licensor in its sole discretion.

“Broadcasting Licence” - a television licence granted by the Office of Communications under part 1 of the Broadcasting Act 1996.

“Channel(s)” - the television and radio channel(s) and interactive service(s) contained in Schedule 2 or any of them, broadcast by the Licensee and available Free to View on the UK digital terrestrial television (“DTT”) platform.

“Channel Trade Marks” - the word marks and devices i.e. trade marks consisting of or including graphic elements, belonging to the Licensee and set out in Part 1 of Schedule 1.

“Channel Operator Guidelines” - the guidelines for use of the Trade Marks to promote the availability of the Channels on the UK Free to View DTT platform attached hereto in Schedule 3 as amended from time to time by the Licensor at its sole discretion.

“Effective Date” - the date of this Agreement.

“Free to View” - unencrypted and made available to consumers without payment.

“Freeview Marketing Website” - the marketing support website entered from <http://www.freeview.co.uk/marketing>.

“Freeview Trade Marks” – the FREEVIEW word mark and logo (i.e. trade marks consisting of or including graphic elements) set out in Part 2 of Schedule 1.

“Freeview+ Trade Marks” – the FREEVIEW+ word mark and logos set out in Part 3 of Schedule 1.

“Freeview HD Trade Marks” – the FREEVIEW HD word mark and logos set out in Part 4 of Schedule 1.

“Freeview+ HD Trade Marks” – the Freeview+ HD word mark and logos set out in Part 5 of Schedule 1.

“HD Channel” means a Channel broadcast in high definition and accessed via high definition DTT receivers.

“Initial Term” - 2 years from the Effective Date.

“New Trade Marks” – means any trade mark added by the Licensor to Part 6 of Schedule 1 from time to time by notice to the Licensee.

“Publicity Material” - any paper-based or online promotional material produced by the Licensee for the purpose of promoting the availability of the Channel(s) on the UK Free to View DTT platform.

“Subsidiary” - any company which is a subsidiary of the Licensor from time to time, subsidiary having the meaning set out in section 1159 of the Companies Act 2006.

“Term” - the period this Licence is in force, subject to clause 5.

“Territory” - United Kingdom.

“Trade Marks” - the Freeview Trade Marks, the Freeview+ Trade Marks, the Freeview HD Trade Marks, the Freeview+ HD Trade Marks and any New Trade Marks.

“To use” - to make use of and/or reproduce.

2 Licence

2.1 The Licensor grants to the Licensee during the Term a royalty-free, non-exclusive, non-transferable right in the Territory to use the Trade Marks in or on Publicity Material subject to the terms and conditions of this Licence.

2.2 The Licensee shall not use or distribute any Publicity Material carrying the Trade Marks unless and until such Publicity Material has been approved by the Licensor in accordance with the Approvals Procedure set out in Schedule 4 (as amended from time to time by the Licensor in its sole discretion).

2.3 The Licensee shall only use the Freeview HD Trade Marks and Freeview HD+ Trade Marks in Publicity Material relating to an HD Channel, and shall not use those trade marks to imply that a Channel is an HD Channel if it is not.

2.4 The Licensee shall only use the Trade Marks:

2.4.1 in the form supplied by the Licensor;

2.4.2 in a manner acceptable to the Licensor and in accordance with the Licensor’s high quality standards, goodwill and reputation; and

2.4.3 strictly in accordance with the Brand Guidelines and the Channel Operator Guidelines.

2.5 In the event of any Amendment, the Licensee shall not produce any item of Publicity Material that does not comply with the Amendment, after the expiry of any applicable notice period advised by the Licensor or otherwise after the date of notification of the Amendment under clause 2.14 (“Notification Date”). The Licensee may use and distribute Publicity Material produced prior to the Notification Date that does not comply with the Amendment for a period of six months from the Notification Date, after which it shall cease using and distributing such non-compliant Products and/or Publicity Material.

2.6 The Licensee shall not use any Trade Marks in a manner that misrepresents the Licensee's association with the Licensor.

2.7 The Licensee shall not apply the Trade Marks directly to any product or packaging for any product.

2.8 The Licensee shall not use any Trade Mark in such a way as to suggest or imply that it is a kite mark or a standard for the functionality or technical specification of any television receiver or adaptor, or other equipment.

2.9 The Licensee undertakes that its use of the Trade Marks shall preserve, promote and not undermine the goodwill in the Trade Marks.

2.10 The Licensee hereby grants to the Licensor a co-terminous, non-exclusive royalty-free licence to use the Channel Trade Marks for the purposes of promoting the availability of the Channel(s) on the UK Free to View DTT platform on the same terms as set out in this Licence, excluding clauses 2.2, 2.3, 2.4.3, 2.5, 2.7, 2.11, 2.13, 2.14, 2.15, 3.1.4 (solely to the extent it requires the Channel Trade Marks to be kept separate from any other trade marks), 4 and 5.5. For the avoidance of doubt (except in clauses 2.12 and 5.6), references to Trade Marks in this Licence shall become reference to Channel Trade Marks for the purposes of the licence contained in this clause, and references to the Licensor and Licensee shall refer to the licensor and licensee of the Channel Trade Marks.

2.11 The Licensee shall at all times during the Term hold a valid Broadcasting Licence for each Channel.

2.12 The Licensee hereby grants the Licensor the right to sub-licence the Channel Trade Marks to manufacturers and retailers for the purposes of promoting the availability of the Channel(s) on the UK Free to View DTT platform, and for use in or on publicity material, on-screen guides and product outer packaging, on terms substantially the same as the terms of this Licence, and consents to the Licensor's use and sub-licensing of the Channel Trade Marks prior to the Effective Date, to the extent that such use complied with clauses 2.4.1, 2.4.2, 2.6, 2.9 and 3 of this Licence.

2.13 In the event of the addition or removal, after the Effective Date, of a channel broadcast by the Licensee to or from the Free to View television, radio and interactive channels and services provided under the Trade Marks and available on the UK DTT platform, the Licensee shall complete the form attached as Schedule 6 to this Licence and shall forward it to the Licensor as soon as possible. Where a channel is added, then upon signature of the form by the Licensor, the channel will be added to Schedule 2 as a Channel and the trade marks relating to that channel will be added to part 1 of Schedule 1 as Channel Trade Marks.

2.14 The Licensee must consult the Freeview Marketing Website and comply with the Brand Guidelines when producing Publicity Materials. The Licensee shall be deemed to have been notified of an Amendment on the earlier of: (i) the date on which it consults the Freeview Marketing Website (if such Amendment is included on the Freeview Marketing Website at that date); or (ii) the date on which it receives direct notification from the Licensor.

2.15 The Licensee may only use any New Trade Marks as the Licensor may specify in writing to the Licensee, and in accordance with the Brand Guidelines.

3 Rights in and Registration of the Trade Marks

3.1 The Licensee acknowledges and agrees that:

3.1.1 the Licensor is the proprietor of the Trade Marks and any copyright subsisting in and the goodwill relating to the Trade Marks is owned by the Licensor;

3.1.2 the benefit of all use of the Trade Marks and any additional goodwill accrued as a result of the Licensee's activities in connection therewith shall inure to the Licensor;

3.1.3 the Licensee will not make any representation or do any act which may be taken to indicate that it has any right, title or interest to the ownership or use of the Trade Marks except under the terms of this Licence;

3.1.4 the Licensee will not use the Trade Marks in a manner likely to prejudice their legal protection or validity. In particular, without prejudice to the generality of the foregoing, the Licensee shall ensure that if any other logos and/or trade marks are used or incorporated on the Publicity Material they are kept separate from the Trade Marks and are not used in any manner which could lead to confusion as to the ownership of the Trade Marks;

3.1.5 except as provided by this Licence or under the terms of another valid licence, or as otherwise permitted under law or contract, the Licensee will not make use of the name of the Licensor or any of its Subsidiaries (present or future) or of any other trade mark, design, copyright or other intellectual property in which the Licensor or any of its Subsidiaries has proprietary rights;

3.1.6 any trade mark application in respect of the Trade Marks may be made only by the Licensor and the Licensee will not make or attempt to make any such trade mark application. The Licensee shall if so required by the Licensor co-operate with the Licensor in securing or attempting to secure registration of the Trade Marks anywhere in the Territory, (which shall include providing such written details and further samples of the Publicity Material as the Licensor may reasonably request) free of charge to the Licensor, provided that the Licensee's reasonable out of pocket costs in complying with this sub-clause shall be met by the Licensor;

3.1.7 subject to sub-clause 3.1.8, the Licensee will on receipt of a request from the Licensor enter into any further agreements or execute any documents deemed necessary by the Licensor in order to give effect to sub-clause 3.1.2 and/or to secure any registrations or cancellations pursuant to sub-clause 3.1.6;

3.1.8 the Licensee's reasonable out of pocket costs in complying with sub-clauses 3.1.6 and 3.1.7 shall be met by the Licensor; and

3.1.9 the Licensor shall have no obligation to register the Trade Marks.

3.2 The parties hereby acknowledge and agree that neither shall acquire rights in the other's trade marks by virtue of their use in connection with the Publicity Material.

4 Trade Mark and Copyright Notices

Unless otherwise agreed by the Licensor during the Approvals Procedure in Schedule 4, the Licensee shall cause to appear in or on any Publicity Material on which the Trade Marks appear the following notices (or the relevant part thereof as appropriate) and/or such other legends, markings or notices and in such locations and sizes as the Licensor may from time to time require (and as are lawful) in order to give appropriate notice of the Licensor's trade mark or other intellectual property rights:

“The *[insert reference]** words and logos are trade marks of DTV Services Ltd and are used under licence. © DTV Services Ltd.”

*The Licensee shall insert where indicated in the above notice, details of such of the Licensor Trade Marks as the Licensee uses and is permitted to use under this Licence in relation to the relevant Publicity Material in the form FREEVIEW, FREEVIEW+, FREEVIEW HD and/or FREEVIEW+ HD (as applicable).

4.2 The Licensee shall comply with any instructions given by the Licensor in relation to the use of trade mark notices and markings for the New Trade Marks.

5 Term and Termination

5.1 This Licence shall continue indefinitely unless and until terminated in accordance with this clause 5.

5.2 At any time after the end of the Initial Term, either party may terminate this Licence by giving the other party not less than thirty (30) days' written notice.

5.3 If any Channel ceases to be available on the UK Free to View DTT platform, this Licence shall terminate immediately in relation to that Channel and the Channel Trade Marks signifying that Channel.

5.4 The Licensor may terminate this Licence immediately at any time on the giving of written notice to the Licensee if:

5.4.1 the Licensee commits a breach of any of the obligations and conditions imposed upon it by this Licence (including for the avoidance of doubt, a breach of the Channel Operator Guidelines or Brand Guidelines) and does not remedy such a breach (if capable of remedy) within thirty (30) days after receiving written notice from the Licensor to do so; or

5.4.2 the Licensee uses the Trade Marks in a manner unacceptable to the Licensor or brings any of the Trade Marks into disrepute; or

5.4.3 the Licensee makes any representation or does any act which may be taken to indicate that it has any right, title or interest to the ownership or use of the Trade Marks except under the terms of this Licence; or

5.4.4 the Licensee undergoes any change in control. The Licensee is required immediately to give written notice to the Licensor following any such change in control; or

5.4.5 the Licensee ceases to carry on business, goes or is put into receivership, administrative receivership, administration or liquidation or makes an arrangement for the benefit of its creditors or takes or suffers any similar action in consequence of any debt; or

5.4.6 the Licensee challenges the validity of any of the Trade Marks.

5.5 Upon termination of this Licence in relation to any Trade Mark, and provided that the Licensee is not in breach of this Licence, the Licensee (and any sub-licensees) shall, to the extent it is entitled under this agreement during the Term in relation to that Trade Mark, be entitled to continue to use the Trade Mark on Publicity Materials for a further six (6) month period from the date of termination, for the sole purpose of using up Publicity Material manufactured during the Term.

5.6 Where the Licensor is exercising its rights under the Licence granted pursuant to clause 2.10, and the Licence of a Channel Trade Mark is terminated in accordance with clause 5, the Licensor and its sub-licensees shall be entitled to continue the use of the Channel Trade Mark on Publicity Materials, including for the avoidance of doubt on outer packaging of products, for a further six month period from the date of termination, for the sole purposes of selling-off such products and using up Publicity Material manufactured during the Term.

5.7 Subject to clause 5.5 and 5.6, on termination of this Licence for any reason in relation to a Trade Mark, except as otherwise agreed by the Licensor in writing the Licensee shall immediately cease using that Trade Mark in any form and the Licensee shall (at the Licensor's sole option) destroy or deliver up to the Licensor all materials in the Licensee's possession or control bearing the Trade Mark and all rights granted under this Licence shall immediately revert to the Licensor.

5.8 Termination of this Licence shall be without prejudice to the accrued rights of each party at the date of termination

5.9 Clauses 3.1.7, 3.1.8, 5.5, 5.6, 5.7, 7, 8 and 10 shall survive termination of this Licence and shall continue in full force and effect.

6 Infringement by third parties

The Licensee shall immediately give written notice to the Licensor of any actual, threatened or suspected infringement by a third party of any of the Licensor's rights in and to the Trade Marks which may come to the Licensee's attention. The Licensor shall not be under any obligation to take any legal or other action against any such third party. The Licensee shall not be entitled to bring proceedings under section 30 of the Trade Marks Act 1994.

7 Indemnity

7.1 The Licensee shall be liable for, and shall defend, indemnify on demand, and hold harmless the Licensor including, for the purposes of this clause, its directors, secretary, officers, servants, agents, employees and shareholders against, all professional expenses, liabilities, claims, judgments, actions, debts or rights of action (of whatever kind), and all costs (including legal costs), damages, legal fees, losses, expenses, penalties, fines, criminal or civil, or other payments of any nature whatsoever incurred or suffered by the Licensor, excluding indirect or consequential loss but including loss of goodwill

relating to the Trade Marks, which arise out of, or are caused by, or result from any dispute or contractual, tortious or other claims or proceedings brought against the Licensor by reason of the acts or omissions of the Licensee or of its officers, employees, agents or subcontractors.

7.2 The Licensee's maximum liability under clause 7.1 shall be limited to £3,000,000 (three million pounds sterling).

7.3 The limitations of liability set out clause 7.2 shall not extend to death or personal injury resulting from the negligence of the Licensee and/or its servants or agents nor to any other liability which the Licensee is prohibited from excluding by law.

8 Address for Notices

Except for notices given under clauses 2.2, 2.13, 2.14 and 4, which may be sent to the email address provided by the Licensee from time to time, all notices given by the parties under this Licence shall be in writing and delivered by registered post, airmail or facsimile (with a copy posted) to the respective addresses or facsimile numbers of the parties as advised from time to time.

9 Assignment and Sub-Licensing

9.1 This Licence is personal to the Licensee which (subject to clause 2.12) shall not assign, transfer, sub-license, mortgage, charge, or in any other way dispose of or purport to dispose of its rights or obligations under this Licence.

9.2 Without prejudice to the generality of clause 9.1 above, the Licensor acknowledges that third parties may be subcontracted to print or produce the Publicity Material for the Licensee. Such third parties shall not be permitted to distribute the Publicity Material to any party other than the Licensor and/or the Licensee, or deal with the Publicity Material in any other way.

10 General

10.1 Nothing in this Licence shall constitute or be deemed to constitute a partnership between the parties or constitute or be deemed to constitute either party as agent of the other for any purpose whatsoever and neither party shall have authority or power to bind the other or to contract in the name of the other in any way or for any purpose.

10.2 No amendment to the terms of this Licence, (other than an Amendment, an amendment to the Approvals Procedure or the addition of a New Trade Mark) shall be valid or binding unless made by prior written agreement between the parties and signed by their duly authorised representatives.

10.3 No waiver by either party of a breach or a default hereunder shall be effective unless in writing and signed by both parties and any such waiver shall not be deemed to be a waiver of any subsequent breach or default of the same or similar nature. No failure or delay by either party in exercising any rights, power or privilege under this Licence shall operate as a waiver thereof nor shall any single or partial exercise by any party of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege.

10.4 To the extent permitted by English or any other applicable law all provisions of this Licence shall be severable and no provision shall be affected by the invalidity or unenforceability of any other provision.

10.5 No person who is not a party to this Licence has or shall have any right under the Contracts (Rights of Third Parties) Act to enforce any term of this Licence, except for any other beneficiary of the indemnity given in clause 7 who shall be entitled to enforce the provisions of clause 7 of the Licence. Notwithstanding the above, the consent of any other beneficiary of the indemnity in clause 7 shall not be required in order to vary or terminate this Licence by agreement. Nothing in this Licence shall confer or purport to confer on any other third party any benefit or the right to enforce any term of this Licence.

10.6 This Licence represents the entire understanding between the parties [and replaces the channel operator trade mark licence agreement entered into between the parties on [INSERT DATE]*, which is hereby terminated. The provisions of clauses [5.5 and 5.6] of that agreement shall not apply].

10.7 This Licence shall be interpreted in accordance with the laws of England and Wales and any dispute or other matter arising hereunder shall at the option of the Licensor be subject to the exclusive jurisdiction of the English courts.

DULY EXECUTED

SIGNED for and on behalf of the **Licensor (DTV Services Limited):**

Signature _____

Name _____

Title _____

Date _____

SIGNED for and on behalf of the **Licensee*:**

Signature _____

Name _____

Title _____

Date _____

***Please ensure the date of any previous licence is inserted into clause 10.6.**

SCHEDULE 1

Part 1 - Channel Trade Marks

Word Mark(s):

Logo(s)

Part 2 – FREEVIEW Trade Marks

Word Mark: Freeview

Logo:



Part 3 – FREEVIEW+ Trade Marks

Word Mark:

FREEVIEW+
FREEVIEW PLUS

Logo:



Part 4 – Freeview HD Trade Marks

Word Mark:

FREEVIEW HD

Logo:



Part 5 – Freeview+ HD Trade Marks

Word Mark:

FREEVIEW+ HD
FREEVIEW PLUS HD

Logo:



Part 6 – New Trade Marks

SCHEDULE 2

Channel(s)

SCHEDULE 3

Channel Operator Guidelines

receive all Free to View DTT services (including text and interactive), including those broadcast in high definition.

The Trade Marks may be used subject to the following conditions:

1. The Trade Marks shall be used only for the purpose of promoting the availability of the Channel(s) on the UK Free to View DTT platform.
2. All Publicity Material including the Trade Marks issued by or on behalf of the Licensee shall comply with all applicable laws, regulations, codes and industry standards.
3. The Licensee shall supply the Licensor with advance details of marketing activity incorporating the Trade Marks and obtain written approval prior to use of the relevant materials .
4. For clarity, this Licence is intended to relate to the promotion of the availability of the Channel(s) on the UK Free to View DTT platform only and is not for the promotion of products. If the Licensee wishes to include a reference to a particular product brand or model in any Publicity Material, the Licensee shall seek the prior written consent of the Licensor in relation to the inclusion of that particular product brand or model. In any event, the Licensee shall only associate the Trade Marks on Publicity Material with products that have been approved by the Licensor under the terms of a licence with the manufacturer of that product. The Licensor acknowledges that the Licensee is entitled to assume that a product has been approved by the Licensor if the packaging for that product bears a Trade Mark. However, if it comes to the Licensee's attention that the manufacturer of a product is not authorised to use one or more of the Trade Marks that it is using in relation to a product, the Licensee shall immediately notify the Licensor and shall immediately cease any further use of the relevant unauthorised Trade Mark in publicity material relating to that product.
5. In particular, the Licensee shall:
 - 5.1 only use the Freeview HD Trade Marks and Freeview+ HD Trade Marks to indicate HD Channels and shall only associate such marks with products that can receive all Free to View DTT services (including text and interactive), including those broadcast in high definition;
 - 5.2 only associate the Freeview+ Trade Marks and Freeview+ HD Trade Marks with products that are digital television recorders; and
 - 5.3 only associate the Freeview+ HD Trade Marks with products that are digital tv recorders and can

SCHEDULE 4

Approvals Procedure

1. For the purpose of this Schedule 4 “Samples” shall mean (i) where the Trade Marks are to be used on a live webpage, a screen shot or other representation of the format of the webpage (as appropriate) and the proposed address of the web-page, or (ii) in any other case two (2) true and accurate samples of any item of proposed Publicity Material.

The Licensee shall provide Samples to the Licensor together with a written request for approval of them at least three (3) working days before producing the Publicity Material.

2. Where practicable, the Licensor shall use reasonable efforts to inform the Licensee whether or not the Samples are acceptable within three (3) working days of receipt of the Licensee’s request for approval.

3. The Licensee warrants that the Publicity Material shall conform in every way to the Samples as approved by the Licensor and undertakes that:

- 3.1 it will make no use of any of the Trade Marks or of the Publicity Material other than for the purposes of complying with paragraph 1 above unless and until the Licensee has the express written approval of the Licensor;

- 3.2 it will not make any alterations, modifications or changes to the Publicity Material once they have been approved by the Licensor without the specific written consent of the Licensor (and, for the avoidance of doubt, any breach of this clause shall constitute a material breach of this Licence for which damages may not be an adequate remedy, and the Licensee acknowledges that, in addition to any other remedies available at law, in equity or under this Licence, the Licensor shall be entitled to obtain injunctive relief from a court of competent jurisdiction to restrain any such breach and in particular the distribution of any such amended items);

- 3.3 for on-line use, it will email the Licensor a link to the webpage on the day it goes live and inform the Licensor immediately of any change to the web address; and

- 3.4 in cases other than for on-line use, it will supply to the Licensor free of charge, upon request by the Licensor, samples of

the Publicity Material as manufactured, sold or issued.

4. The address to which Samples shall be sent is (or such other address notified by the Licensor to the Licensee):

Name: Neema Shah
Brand Manager

Address: FREEVIEW
27-29 Cursitor Street
London, EC4A 1LT

Email: neema.shah@freeview.co.uk

Tel: +44 (0) 20 7269 0856

SCHEDULE 5

Brand Guidelines

SCHEDULE 6

FREEVIEW Channel Operator Trade Mark Licence

Channel and Channel Trade Mark Addition and Removal Notification

Please copy this Schedule and sign and return the completed copy as outlined below. All sections must be completed.

Company name:

Channel name:

New Channel Trade Marks (include word marks and logos):

HD/SD:

Date of addition or removal to the DTT platform:

Signed on behalf of

Name:

Date:

Please return this form to:

Trade Mark Licensing
DTV Services Limited
27-29 Cursitor Street
London EC4A 1LT

For completion by DTVS; copy to be returned to the Channel Operator

We agree to the addition of the above channel to Schedule 2 as a Channel and the above new channel logo to Part 1 of Schedule 1 as a Channel Trade Mark.

Signed on behalf of DTV Services Limited

Name:

Date: